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Prepared by and Return To:

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NORTH CAROLINA

DURHAM COUNTY

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR MULBERRY PARK TOWNHOMES**

THIS DECLARATION is made this 31st day of January, 2006, by **SATTERWHITE CONSTRUCTION, INC.**, a North Carolina corporation, hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property (the "Properties") situated in the City of Raleigh, County of Durham, State of North Carolina, which is more particularly described as follows:

BEING all of Lots 1 through 200, inclusive, open space, greenway and right(s) of way, Mulberry Park, containing 25.96 acres in the aggregate as shown on a plat recorded in Plat Book 172, Pages 94, 97, 100, 103, 106 & 109, Durham County Registry.

WHEREAS, it is the intent of the Declarant to cause the Properties to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that the Properties, including without limitation, every Lot (as hereinafter defined) which is a part of the Properties, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with such real property and shall be binding on all parties having any right, title or interest in the above-described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1-DEFINITIONS

SECTION 1.01. "Association" shall mean and refer to Mulberry Park Townhomes Association, Inc., a North Carolina non-profit corporation, its successors and assigns. See also Article 2, Part A, Section 2.01(d).

SECTION 1.02. "Amenities" means the improvements, if any, constructed, erected, installed or existing on the Common Area for the common use, benefit and enjoyment of the Properties by the Owners, such as clubhouses, lakes, greenways and Stormwater Control Measures. Initially, no Amenities other than Stormwater Control Measures, are proposed.

SECTION 1.03. "Architectural Committee" means a committee of at least three individuals appointed by the Board of Directors to review requests by Owners of Lots, specifically excluding the Declarant, to make improvements to Lots in accordance with Article 6 of this Declaration.

SECTION 1.04. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association. See also Article 2, Part A, Section 2.01(e).

SECTION 1.05. "City" shall mean the City of Raleigh, North Carolina.

SECTION 1.06. "Common Areas" shall be defined as set forth in Article 2, Part A, Section 2.01(h) of this Declaration and shall include without limitation the following unless in conflict with Article 2, Part A, Section 2.01(h):

- A. All central appurtenant installations for services such as electricity, gas, telephone and cable television;
- B. Private streets, drives, parking areas, medians, traffic and landscape islands on private streets, street yard areas, subdivision signs and entrances on the Properties or serving the Properties, but excluding driveways serving individual Lots;
- C. All of the parts of the Properties and facilities and Amenities existing in or upon the Properties for common use which are necessary or convenient to the existence, enjoyment, use, maintenance or safety of the Properties;
- D. Any private drainage easement shown on the Plat or future map recordings however named pursuant to an Encroachment Agreement with the City and Stormwater Control Measures serving more than one (1) Lot which are situated outside of the public street rights of way including without limitation, detention facilities, retention facilities, wet ponds, sand filters, wetlands, bio-retention measures, swales and storm pipes that serve more than one (1) lot (excluding those pipes and Stormwater Control Measures serving one (1) lot); and

- E. Open space, including any permanently protected undisturbed open space areas .

SECTION 1.07. "Common Expense" shall be defined as set forth in Article 2, Part A, Section 2.01(i) and shall also mean and include:

- A. Costs and expenses associated with the Association's purchase and reconstruction of Townhomes as provided in this Declaration;
- B. The replacement of trees and vegetation within the slope easement along West Millbrook Road in accordance with Raleigh City Code Sections 10-2082.12(b) and 10-2082.5(d); and
- C. Maintenance costs for the Stormwater Control Measures and replacement contribution payments required to be paid by the Association to the City by the Stormwater Replacement Protection Easement and Access Maintenance Agreement.

SECTION 1.08. "Declarant" shall mean and refer to Satterwhite Construction, Inc., a North Carolina corporation, and its successors and assigns as provided in the Planned Community Act. See also Article 2, Part A, Section 2.01(j)..

SECTION 1.09. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Mulberry Park Townhomes and all valid amendments hereto applicable to the Properties recorded in the Office of the Register of Deeds of Durham County, North Carolina. See also Article 2, Part A, Section 2.01(m).

SECTION 1.10. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first Mortgage on a Lot who has requested notice of certain matters from the Association as provided in this Declaration or the Organizational Documents.

SECTION 1.11. "FHA" shall mean and refer to the Federal Housing Administration of the U.S. Department of Housing and Urban Development, "HUD" shall mean the U.S. Department of Housing and Urban Development, and "VA" shall mean and refer to the U.S. Department of Veterans Affairs.

SECTION 1.12. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties (provided said map has been approved by Declarant or the Association), with the exception of the Common Areas owned in fee simple. Except where otherwise indicated by context, the term "Lot" shall also include the Improvements on such Lot. See also Article 2, Part A, Section 2.01(r).

SECTION 1.13. "Lot in Use" shall mean any Lot on which a Townhome has been fully constructed and for which a certificate of occupancy or similar certificate has been issued by the appropriate governmental agency.

SECTION 1.14. "Map" or "Maps" shall mean and refer to any map of the Properties including additional phases (if they are annexed pursuant to Article 10 hereof) which may be recorded by Declarant in the Durham County Registry hereafter.

SECTION 1.15. "Member" shall mean and refer to every Person who or which holds membership in the Association. See also Article 2, Part A, Section 2.01(t).

SECTION 1.16. "Mortgage" means any mortgage, deed of trust, and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

SECTION 1.17. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage. See also Article 2, Part A, Section 2.01(u).

SECTION 1.18. "Organizational Documents" shall mean and refer to the Articles of Incorporation and Bylaws of the Association, and all lawful amendments thereto. The Articles of Incorporation of the Association and the Bylaws of the Association are attached to this Declaration as Exhibits A and B, respectively. Unless required by applicable law, including but not limited to the ordinances and regulations of the City, amendments to Organizational Documents are not required to be recorded in the Durham County Registry (as defined in Section 13.05) as an amendment to this Declaration.

SECTION 1.19. "Owner" shall mean and refer to the record owner, whether one or more Persons, of a fee simple interest (or undivided fee simple interest) in any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. See also Article 2, Part A, Section 2.01(x).

SECTION 1.20. "Person" means any individual, corporation, partnership, limited liability company, association, trustee, or other legal entity. See also Article 2, Part A, Section 2.01(y).

SECTION 1.21. "Planned Community Act" shall mean the provisions of Chapter 47F of the General Statutes of North Carolina applicable to the Properties, as such provisions shall be amended and recodified from time to time. See also Article 2, Part A, Section 2.01(a).

SECTION 1.22. "Properties" shall mean and refer to that certain real property described in this Declaration affecting real property now within the authority of the Association by way of this Declaration and such additional real property thereto as hereafter may be annexed and brought within the jurisdiction of the Association. See also Article 2, Part A, Section 2.01(z).

SECTION 1.23. "Stormwater Control Measures" shall mean and refer to grass swales, level spreaders and the detention pond, its inlets and outlets, located on the Property in or under the private drainage easements shown on the Plat and other recorded maps together with drainage easements, however named, and all other storm drainage pipes, which serve more than one Lot that are located outside public street rights-of-way. No amendments to the legal documents affecting

Stormwater Control Measures or the Replacement Fund shall be made without the prior written consent of the City of Raleigh. See also Article 2, Part A, Section 2.01(ac).

SECTION 1.24. "Stormwater Maintenance Manual" shall mean the stormwater operations and maintenance manual and budget attached to the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installation Replacement Contribution as Exhibit A. See also Article 2, Part A, Section 2.01(ad).

SECTION 1.25. "Stormwater Replacement Agreement" shall mean the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installation Replacement Contribution legal agreement by and among the Declarant, the Association and the City of Raleigh, North Carolina recorded contemporaneously with this Declaration.

SECTION 1.26. "Townhome" or "Townhouse" shall mean and refer to an attached single family dwelling or place of residence constructed upon a Lot within the Properties and constituting a part of a building.

ARTICLE 2 - RALEIGH CITY CODE REQUIREMENTS

PART A - DEFINITIONS AND GENERAL REQUIREMENTS

SECTION 2.01. Definitions. As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise (when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital letters in order to have the defined meaning). Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in Section 2.03 of this Part A (for example, words and terms defined by the Code and used in this Declaration have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

(a) "Act" is defined as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S.47F, with the particular section number following the G.S.47F reference (for example, G.S.47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

(b) "Annexation Declaration" is defined as a document, by whatever name denominated, that is recorded for the purposes of annexing Annexed Property to this Declaration and causing such Annexed Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and including any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

(c) "Annexed Property" is defined as all real property annexed or subjected (those two terms being used interchangeably herein) to any part or all of the terms of this Declaration following the initial recording of this Declaration in the Registry.

(d) "Association" is defined as the nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for the Properties. Sub-Association (if applicable) is defined as a nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for a portion of, but not all of, the Properties. There may be one or more Sub-Associations (if applicable) with respect to the Properties. An example of a Sub-Association is a property Owners association for a townhouse development that is part of a cluster unit development which has an Association for the cluster unit development. All references herein to an Association that is, in fact, a Sub-Association, are deemed corrected accordingly.

(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 in this Declaration and in the Act.

(f) "City" or "City of Raleigh" is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.

(g) "Code" is defined as the Raleigh City Code of Ordinances as it exists from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

(h) "Common Area" is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Properties, however such real property is described on a plat or document recorded in the Registry. Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one (1) Lot in the Properties or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the City). Common Areas include all of the following:

- (1) any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);
- (2) Stormwater Control Measures;
- (3) any water or sewer utility line that serves more than one Lot and which is either located

- outside public street rights-of-way or outside any City utility easement;
- (4) any site or facility designated a common area, common property open space, open space common area, amenity area, or other similar designation on any recorded plat or map of the Properties, or in this Declaration;
 - (5) any Code-required shared facility or Open Space for the Properties, except for Open Space owned by the City;
 - (6) any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public Maintenance by the appropriate Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorney's fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and
 - (7) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers.

Common Area that is owned by or subject to being Maintained by a Sub-Association is Sub-Association Common Area, even if it is referred to in this Declaration or in any recorded plat of the Properties as Common Area instead of Sub-Association Common Area. Common Area, if any, established by the Declarant or the Association for the benefit of fewer than all of the Owners and occupants of the Properties is Limited Common Area, and such Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Limited Common Area exists are subject to the same Code provisions as those applicable to Common Area. All references herein or in any recorded plat of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly. Sub-association Common Area, if any, owned by or subject to being Maintained by a Sub-Association for the benefit of fewer than all of the Owners and occupants of the applicable portion of the Properties is Sub-Association Limited Common Area, and such Sub-Association Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Sub-Association Limited Common Area exists are subject to the same Code provisions as those applicable to Sub-Association Common Area. All references herein or in any recorded plat of the Properties to Limited Common Area or Sub-Association Limited Common Area that is, in fact, Common Area or Sub-Association Common Area, are deemed corrected accordingly.

(i) "Common Expense" is defined as all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, and the Governing Documents and including specifically, but without limitation, all of the following: (Expenses for the Maintenance of Limited Common Area are Limited Common Expenses, which is a subcategory of Common Expense.)

- (1) All sums lawfully assessed by the Association against its Members;

- (2) Expenses of the Common Area and administration, inspection and Maintenance of the Common Area;
- (3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;
- (4) Expenses for acquisition, Maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;
- (5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;
- (6) Ad valorem taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;
- (7) Fees or charges for utilities used in connection with the Common Area;
- (8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (9) Allocations to reserve funds;
- (10) Payments owed to the City pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the City by the Declarant;
- (11) Fees for services engaged by the Association;
- (12) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other Governmental Entity;
- (13) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (14) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and
- (15) Expenses agreed by the Members to be Common Expenses of the Association.

(j) "Declarant" is defined as Satterwhite Construction, Inc., its successors and assigns.

(k) "Declarant Annexation Date" is defined as the last date and time on which the Declarant has the right to annex real property to this Declaration without the consent or joinder of any Person other than the City, which date is 5:00 p.m. on _____ (or, if no date is entered in the blank space, is 5:00 p.m. on the date that is seven (7) years following the date of the recording of this Declaration). The timeliness of an Annexation Declaration is determined by the date of its recordation as stamped by the Registry notwithstanding its date of execution.

(l) "Declarant Control Period" is defined as any period of Declarant control of the Association, as provided in 47F-3-103(d) of the Act and established in this Declaration (which may include a vote allocation that gives Declarant, by itself, sufficient voting power to elect members of the Board).

(m) "Declaration" is defined as the document, however denominated, which contains this Article, together with all exhibits and amendments to the document.

(n) "Fiscal Year" is defined as the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

(o) "Governing Documents" is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; Annexation Declarations; and other declarations of restrictive or protective covenants applicable to the Properties; and all Sub-Association documents (with respect to those portions of the Properties subject to such Sub-Association documents), as the same may be amended, restated or supplemented from time to time.

(p) "Governmental Entity" is defined as the City, the Counties of Wake and Durham, 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 or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Entity or entities is/are applicable.

(q) "Include" or "Including" is defined as being inclusive of, but not limited to, the particular matter described, unless otherwise clearly obvious from the context.

(r) "Lot" is defined as any numbered or lettered portion of the Properties, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is not any of the following: dedicated street rights-of-way; Common Area; Open Space owned in fee simple by the Association; greenway or park lands owned in fee simple by the City.

(s) "Maintain", "Maintenance", "Maintaining", or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation. Provided, however, this definition is not applicable to Section 2.08 of Part A of this Article.

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

(u) "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust, and the terms mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

(v) "Open Space" is defined as open space areas shown on preliminary subdivision plans filed with the City and delineated on any recorded plat of the Properties or the open space areas required by the Code or by the conditional use zoning of the Properties for the perpetual benefit of the Owners. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code. Under the Code, Open Space may be owned by the Association, a Sub-Association, or by the City. Open Space owned by the Association or a Sub-Association is Common Area or Sub-Association Common Area, as appropriate.

(w) "Operating Deficit" is defined as the difference between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements.

(x) "Owner" is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any Person who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

(y) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the City), or other entity.

(z) "Properties" is defined as all of the real property subject to any part or all of the terms of this Declaration. The amount of acreage of the Properties at the time of the recording of this Declaration is 25.96 acres.

(aa) "Registry" is defined as the office of the Register of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Properties are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Properties is situated.

(ab) "Stormwater Agreement" is defined as any agreement recorded in the Registry among the Declarant, the Association, and the City, or between the Declarant and the City, or between the Association and the City, relating to Stormwater Control Measures for the Properties or any part thereof, and includes all amendments and supplements to such agreements. A Stormwater Agreement with the City includes the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution Contract and the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Lump Sum Replacement Contribution Contract (those names being subject to change from time to time under the Code).

(ac) "Stormwater Control Measures" or "Stormwater Control Facilities", such terms being used interchangeably herein and in the Stormwater Agreement, is defined as one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and City drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded plat or in a recorded

document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures are Common Area or Limited Common Area, or Sub-Association Common Area or Sub-Association Limited Common Area, as applicable.

(ad) "Stormwater Operations Maintenance Manual and Budget" is defined as that manual; however named, attached to and incorporated into the Stormwater Agreement as an exhibit for the Maintenance of Stormwater Control Measures and the payment of the costs thereof.

SECTION 2.02. Applicability. The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the City, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

SECTION 2.03. Conflicts.

(a) Some or all of the Properties may be subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents.

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all Annexation Declarations are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Provided, however, any provision of this Declaration or any Annexation Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration or an Annexation Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(c) The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, any Annexation Declaration or any other Governing Documents.

(d) The provisions of this Declaration control over any inconsistent provisions of any other Governing Documents, except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the Articles shall control.

SECTION 2.04. Amendment of Declaration. Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment. When City approval of an amendment is required by the Code or by a provision of this Declaration (including this Article), City approval shall be evidenced by the signature of the Raleigh City Attorney or his/her Deputy on the recorded original or copy of the amendment. Any amendment of this Article of this Declaration must have prior City approval. Any amendment of this Article or any other provision of this Declaration that requires City approval is void *ab initio* if recorded without the required City signature.

SECTION 2.05. Assessments.

(a) **Obligation for Assessments.** Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) stormwater assessments created and established pursuant to Part B of this Article; (4) special assessments; (5) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (6) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (7) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (8) all other assessments and charges imposed or allowed to be imposed by this Declaration.

The Association at all times has the right to include as part of the assessments or other charges applicable to the Properties and the Owners thereof such amounts as are required to pay all Common Expenses and all financial obligations of the Association imposed by the Code either (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on some or all of the Owners, with the Association having responsibility for collection and payment to the City.

(b) **Purpose of Assessments.** The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which it applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board. All budgets of the Association shall be proposed in good faith and with the intent to cover all reasonably necessary Common Expenses for the applicable Fiscal Year of the Association, including monies allocated for reserve funds.

(c) **Budgets; Amount of Assessments.** The Association is at all times empowered to levy assessments against the Lots and the Owners of Lots within the Properties for the payment of

Common Expenses.

Notwithstanding the foregoing, for calendar year 2006, the annual assessment per Lot is \$160.00. The "Maximum Annual Assessment" for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

(d) Effect of Non-Payment; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be charge on the Owner's Lot as provided in G.S.47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in G.S.47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the

assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. 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 Lot until the amounts due are paid.

(e) **Classes of Membership.** This Declaration may allow different classes of membership in the Association and may allow different levels of annual assessments and other assessments to be imposed for different classes of membership.

(f) **Declarant's Obligation to Fund Deficits; Assessment Credit.** During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits 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.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots owned by Declarant, in an amount equal to aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

(g) **Certificate of Payment.** The Association shall, within ten (10) business days after receipt of a written request from an Owner or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the assessments and other charges against a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

SECTION 2.06. Membership and Governance.

(a) **Membership.** The Declarant and every Owner within the Properties shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such

Owner title to any Lot, 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 Member's Lot. The foregoing is not intended to include any Person that holds an interest merely as security for the performance of an obligation. Upon termination of ownership, an Owner's membership with respect to the transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot.

(b) Members' Rights of Use. Each Member and lawful occupant in the Properties shall have a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right rights of ingress and egress to and from all Common Areas throughout the Properties, subject to such rules and regulations as are allowed under the Governing Documents to be imposed by the Association and subject to suspension of use rights allowed in the Governing Documents; provided that no suspension of rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by G.S. 47F-3-107.1 of the Act. But, the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

(c) Voting Rights. Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. If a Lot is owned by multiple Owners, the votes allocated to that Lot shall be cast only in accordance the agreement of a majority in interest of the multiple Owners unless otherwise provided in the Governing Documents. A majority agreement is conclusively presumed if only one of the multiple Owners casts the votes allocated to that Lot, unless any of the other Owners of the Lot protest such co-Owner's vote promptly to the Person presiding at the meeting.

(d) Proxies. Votes may be cast in person or by proxy. All proxies must be dated, duly executed by the Owner, and delivered to the Secretary of the Association or to the property management company authorized by the Board to receive proxies prior to the opening of the meeting for which it is first intended to be used. No proxy shall exceed a term of eleven (11) months from its date except as otherwise provided in the Act. Revocation of a proxy shall be made by actual notice to the Person presiding over the Association meeting.

(e) Quorum. Except as otherwise provided in the Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Governing Documents, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

SECTION 2.07. Permanently Protected Undisturbed Open Space Areas. Within any permanently protected undisturbed open space areas shown on any recorded plat of the Properties, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code), any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse permit from the City. Permanently Protected Undisturbed Open Space may or may not be Open Space as defined in this Declaration.

SECTION 2.08. Tree Conservation. The Association shall have a conservation easement for the planting of trees and for the protection and Maintenance of the trees situated within any tree conservation areas shown on any recorded plat of the Properties. No tree disturbing activity, as defined in Part 10, Chapter 2 of the Code, shall be permitted in tree conservation areas in violation of the Code. Any tree disturbing activity undertaken in tree conservation areas or in permanently protected undisturbed open space areas shown on recorded plats of the Properties without a permit from the City or otherwise in violation of the Code is a violation of the Code and may result in significant financial consequences to the Owner and to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of both the City and of the Association, enter tree conservation areas to perform active tree protection measures (as defined in the Code), to plant trees, to remove dead or diseased trees, or to plant replacement trees, provided, however, that Association consent shall not be required, unless otherwise required by other provisions of this Declaration or Governing Documents, if the tree conservation area in which the Owner desires to perform active tree protection measures or plant trees, remove dead or diseased trees and to plant replacement trees is located on that Owner's Lot.

SECTION 2.09. Insurance. Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall procure and Maintain (i) hazard insurance on the Common Area, insuring against all risk of loss commonly insured against, including fire and extended coverage of peril, and (ii) liability insurance, in an amount of not less than one million dollars (\$1,000,000.00), 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 Common Area. The Association shall obtain and Maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial for the protection or preservation of the Common Area and other property of the Association or otherwise is in the best interests of the Association. The premiums for such insurance shall be a Common Expense paid from the annual assessments as established pursuant to this Declaration.

SECTION 2.10. Indemnification. No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from its liabilities as an Owner under this Declaration and other Governing Documents.

SECTION 2.11. On-Street Parking. Any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

SECTION 2.12. Sight Triangles. No sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two feet and eight feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists, shall be placed within any area designated on a recorded map of the Properties as a sight triangle or other similar designation. An easement over sight triangles is reserved for the benefit of the Declarant, the Association, and the City, and their respective agents and contractors for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or the Owner of the Lot with respect to the obstruction removed from the site triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Properties previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

SECTION 2.13. Annexed Property. Real property which was not part of the City-approved development, or real property that was part of the City-approved development but which was not subjected to this Declaration at the time of its initial recording, may be annexed to this Declaration and made part of the Properties as Annexed Property, provided that all of the following conditions are met with respect to the real property to be annexed:

- (a) the Annexed Property is contiguous to the Properties or directly across a street from the Properties;
- (b) any development of the Annexed Property is first approved by the City;
- (c) annexation of such Annexed Property meets any other applicable requirements of this Declaration; and
- (d) contemporaneously with either the development of the Annexed Property or the recording of the plat of the Annexed Property, whichever first occurs, an Annexation Declaration shall be recorded in the Registry.

No Annexation Declaration shall be valid without the prior written approval of the Raleigh City Attorney or his/her deputy. Evidence of such approval shall be indicated by the signature of the City Attorney or his/her deputy on the recorded original or copy of the Annexation Declaration. Any Annexation Declaration recorded without the required City approval is void *ab initio*. An Annexation Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Annexed Property and as are not inconsistent with the general scheme of this Declaration. Each Annexation Declaration shall state that title to the Common Area that is included within the Annexed Property shall be conveyed to the Association no later than the time of the conveyance of the first Lot within the Annexed Property, and any Open Space in the Annexed Property shall be conveyed in fee simple without any encumbrances except drainage, greenway, utility and conservation easements and this Declaration. Open Space in the Annexed Property is subject to all Code and Declaration provisions relating to Open Space. Each Annexation Declaration shall state the amount of the Stormwater Assessment for Lots in the annexed Property when required by Part B, Section 6 of this Article.

Annexation of the Annexed Property shall be effective upon the later of the recording of the Annexation Declaration in the Registry or such later date as specified in the Annexation Declaration, and the Annexed Property described therein shall be subject to all of the provisions of this Declaration to the extent made applicable by the Annexation Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration and other Governing Documents of the Association. Each Owner of a Lot in Annexed Property shall be a Member of the Association, and the Annexed Property and each Owner of any portion thereof shall be subject to assessment by the Association in accordance with the terms of this Declaration, the Annexation Declaration, other Governing Documents, the Code, and the Stormwater Agreement, as applicable. The Association shall have the duties, responsibilities and powers set forth in this Declaration and other Governing Documents with respect to Annexed Property. Except as may otherwise be expressly provided in this Declaration or any Annexation Declaration, the Properties, including the Annexed Property, shall be managed and governed by the Association as an entirety. Assessments for Common Expenses collected from Owners in the Annexed Property may be expended by the Association for Common Expenses anywhere in the Properties without regard to the particular phase, area or subdivision from which such assessments came.

SECTION 2.14. Access Easement for Repair of Structures. A perpetual access easement over an adjoining Lot hereby is established in favor of each Owner or tenant of a residence or business, and the contractors of such Owner or tenant, whose residence or business is located closer than five (5) feet from an adjoining Lot line, for the purpose of allowing the residence or business to be Maintained. No fence, wall, storage shed, or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the residence or business.

SECTION 2.15. Access for Governmental Agencies. A non-exclusive, perpetual right of access over all Lots and Common Areas (including private streets, if any) in the Properties is hereby established for the benefit of Governmental Entities for installing, removing and reading water meters, Maintaining and replacing water and sewer facilities, fire lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and the delivery of mail.

SECTION 2.16. Conveyance or Dedication of Common Areas. Common Areas, including Open Space, shall either be conveyed to the Association in fee simple without any encumbrances except this Declaration, drainage, greenway, utility and conservation easements of record at the time of conveyance, and the lien of real property taxes not yet due and payable, or conveyed to the City as allowed or required under the Code. Common Areas may be conveyed to the City free of part or all of the provisions of this Declaration, as determined by the Declarant and the City. Title to Common Areas shall be conveyed to the Association or to the City no later than the time of the conveyance of the first Lot within the applicable phase of the Properties. The Association shall accept all Common Areas, including the improvements installed thereon by the Declarant, deeded to it and/or dedicated to it on any recorded plat of the Properties, whether or not the conveyance or dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Properties.

SECTION 2.17. Private Utility Lines. Any water or sewer line that serves more than one Lot and which is either located outside of any public street right-of-way or outside of any City utility

easement shall be owned and Maintained by the Association as Common Area. In no case shall the City or the State of North Carolina be responsible for Maintaining any such private utility line or be responsible for the consequences for any blockage, backflow, break or leak in said utility line. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lots within the Properties. Accordingly, the City shall not be responsible for failing to provide regular or emergency utility services to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or their occupants when such failure is due to inadequate design or construction, blockage, backflow, leakage, inadequate maintenance, or any other factor within the control of the Declarant, the Association, or the Owners or occupants of the Properties.

The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration. Provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

SECTION 2.18. Landscape Easements. The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement removes or causes any of the shrubs or trees within the slope easement to die or become unhealthy (as defined in Part 10 Chapter 2 of the Code), it shall be the responsibility of the Association to replace the shrubs and trees in accordance with the minimum applicable quantity, size and spacing requirements of the Code within one-hundred and eighty days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association. Notwithstanding the foregoing, no Governmental Entity shall be required to obtain the consent of the Association when working within slope easements, greenway easements or construction easements.

PART B - STORMWATER (CODE SECTIONS 10-5007 and 10-9027)

SECTION 2.01. Stormwater Control Measures. The Code requires that stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the Properties be reduced. To comply with the Code, Stormwater Control Measures will be installed by the Declarant and Maintained by the Association as Common Area or Limited Common Area (or by a Sub-Association as Sub-Association Common Area or Sub-Association Limited Common Area) in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement for the Properties so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code and applicable regulations, rules and directives of the City. The expenses for Maintenance of Stormwater Control Measures by the Association shall be Common Expenses (or, if applicable, Limited Common

Expenses). Failure to Maintain the Stormwater Control Measures is a violation of the Code potentially subjecting each Owner of a Lot to significant daily civil penalties and other enforcement actions.

SECTION 2.02. Creation of Stormwater Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a Stormwater Assessment, as hereinafter defined, established and collected as hereinafter provided, and each Owner of a Lot, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any person who maybe designated by the Association to collect such monies) such Stormwater Assessment. For calendar year 2006, the Stormwater Assessment is approximately \$23.92 per Lot. Stormwater Assessments shall commence with respect to each Lot on the later of the date on which this Declaration or applicable Annexation Declaration is recorded or the date on which a plat is recorded establishing the Lot. The annual budget for the Association shall include a line item evidencing the Stormwater Assessments, and the amount budgeted shall be sufficient to satisfy the total annual inspection, management and Maintenance budget for the Stormwater Control Measures as set forth in the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, and any replacement contribution payment owed to the City pursuant to the Stormwater Agreement. The Association shall honor its obligations under the Stormwater Agreement, and the Association shall assess the Stormwater Assessment. The Declarant and each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the Members of the Association. No vote of the Owners is required to levy, collect, or foreclose a Stormwater Assessment. Stormwater Assessments shall be paid to the Association at the same time annual assessments are due.

In the event of nonpayment of any Stormwater Assessment for a period of thirty (30) days or longer after the payment due date, such Stormwater Assessment, together with interest at a rate not to exceed the highest rate allowed by North Carolina law), as computed from the date the delinquency first occurs, late charges, and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land upon the filing of a claim of lien, in the manner provided in G.S.47F-3-116(g), in the office of Clerk of Superior Court in the County in which the Lot is located and shall be a continuing lien upon each Lot against which the assessment is made until paid in full. The lien may be foreclosed in accordance with North Carolina law, or in any other manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the Stormwater Assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. In such instances, such unpaid assessments shall be deemed Common Expenses collectible from all Owners, including the new Owner.

Each Stormwater Assessment, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person

who was the Owner of the Lot at the time when the Stormwater Assessment first became due and payable. If more than one Person held an ownership interest in the Lot at the time the Stormwater Assessment first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of Stormwater Assessments shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amount due is paid.

The creation of the Stormwater Assessments is for the benefit of the City, and the Stormwater Assessments may be collected and enforced by the City as provided herein and in the Code.

SECTION 2.03. Purpose of Stormwater Assessments. The Stormwater Assessments to be levied by the Association against each Lot shall be used as follows:

(a) to pay the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve funds, under any Stormwater Agreement, including Maintenance of the Stormwater Control Measures in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code, applicable regulations and rules and directives of the City;

(b) to pay all legal, engineering and other professional fees incurred by the Association in carrying out its duties as set forth herein, or in the Governing Documents, or in the Stormwater Agreement in connection with the Stormwater Control Measures; and

(c) payments to the City pursuant to the Stormwater Agreement.

SECTION 2.04. Assignment of Collection Rights and Lien Rights the City. Pursuant to the Stormwater Agreement and G.S.47F-3-102(15) of the Act, the Association has assigned to the City its rights to collect Stormwater Assessments, its rights to file liens against the Lots, and the right to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement. The Association shall have a license to collect Stormwater Assessments, to file liens against the Lots, and to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement until such time as the City notifies the Association in writing that it has elected to exercise its right to collect Stormwater Assessments, to file liens against the Lots, and/or to foreclose on those liens for monies owned by the Association to the City pursuant to the Stormwater Agreement. Declarant hereby irrevocably authorizes and directs each Owner to rely upon any written notice sent to such Owner by the Association that the City has elected to exercise its rights hereunder and thereafter to pay Stormwater Assessments directly to the City without any obligation or right to inquire otherwise until such time such Owner receives written notice from the City to pay the Stormwater Assessments directly to the Association. As the assignee of the Association's collection and lien rights, upon the filing of a claim of lien by the City, any such lien may be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Articles 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the office of the clerk of superior court of the county in which the Lot is located; which claim of

lien shall state the description of the Lot(s) encumbered by the claim of lien, the name and address of the Association and of the City, the record Owner(s) of the encumbered Lot(s) at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be filed any time after a period of thirty (30) days or longer of default and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is filed, plus late charges, interest at the rate set forth in the Stormwater Agreement, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorney's fees. Any lien claim filed by the City shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

SECTION 2.05. Effect of Assignment. Each Owner of a Lot, by acceptance of a deed or otherwise, vests in the City, as the assignee of the Association's collection and lien rights for the Stormwater Assessments, the right and power, upon nonpayment of the Stormwater Assessments by the Association, to bring all actions against each Owner, personally, for the collection of such charges as a debt or to foreclose the lien, which charges and lien amounts shall equal a pro-rata share of the Stormwater Assessments for each Owner. The lien provided for in this Article shall be in favor of the City and shall be for the benefit of all Owners.

SECTION 2.06. Annexation of Additional Property. As set forth in this Declaration, additional real property from time to time may be annexed to the Properties and subjected to this Declaration. Such Annexed Property shall also be subjected to existing Stormwater Agreements and/or new Stormwater Agreements, in accordance with the following:

In connection with the recording of an Annexation Declaration, either a new Stormwater Agreement and/or an amendment to an existing Stormwater Agreement (as determined by the City) shall be entered into among the City, Declarant, and Association to address the Stormwater Control Measures of the Annexed Property. Except in those instances where the Stormwater Agreement already contains contribution payments for the Annexed Property, the Annexation Declaration shall establish a new Stormwater Assessment for the Lots in the Annexed Property with respect to all new Stormwater Control Measures located in or serving such Annexed Property, and such new Stormwater Control Measures shall be designated as Common Area or Limited Common Area, as appropriate, on the recorded plat(s) of the Annexed Property. The new Stormwater Assessment shall be sufficient to Maintain the new or additional Stormwater Control Measures in or serving the Annexed Property and to pay the applicable replacement contribution payments to the City under the new or amended Stormwater Agreement, and such Stormwater Assessment shall be assessed against the Owners of the Lots of the Annexed Property and Owners of the existing or future Lots served by the same Stormwater Control Measures.

SECTION 2.07. Drainage Easement. The Declarant dedicates, establishes and declares to and for the benefit of each Lot, the Common Area and each Owner hereof:

(a) a perpetual, irrevocable and nonexclusive easement, right and privilege to discharge and store surface water drainage from such Lot or Common Area into the Stormwater Control Measures situated in private drainage easements that serve the Properties, whether located on or off or the

Properties, and

(b) a perpetual, irrevocable and non-exclusive easement, right and privilege to use and Maintain Stormwater Control Measures, including the right of access to and from the private drainage easements and other portions of the Properties as reasonably necessary to Maintain the Stormwater Control Measures.

SECTION 2.08. Joint and Several Liability. Each Owner of any portion of the Properties served by Stormwater Control Measures is jointly and severally responsible for Maintenance of such Stormwater Control Measures, including payment of any unpaid *ad valorem* taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the Stormwater Control Measures, and including all interest charges thereon, together with the costs and expenses of collection incurred by the City or other collecting Person, including court costs and reasonable attorney's fees actually incurred. Each Owner of any portion of the Properties served by the Stormwater Control Measures has a right of contribution against all other Owners of other portions of the Properties served by the same Stormwater Control Measures for payment of such costs and expenses to the extent that the Owner having such right of contribution pays more than such Owner's prorata share thereof, such prorata share being determined either by other assessment provisions of this Declaration or by dividing the acreage of such Owner's portion of the Properties served by the Stormwater Control Measures by the total acreage of the Properties served by the same Stormwater Control Measures.

SECTION 2.09. Relocation of Drainage Easements. Drainage easements situated on the Properties may be relocated only by a written agreement signed by the Association - upon approval of the Board of Directors without vote of the Members - and by the Owners of all portions of the Properties on which the drainage easement then is located, and by the Owners of all portions of the Properties on which the drainage easement is to be relocated. The consent of tenants and Mortgagees of the affected Lots shall not be required for the relocation to be effective. All relocations of a drainage easement shall be accompanied with a letter sealed by a professional engineer licensed in the State of North Carolina stating that the relocated drainage easement will not cause any adverse stormwater runoff unto adjoining properties.

Notwithstanding anything herein to the contrary, no relocation of any drainage easement shall be valid without the without the prior approval of the Raleigh Chief Engineer or his/her Deputy. City approval shall be evidenced by the signature of the Raleigh Chief Engineer or his/her Deputy on the recorded plat or other instrument of the relocation. Any relocation, without the required City signature is void *ab initio*.

Relocation of a drainage easement is valid from the later of the time of either recording of the plat or other instrument of relocation in the Registry or such later date specified therein.

PART C - TOWNHOUSE DEVELOPMENT (CODE SECTIONS 10-2109, 10-3072 AND 10-3073)

Any portion of the Properties that is part of a "townhouse development", as that term is defined in

the Code, is subject to all of the following. A townhouse development may be, but is not required to be, part of a cluster unit development. Any townhouse development that is part of a cluster unit development is also subject to the provisions of the Code applicable to cluster unit developments (some of which may be identical to the following provisions), except as otherwise provided in the Code:

SECTION 2.01. Open Space. In addition to other provisions of this Article (*see e.g.*, Part A, Sections 2.06, 2.16 and 2.17), all Open Space is subject to the following:

(a) **Townhouse Open Space.** Townhouse Open Space and private streets used for the exclusive benefit of townhouse residents are Limited Common Area or Sub-Association Common Area when the townhouse development is part of a cluster unit development containing other housing types.

(b) **Preservation.** Open Space and private streets shall be preserved for the perpetual benefit of the Owners of the Lots within the Properties, and shall be restricted against private or public Ownership for any other purpose, except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage, conservation and greenway easements.

(c) **Exchange.** Open Space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of Open Space for other properties when all of the following are met:

- (1) written notice of the exchange is given to each Member of the Association;
- (2) after the notice is given, those members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;
- (3) the exchanged properties and other considerations are of like value and utility;
- (4) the acreage and configuration of the remaining Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and
- (5) the exchange is approved by the Planning Director of the City.

(d) **Dissolution.** If the Association is dissolved, the Open Space shall first be offered to the City, and if accepted, deeded to the City.

(e) **Recreation.** Recreational uses located in Open Space and other Common Areas shall comply with the provisions of Code Section 10-2072 related to recreational use related to a residential development, other than a single-family dwelling unit. Membership fees shall not be charged to non-members of the Association for any recreation facility located in a residential zoning district unless the facility is owned by a non-profit entity and a special use permit is first obtained from the Raleigh Board of Adjustment in accordance with Code Section 10-2144(b), "Recreational Use Restricted to Membership - Not for Profit".

(f) **Mortgaging of Open Space.** Open Space may be subjected to a security interest with the written approval by those Members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration, and provided that the

rights of the mortgagee are subordinate to the rights of the Owners and the Association.

SECTION 2.02. Common Party Walls. All common party walls between individual residences shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

(a) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common 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 common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, 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 common 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 of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common 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 with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

(f) An Owner who desires to sell a residence, or the prospective purchaser of such residence, may request the Owners of each other residence which shares that common party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such common party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, 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 a residence which shares a common party wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that residence and with respect to third parties.

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

PART D - CITY GREENWAYS (CODE SECTIONS 10-3003 AND 10-3022)

Notwithstanding any other provision of this Declaration, without the prior written consent of the City, none of the following is allowed in any City-owned greenway or greenway easement: grading; excavation; dredging; the addition or removal of soil or other materials; the erection of buildings, signs, fences, drainage devices or structures; or any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code). The City, in its sole discretion, at any time and from time to time, may erect paved or unpaved trails, trail markers, and place litter receptacles and other convenience facilities, within the greenway boundaries. The City, in its sole discretion, may adopt and amend regulations concerning the use of greenway (including, by way of example, limiting hours of operation), which shall be equally applicable to the general public and to the Owners and their occupants and guests.

PART E - PRIVATE STREETS (CODE SECTION 10-3074)

SECTION 2.01. Private Streets. Pursuant to Code Section 10-3074 (b) and (c), all of the following are applicable to private streets in the Properties:

(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 cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or to the occupants of same when such failure is due to lack of access to such areas due to inadequate design, construction or blocking of access routes, inadequate Maintenance, or any other factor within the control of the Declarant, the Association, the Owners or the occupants of the Properties.

(b) In no case shall the City or the State of North Carolina be responsible for Maintaining any private street. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lot within the Properties, in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

(c) The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration; provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

ARTICLE 3 - PROPERTY RIGHTS

SECTION 3.01. OWNER'S EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area and a right and easement over the Common Area for access, ingress and egress to and from streets, parking areas and walkways and to and from such Owner's Lot, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. **Admission and Other Fees:** Subject to the ordinances of the City, the right of the Association to regulate the use of and to charge reasonable admission and other fees for the use of any recreation facility situated upon the Common Area;
- B. **Suspension of Use of Common Area:** The right of the Association to suspend the right to use any Amenities, except Stormwater Control Measures and access rights, by any Owner, his family, occupants, tenants, guests, and invitees during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. Such rights may be suspended, after notice and hearing, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for infraction or violation of any provision of this Declaration, the Organizational Documents or published rules and regulations of the Association;
- C. **Dedication and Transfer of Common Area:** Except with respect to easements granted by the Association pursuant to Section 10.05 of this Declaration, and except as restricted by applicable law including but not limited to the ordinances, regulations and procedures, including variances, of the City, the right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority or utility, or for such purposes as may be agreed to by the Members, and subject to such conditions as may be agreed to by the Members, and provided that said dedication or transfer shall be approved as provided herein. Except with respect to easements granted by the Association pursuant to Section 10.05 of this Declaration, no such dedication or transfer shall be effective unless Members entitled to cast at least 80% of the votes in each class of Membership of the Association, have signed a written instrument consenting or agreeing to such dedication or transfer and unless such other agreement or consent as then required by the Planned Community Act and the ordinances, regulations and procedures, including variances, of the City have been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Association and the Owners established hereunder, including but

not limited to every Owner's easement for access, ingress and egress right to such Owner's Lot and use of the Common Areas ;

- D. **Guests:** The right of the Association to limit the number of guests that a Member may allow to use the Common Area;
- E. **Borrowing for Improvements:** The right of the Association, in accordance with its Organizational Documents and the Planned Community Act, to borrow money for the purpose of constructing, repairing, or improving the Common Area, including but not limited to the Amenities (or any portion thereof) and to the Stormwater Control Measures and in aid thereof, with the written assent of Members entitled to at least 80% of the votes in each class of Membership of the Association (that is, at least 80% of the votes in each class of Membership of the Association must have signed a written instrument consenting or agreeing to mortgage, pledge, encumber or hypothecate the Common Areas), and in accordance with the provisions of the Planned Community Act, to mortgage, pledge, encumber or hypothecate said Common Area; provided, however, the right of such Mortgagee shall be subordinate to the rights and easements of the Association and the Owners established hereunder;
- F. **Use of Common Area:** The right of the Association, through its Board of Directors, to determine the time and manner of use of the Common Areas and Amenities, if any, by the Members and others and to formulate, publish and enforce rules and regulations, and specifically including, but not limited to, the right to make permanent and temporary assignment of parking spaces and to make rules and regulations concerning parking all in accordance with the Raleigh City Code;
- G. **Easements:** The right of the Declarant, during the period of Class B membership, with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area to any public agency, authority, or any utility for such purposes as benefits the Properties or any portion thereof. This Section 3.01(G) may not be amended or deleted, without the written consent of Declarant;
- H. **Driveways:** The right and easement of individual Owners for driveways and walkways as provided in this Declaration;
- I. **Exchanges:** The right of the Association, as provided by and consistent with Section 10-3073(a)(2) of the Raleigh City Code, as the same may be amended from time to time, to exchange all or part of the Common Area for other real property and consideration of like value and utility subject to the provisions of the Planned Community Act;
- J. **Owner's Maintenance Easement:** The right and easement of individual Owners to maintain, repair and reconstruct the Townhome on such Owner's Lot as provided in Section 10.09 of this Declaration; and

- K. **Rules and Regulations:** The right of the Board to formulate, publish and enforce rules and regulations as provided in this Declaration.

SECTION 3.02. DELEGATION OF USE. Any Owner may delegate his right of use and enjoyment to the Common Area, including but not limited to the Amenities, to the members of his family, his tenants, contract purchasers or guests, who reside on such Owner's Lot, subject to the provisions of this Declaration.

SECTION 3.03. TITLE TO COMMON AREA. The Declarant covenants for itself, its successors and assigns, that in accordance with the Planned Community Act it will convey fee simple title in the Common Area to the Association, free and clear of all encumbrances and liens, except the current year's ad valorem real property taxes, utility, drainage and other easements as provided in this Declaration or as shown on recorded plats of the Properties, and an easement of enjoyment to which the Owners are entitled to share. Title to Common Area within real property annexed pursuant to this Declaration shall be similarly conveyed to the Association. The Common Area shall be preserved for the perpetual benefit of the Owners of the Lots and the Common Area is restricted against private or public ownership for any other purpose other than as provided by the Planned Community Act and the Raleigh City Code. Common Area shall not be subsequently subdivided or conveyed by the Association except as permitted by and in accordance with this Declaration, the Planned Community Act and the ordinances, regulations and procedures, including variances, of the City.

SECTION 3.04. EXCHANGE OF ASSOCIATION COMMON AREA. The Association, acting through its Board, from time to time may exchange with the Declarant or any member a portion of the Common Areas for a portion of the real property owned by such member within Mulberry Park provided that the real property acquired by the Association in exchange: (a) is free and clear of all encumbrances except the Declaration, and easements for drainage, utilities and sewers; (b) is contiguous to other portions of the Association Common Area; and (c) meets those requirements in Article II, Part C, Section 2.01(c) including the notice and written approval requirements. The real property so acquired by the Association shall be a part of the Association Common Areas, and without further act of the Association or membership, shall be released from any provisions of the Declaration except those applicable to the Association Common Areas. The portion of the Association Common Areas so acquired by Declarant or a member, without further act of the Association or membership, shall cease to be Association Common Areas and shall be subject to those provisions of the Declaration that were applicable to the real property conveyed to the Association by the member.

SECTION 3.05. TELEVISION ANTENNAS. The Association may provide, but is not required to provide, one or more cable television or telecommunication systems, central television antennas or other telecommunications-receiving devices for the convenience of the Members. The costs of services provided under these contracts may be included in annual or special assessments applicable to the Lots. The Association may regulate or prohibit the erection of antennas, satellite dishes and related equipment on any Lots in accordance with Section 9.05 of this Declaration. No exterior antennas, dishes, towers, or other transmitting or receiving structure, or support thereof,

shall be erected, installed, placed, or maintained without the prior written consent of the Board of Directors or Architectural Committee.

SECTION 3.06. PARKING RIGHTS. If a Lot is improved with a garage and/or is served by a driveway for which an exclusive easement is provided under this Declaration, then each of the following areas shall constitute an assigned parking space for such Lot: the garage, the driveway and the space in the common parking areas, if any, in front of such driveway. Garages shall be used for parking of motor vehicles only and shall not be used as storage areas nor converted to living area. The Board may regulate all parking on the Common Spaces including but not limited to the parking of boats, trailers, and other such items on the Common Areas. No boats and other water craft, trailers, campers, tractors, trucks other than pickup trucks rated at 3/4 tons or less, and motor vehicles other than passenger motor vehicles for 8 or fewer passengers shall be parked within the right of way of any street within the Properties, nor shall any of these be regularly parked on the Properties except in enclosed garages or in areas on the Properties designated by the Board. No inoperable motor vehicles shall be regularly stored on the Properties except in accordance with the Raleigh City Code, as it may be amended from time to time. The Board may from time to time adopt appropriate rules for the temporary parking of any of these items on the Properties.

SECTION 3.07. RULES AND REGULATIONS. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, including but not limited to the Amenities, and the Lots. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to their effective date. Such rules and regulations shall be binding upon the Owners (with the exception of the Class B Member), their families, tenants, guests, invitees, and agents until and unless such rule or regulation shall be specifically overruled, canceled, or modified by the Board of Directors or by the affirmative votes of a majority of the Members in a regular or special meeting. After notice, opportunity to be heard and notice of the final decision, the Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for a violation of the Association's rules and regulations, including but not limited to a suspension of the Owner's rights to use the Amenities except the Stormwater Control Measures. All rules and regulations shall be uniform with respect to the Lots. Notwithstanding anything to the contrary in this Declaration, the Board of Directors may not suspend an Owner's right of ingress and egress over the Common Areas and right to the use of parking spaces as provided in this Declaration.

SECTION 3.08. TAXES ON COMMON AREA. The Association shall be responsible for and shall cause to be paid out of annual assessments all ad valorem taxes, special assessments and assessments for public and private capital improvements made to or for the benefit of the Common Area or levied against the Common Area owned in fee simple by the Association.

SECTION 3.09. LEASES OF LOTS. Any lease between an Owner and a tenant for the lease of such Owner's Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, and that any failure by the tenant to comply with the provisions of this Declaration, the Organizational Documents and the rules and regulations of the

Association, as they exist from time to time, shall be a default under the terms of the lease. All leases of Lots shall be in writing and shall be for a term of not less than 90 days.

ARTICLE 4 - MEMBERSHIP AND VOTING RIGHTS

SECTION 4.01. MEMBERSHIP. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot. Following termination of the Properties as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association. See also Article 2, Part A, Section 2.05(e) of this Declaration.

SECTION 4.02. MEMBERSHIP CLASSES. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Member, if any. Class A Members shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be a Class A Member upon the termination of Class B Membership.

Class B: The Class B Member shall be the Declarant and its assigns and each Class B Member shall be entitled to three (3) votes for each Lot owned by the Declarant or its assigns. The Class B membership shall cease and be converted to Class A membership upon the occurrence of any of the following events, whichever occurs first:

- (a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional land is annexed to the Planned Community without the assent of Class A Members for the development of such additional land by the Declarant, as provided in this Declaration, but in any event the Class B membership shall terminate when 75% of the Lots have been deeded to Owners other than the Declarant;
- (b) Until seven (7) years from recording of this document; or
- (c) Upon the surrender of the Class B membership by the Declarant.

ARTICLE 5 - COVENANT FOR ASSESSMENTS

SECTION 5.01. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association assessments as stated in Article 2, Part A, Section 2.05 of this Declaration.

Such assessments are to be established and collected as hereinafter provided. All annual assessments shall be fixed at a uniform rate for all Lots; provided, however, as to any Lot which is not a Lot in Use, the amount of the annual assessment for each such Lot shall be an amount equal to twenty-five (25%) of the amount of the annual assessment applicable to a Lot which is a Lot in Use. Except as provided herein, special assessments shall be fixed at a uniform rate for all Lots without regard as to whether or not said Lot is a Lot in Use. Annual assessments shall be collected on a monthly basis. Special assessments may be collected on an annual, semi-annual, quarterly or monthly basis as determined by the Board from time to time. The annual and special assessments, together with such interest thereon, applicable late fees and the cost of collection thereof, including reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon such Lot until paid in full. Each such assessment, together with such interest, late fees and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

SECTION 5.02. RESERVE FUND. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and those other portions of the Properties or Lots which the Association may be obligated to maintain. Such reserve fund is to be established and maintained out of regular assessments as a common expense, but if the reserve fund is inadequate, a special assessment may be made.

SECTION 5.03. ADOPTION OF BUDGET AND ANNUAL ASSESSMENTS. The following provisions shall not operate so as to restrict the Association or the Board in performing the duties and obligations required of the Association or the Board under the Planned Community Act, but they shall be a limitation on discretionary costs and expenses above and beyond such duties and obligations:

- A. The Board of Directors of the Association shall adopt a proposed budget for the Association and set the amount of the regular annual assessment against the Lots at least 90 days in advance of each annual assessment period. See also Article 2, Part A, Section 2.05(c) of this Declaration.
- B. Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses as required by the Planned Community Act and the Raleigh City Code. If the assessments are insufficient to pay all Common Expenses, the Declarant may advance expenses for the maintenance and operation of the Association to the extent that annual assessments assessed against the Owners are inadequate for this purpose. Such advance shall be to the Association and on terms generally available to Declarant from its lending institution. At such time as the majority of the total votes of the Association are no longer held by the Declarant, its successors or assigns, the Declarant shall have no further obligation for maintenance and operation of the Association pursuant to the terms of this section. Notwithstanding the foregoing, Declarant, its successors and assigns, shall be

responsible for the payment of assessments and other amounts pursuant to other sections of this Declaration.

SECTION 5.04. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above and those set forth in Article 2, Part A, Section 2.05(c) of this Declaration, the Association may levy in any assessment year a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or any other purpose permitted under the Planned Community Act. Any such special assessment must have the assent of two-thirds (2/3) or more of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5.05. SPECIAL ASSESSMENTS FOR THE PURCHASE AND RECONSTRUCTION OF TOWNHOMES. In the event that any Townhome located on any Lot is substantially destroyed by fire or other hazard, the Owner shall give written notice to the Association within ninety (90) days following such destruction of whether such Owner intends to repair or reconstruct the Townhome. If the Owner fails to give such notice to the Association, it shall be presumed, for purposes of this Section, as notice that the Owner intends to repair or reconstruct the Townhome until either such Owner subsequently gives notice to the Association that such Owner does not intend to repair or reconstruct the Townhome. For purposes of this Section, "substantially destroyed" shall mean that the costs of replacement or repair equals at least fifty percent (50%) of the appraised value of the Townhome on the Lot before it was damaged. If the Owner elects not to repair or reconstruct the Townhome, the Association shall have the first right and option to purchase such Townhome and the Lot on which it is located in the manner hereinafter provided. The purchase option shall be effective for a period of ninety (90) days following notice of the Owner's election not to repair or reconstruct. For purposes of this Section, the failure of such Owner to repair or reconstruct the Townhome within twelve (12) months following such destruction shall be deemed notice to the Association that the Owner elects not to repair or reconstruct the Townhome.

- A. **Exercise of Option.** Upon notice of an Owner's election not to repair or reconstruct, the Board of Directors shall appoint a committee, or shall designate an existing committee of the Association, to determine whether failure to reconstruct the substantially destroyed Townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining Lots and Properties. The committee may employ such persons, including, but not limited to, real estate appraisers, realtors, architects, and engineers, as are reasonably necessary to make its determination, and shall report its conclusions, with supporting data, in writing to the Board within fifteen (15) days. The report shall set forth such matters as the Board and committee deem pertinent, but shall contain estimates of the pecuniary injury and diminution in value along with an estimate of the cost of purchase and reconstruction of the Townhome.

If the Board of Directors determines that it would be advantageous to the Association and/or to the remaining Properties to purchase and reconstruct the Townhome, it

shall call a special meeting by giving written notice thereof, setting forth the purpose of the meeting, to all Members within seven (7) days following submission of the committee report. The special meeting of Members shall be held not less than seven (7) days nor more than fifteen (15) days following notice to Members. Upon an affirmative vote of at least sixty-six and two-thirds percent (66-2/3%) of each class of membership, voting in person, by proxy or by written consent or ballot (unless prohibited by law) the Board will be authorized to purchase and reconstruct the Townhome and the Lot on which it is located and to assess all Lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of such Townhome and Lot. The Board may require that the assessment be paid in a lump sum, in installments during an assessment year, or over a period of two (2) or more assessment years, as the Board, in its discretion, shall determine to be appropriate.

Such an assessment shall be in addition to, and not in lieu of, the annual assessments provided for in this Article and the special assessments provided for in Article 2, Part A, Section 2.05 (c) of this Declaration.

- B. **Determination of Value.** The Owner of the substantially destroyed Townhome and Lot on which it is located shall convey marketable fee simple title thereto to the Association upon payment to the Owner by the Association of the fair market value of the Lot and Townhome in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the Owner. If they cannot otherwise agree on a fair market value or method of determining fair market value, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The fair market value as determined by any two of these three appraisers shall be final and binding on all parties. In the event no two appraisers agree upon a fair market value, the fair market value shall be the average of the values determined by the appraisers. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (2) of the fee of the third appraiser. If the Board and the Owner agree upon a single appraiser, each shall pay one-half (2) of the cost of the appraisal.
- C. **Application of Insurance Proceeds.** The Owner of the substantially destroyed Townhome, prior to conveyance to the Association, shall apply or cause to be applied so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the Townhome as shall be necessary to pay all liens, mortgages, deeds of trust, taxes and encumbrances upon the Lot so that the marketable fee simple title thereto may be conveyed free and clear of all liens and encumbrances. If the insurance proceeds are not sufficient to pay all liens, encumbrances, and obligations upon the Lot, the purchase price may be reduced by an amount adequate to pay any such deficiency or the deficiency may be paid out of the purchase price.
- D. **Failure to Exercise Option.** If the Association does not exercise the purchase option herein provided for, the Owner may retain the Lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a

site of an attached, singly-family Townhome. The reconstructed or repaired Townhome shall be substantially identical to the destroyed Townhome, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

- E. **Retention by Owner.** If a Townhome is not habitable by reason of damage or destruction, and the Association does not exercise the purchase option provided for herein, the obligation of the Owner to pay annual and special assessments shall not be reduced, delayed, abated or suspended. In the event a Townhome is damaged or destroyed, and the Owner does not begin repair or reconstruction within thirty (30) days following the damage or destruction, the Owner shall remove or cause to be removed, at his expense, all debris from the Lot, so that it shall be placed in a neat, clean, and safe condition and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Lot until paid by the Owner, unless the Lot is thereafter purchased by the Association under this Section.
- F. **Reconstruction by the Association.** Upon the acquisition of title to the Lot and the substantially destroyed Townhome located thereon, the Association is authorized to arrange such financing and to execute such notes, mortgages, deeds of trust, and other instruments, to enter into such contracts, and to do and perform such other matters and things as are necessary to accomplish the reconstruction of such Townhome; provided, however, that only that Townhome which is to be reconstructed and the Lot on which it is located shall stand as security for any liens, mortgages, or obligations arising out of the purchase or reconstruction of such Lot and Townhome, and no other portion of the Properties, including the Common Areas, shall be pledged, hypothecated, mortgaged, deeded in trust, or otherwise given as security for any obligations arising out of said purchase or reconstruction, and no Member shall be required to become personally obligated therefore.
- G. **Sale or Lease.** The Association shall hold title to the Lot and Townhome for the benefit of all Members. The Board may lease or sell the Lot and Townhome upon such terms and conditions as it, in its discretion, deems most advantageous to the Members. The lease rental shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the Lot; (2) to the maintenance, upkeep, and repair of the Lot and Townhome; (3) to payment or repayment to the Members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Lot and Townhome; and (4) to the general expenses of the Association. In the event the Lot is sold, the purchase price shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the Lot; (2) to payment or repayment to the Members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Lot and Townhome; and (3) to the general expenses of the Association. Any payment or repayment to Members of the special

assessment may be in cash or may be applied to any annual or special assessments due or to become due.

- H. **Application of Declaration and Organizational Documents.** Any Townhome (including the Lot on which it was constructed) which is destroyed and not subsequently restored or reconstructed and any Townhome which has been destroyed in whole or in part, by fire or other casualty, and is subsequently restored or reconstructed, at all times shall be subject to the provisions of this Declaration and to the Organizational Documents of the Association.

SECTION 5.06. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 5.04 AND 5.05. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.04 or 5.05 of this Declaration shall be sent to all Members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty-seven percent (67%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned by a majority vote of those present in person or by proxy and the required quorum at the next meeting shall be reduced by one-half of the required quorum for the previously adjourned meeting as provided in the Planned Community Act. The notice requirements do not change for any subsequently called meeting under this Section. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

SECTION 5.07. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to a Lot on the earlier of the date such Lot was conveyed by the Declarant to a third party purchaser or the date such Lot becomes a Lot In Use. The first annual assessment for such Lot shall be adjusted according to the number of months remaining in the calendar year.

SECTION 5.08. EFFECT OF NON-PAYMENT OF ASSESSMENTS/REMEDIES OF THE ASSOCIATION. Any assessment which is not paid within thirty (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. See also Article 2, Part A, Section 2.05 (d) of this Declaration.

SECTION 5.09. SUBORDINATION OF THE LIEN TO MORTGAGE. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage on a Lot. Mortgagees are not required to collect assessments and nothing in this Declaration shall require that failure to pay assessments shall constitute a default under a Mortgage insured by the U.S. Department of Housing and Urban Development ("HUD"), the U.S. Department of Veterans Affairs ("VA") or by any other governmental mortgage insurance program, such as those by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation or the Federal National Mortgage Association. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any such first Mortgage or deed of trust or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer, provided that the Association and

Declarant have been notified of said foreclosure prior to the date thereof. Such unpaid assessments extinguished by the foreclosure sale shall be deemed to be a Common Expense collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

SECTION 5.10. EXEMPT PROPERTY. The following portions of the Properties, subject to this Declaration, shall be exempt from the assessment created herein A) all portions of the Properties dedicated to and accepted by a local public authority; and B) the Common Area.

SECTION 5.11. INSURANCE COVERAGE. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, tenants, invitees, contractors, employees or authorized representatives, the cost of such maintenance or repair shall be added to and become part of the assessment applicable to the Lot owned by such Owner. See also Article 2, Part A, Section 2.09 of this Declaration.

SECTION 5.12. WORKING CAPITAL FUND. In addition to any other assessment provided in this Declaration, at the earlier of the closing of the first sale of each Lot after such Lot becomes a Lot in Use, or upon the occupancy of such Lot as a dwelling unit, a sum equal to two (2) months of the regular annual assessment applicable to such Lot shall be collected from the purchaser in the event of such sale or from the Owner in the event of such occupancy, and such sum shall be paid to the general operating fund of the Association to be used in the same manner specified for annual assessments. All sums paid into the working capital fund are in addition to and not in lieu of any regular or special assessments for Common Expenses.

SECTION 5.13. ASSOCIATION FUNDS NOT ASSET OF OWNERS. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any Common Expense or to the proper undertaking of all acts and duties imposed upon the Association by virtue of this Declaration and the Organizational Documents of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or for any assessment which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association are an asset of the Association which may be used in the operation and management of the Properties.

ARTICLE 6 - ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

SECTION 6.01. PURPOSES. The Properties are hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most

appropriate development and improvement of each Lot in the Properties; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Properties; to preserve, so far as practicable, the natural beauty of said Properties; to guard against the erection thereof of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Properties; to encourage and secure the erection of attractive dwelling units thereon, with appropriate locations thereof on Lots; to secure and maintain proper set-backs from the streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said Properties and thereby to enhance the values of investments made by the purchasers of Lots therein. It is specifically disclosed that different architectural styles, sizes and prices of Townhomes may be built by the Declarant to provide a variety of housing options.

SECTION 6.02. PLAN APPROVAL REQUIREMENT. For purposes of this Declaration, the term "Improvement" shall mean any hedge, mass landscape planting, building, wall, fence or other structure. Other than Improvements constructed, installed, planted or otherwise made by the Declarant, no Improvement shall be commenced, altered, erected, maintained or permitted to remain upon any Lot, nor shall any addition, alteration, replacement, repair to the exterior or other change in exterior appearance of a Townhome or Lot be made thereto, nor shall any Improvement be rebuilt after destruction by any hazard, until plans and specifications, showing the nature, kind, space, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant during the period of Class B Membership, and thereafter, the Board of Directors or the Architectural Committee, as the case may be.

The number of bedrooms in a Townhome shall not be increased either by construction of an addition or the conversion of other living spaces without the approval of the Declarant during the period of Class B Membership, and thereafter, of the Board of Directors or the Architectural Committee, as the case may be. No Townhome garage shall be converted for living space but shall remain as required for parking. The approval required under this Section for increasing the number of bedrooms in a Townhome is in addition to any approval which may be required by the City or other governmental body having jurisdiction.

In the event the Declarant, the Board of Directors or the Architectural Committee, as the case may be, fails to approve or disapprove any proposed Improvement within thirty (30) days after all completed plans and specifications and other information reasonably requested have been properly submitted, approval will not be required and the plans and specifications will be deemed to have fully complied with this Article. To the extent not prohibited by the Planned Community Act or by regulations of HUD or VA, the Association shall have the right to charge and collect a reasonable fee for review of such plans and specifications. Nothing herein contained shall be construed to require approval for any Improvement constructed, made, installed or planted by the Declarant nor to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties approved by FHA and/or VA, if any, or by the City from time to time.

SECTION 6.03. ARCHITECTURAL COMMITTEE. During the period of Class B Membership, the Declarant shall be the Architectural Committee. Upon the expiration or termination of the Class B Membership or upon the earlier relinquishment of the right to act as the Architectural Committee by the Declarant, the Board of Directors may designate the number of and appoint the members of the Architectural Committee on an annual basis. In the event of the death or resignation of any member of the Architectural Committee, the Board of Directors shall designate and appoint a successor. Members of the Architectural Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the Board of Directors. At all times the Board of Directors fails to appoint members of the Architectural Committee pursuant to this Section, the Board of Directors shall be the Architectural Committee.

SECTION 6.04. PROCEDURES. No Improvement shall be commenced, altered, erected, maintained or permitted to remain on any Lot, except by the Declarant, until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Committee as to:

1. quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
2. conformity and harmony of the external design, color, type and appearance of exterior surfaces;
3. location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and any Improvements situated thereon and drainage arrangement; and
4. the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within standards promulgated by the Board of Directors from time to time.

Final plans and specifications (including a site plan showing the location of the contemplated Improvements on the Lot) for all Improvements proposed to be constructed on a Lot shall be submitted to the Architectural Committee for approval or disapproval. The Architectural Committee is authorized to request the submission of samples of proposed construction materials. Any modification or change to the plans and specifications (specifically including, but without limitation, the above described site plan) approved by the Architectural Committee must again be submitted to the Architectural Committee for its inspection and approval. The Architectural Committee's approval or disapproval as required herein shall be in writing. Once the Architectural Committee has approved the plans and specifications for the proposed Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion, and if such construction is not commenced within the time set therefor by the Architectural Committee in the written approval (but in no event later than twelve (12) months after such approval), such approval shall be deemed rescinded and before construction of Improvements can thereafter be commenced on the Lot in question, the plans and specifications therefor must again be approved by the Architectural Committee pursuant to this Article.

The Board of Directors may from time to time publish and promulgate architectural standards which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. Such standards shall supplement this Declaration. Current copies of the architectural standards shall be available to interested persons at the principal office of the Association for a reasonable cost.

It is the responsibility of the Owner of a Lot to consult with a licensed and qualified architect and/or engineer to prepare or review the plans and specifications for compliance with applicable laws and building codes, and to cause the construction, erection and/or installation of Improvements on a Lot to be performed by a licensed and qualified contractor.

SECTION 6.05. CONDITIONS. As a condition to the granting of approval of any request made under this Article, the Architectural Committee may require that the Owner requesting such change be liable for any cost of maintaining or repairing the approved project. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Architectural Committee said approval not to be unreasonably withheld. Thereafter, the Owner, and any subsequent Owner of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that any cost of maintenance and repair of such Improvement shall be added to and become a part of the annual assessment or charge applicable to such Lot, and subject to the lien rights provided in this Declaration.

SECTION 6.06. GROUNDS FOR DISAPPROVAL/DEFECTS. Refusal to approve such plans, locations or specifications may be based upon any grounds, including purely aesthetic or environmental concerns, which the Architectural Committee, in its sole discretion, shall deem sufficient.

SECTION 6.07. VERIFICATION OF COMPLIANCE WITH PLANS. The Architectural Committee, or its appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Lot during site preparation or construction, erection or installation of Improvements, to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

SECTION 6.08. ENFORCEMENT. The Architectural Committee shall have the specific, nonexclusive right, but shall not be required, to enforce the provisions contained in this Article and to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained herein.

SECTION 6.09. LIMITATION OF LIABILITY. Neither the Architectural Committee nor any of the members thereof shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of services performed pursuant to this

Declaration. NEITHER THE APPROVAL OF PLANS AND SPECIFICATIONS NOR ANY INSPECTION OF IMPROVEMENTS BY THE ARCHITECTURAL COMMITTEE OR ANY OF ITS MEMBERS IS A CERTIFICATION THAT THE PLANS AND SPECIFICATIONS AND/OR THE IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH COMPLY WITH APPLICABLE LAWS AND BUILDING CODES. NEITHER THE ARCHITECTURAL COMMITTEE NOR ANY OF THE MEMBERS THEREOF SHALL BE LIABLE OR RESPONSIBLE FOR ANY DEFICIENCIES OR DEFECTS IN THE PLANS AND SPECIFICATIONS SUBMITTED TO IT OR IN ANY STRUCTURE ERECTED ACCORDING TO SUCH PLANS AND SPECIFICATIONS.

SECTION 6.10. COMPENSATION. No member of the Architectural Committee shall be entitled to compensation arising out of services performed pursuant to this Article. With prior approval of the Board of Directors, the Association shall reimburse members of the Architectural Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Architectural Committee.

ARTICLE 7 - PARTY WALLS

SECTION 7.01. RIGHT TO CONTRIBUTION RUNS WITH LAND. Any Owner performing any work on a party wall which is required or permitted under this Declaration shall have a right of contribution against the other Owners for such other Owners' shares of the costs associated with such work as provided in this Declaration, which right of contribution shall be a lien upon the Lot of each such other Owner to secure the payment of the right of contribution. Except as otherwise provided in this Declaration, such right of contribution is due and payable by the later of (i) thirty (30) days after written request for payment, or (ii) ten (10) days after use of such party wall begins on such Owner's Lot (as evidenced by a building permit for the repair, reconstruction or replacement of the Townhome on the Owner's Lot). In the case of work necessitated by the act, negligence or omission of an Owner or its occupants, employees, contractors or other authorized representatives, such right of contribution is due and payable immediately without formal demand. Upon request, an Owner seeking payment of a right of contribution shall furnish the requesting Owner copies of invoices and other reasonable information concerning such costs. In the event legal action is needed to enforce payment of a right of contribution, the successful Owner seeking such payment or contribution also may recover its reasonable attorneys' fees and interest at the lesser of the highest legal rate or the rate of twelve percent (12%) per annum, compounded monthly, from the date payment is due. The right of any Owner to contribute to the costs of maintaining, repairing, replacing or reconstructing a party wall under this Article shall be appurtenant to the land and shall pass to Owner's successors in title. See also Article 2, Part C, Section 2.02 of this Declaration.

SECTION 7.02. ARBITRATION. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, any affected Owner may demand that such dispute shall be settled by arbitration as provided under the laws of the State of North Carolina as they now are or are hereafter amended.

ARTICLE 8 - EXTERIOR MAINTENANCE

SECTION 8.01. MAINTENANCE BY ASSOCIATION. Except as specifically provided in this Declaration, the Association shall maintain and repair all portions of the Common Area, including but not limited to grass, plants, shrubs, trees, landscaping, sidewalks, private streets, and the Stormwater Control Measures in strict compliance with the Stormwater Facilities Operations and Maintenance Manual and Budget for Mulberry Townhome Community which is attached hereto as Exhibit C, and recreation and other facilities, if any. In addition to the operation and maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Townhome on a Lot which is subject to assessment hereunder, only as follows: Stain and/or paint the exterior surfaces of Townhomes; replace roofs; and normal and routine repair, replacement and care for gutters, down spouts, walks, water and sewer lines lying outside the foundations of Townhomes. Such exterior maintenance shall not include any glass panes, screens, driveways serving a single Lot, failure of glass surfaces nor maintenance and repair required to be performed by any Owner. The Owner shall promptly notify the Association of the need for exterior maintenance. In addition, the Association shall be responsible for maintaining on each Lot the grass, plants, shrubs, trees, landscaping, walks and parking Areas (hereinafter the "Yard Improvements") installed by the Declarant, the Association or the builder who constructed the initial Improvements on a Lot, and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping); provided, however, that: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree on a Lot for any reason; (iii) the Association may, but is not required to, water or fertilize Yard Improvements; (iv) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner. No Owner or occupant shall install any fence or similar structure on his Lot or plant any vegetation on his Lot except with the prior written approval of the Association under Article 6 of this Declaration. The Association shall have no responsibility or obligation to maintain any Lot or Townhome except as specifically provided in this Declaration.

SECTION 8.02. OWNER'S MAINTENANCE OBLIGATIONS. In addition to each Owner's responsibility and obligation to maintain such Owner's Lot and Townhome under Section 9.10 herein, each Owner shall maintain those portions of such Owner's Lot and the Townhome thereon as are not specifically to be maintained by the Association under Section 8.01 above, including but not limited to: the, deck, porch, siding, brick, shutters, exterior trim, glass panes, screens, garage doors, doors and windows. The Owner of a Lot improved with a garage and/or served by a driveway shall repair and maintain the garage door and driveway in good order, condition and appearance and shall repair and correct any unsafe or unsightly condition thereon. Each Owner shall be responsible for all repair and maintenance of his Lot except such maintenance and repair specifically required to be provided by the Association under this Declaration or the Organizational Documents. Any Owner who fences, encloses or screens, by plants or structures, the rear portion of his Lot (which fence, enclosure or screen shall require the prior written approval under Article 5 of this Declaration), may plant trees, shrubs, flowers and grass in the fenced or enclosed portion at his own expense, provided that such enclosure, planting and maintenance does not hinder the Association in performing its maintenance duties under this Declaration. No such maintenance by an Owner shall reduce any assessment payable by him to the Association. If, in the

opinion of the Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one (1) year after providing the Owner with written notice and the opportunity to be heard. The Association may perform maintenance during the revocation period and any other repair or maintenance not performed by an Owner as required in this Declaration. Any additional maintenance costs incurred by the Association as a result of an Owner's failure to maintain or repair as provided in this Declaration shall be added to and become a part of the assessment to which such Owner's Lot is subject.

SECTION 8.03. NEGLIGENCE, ETC. In the event that the need for maintenance or repair of any Lot or Common Area is caused through the willful or negligent acts or omissions of an Owner, or such Owner's family, tenants, contract purchasers, guests, invitees, contractors, employees, or authorized representatives, such Owner shall be responsible for the cost of such maintenance and repair, which shall be added to and become a part of the assessment applicable to the Lot owned by such Owner. The Association shall have the right, but not the obligation, to enter onto an Owner's Lot and to perform any maintenance or repair required to be performed by an Owner under this Declaration in the event that an Owner fails to commence any such maintenance or repair within 30 days after written notice from the Association to such Owner specifying the need for such maintenance and repair or such Owner, after commencing such maintenance and repair, fails to diligently pursue to completion such maintenance and repair within a reasonable period of time not exceeding an additional forty-five (45) days; provided, however, no notice nor waiting period shall be required with respect to an emergency condition existing on an Owner's Lot.

ARTICLE 9 - USE RESTRICTIONS

SECTION 9.01. PERMITTED USE. No Lot shall be used for any purpose other than a single family residential dwelling; provided, however, the Declarant excepts and reserves the right for itself and its assigns to use any Lot or Townhome as sales offices and/or models which may be shown to prospective purchasers of Lots. No garage shall be converted or used as a bedroom, storage room or other living space. The number of bedrooms in a Townhome shall not be increased without the approval of the Association and, if required, the City. Garages shall be used for the parking of motor vehicles and limited storage which does not interfere with such parking.

SECTION 9.02. NO BUSINESSES. Except as specifically provided in this Section and in accordance with the Raleigh City Code, no trade, business, industry, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot or other part of the Properties, except that any Owner may lease his Lot for residential purposes in accordance with this Declaration; provided, however, the foregoing covenant shall not apply to the business activities associated with the development of the Properties and sales of the Lots and the construction and maintenance of houses and other Improvements on the Lots, and to the various activities of the Association in furtherance of its powers and purposes. The Declarant and its agents and builders may use any Lot or Lots and any house thereon for office, sales or display purposes.

An Owner or occupant residing in a Townhome may conduct business activities within such Townhome so long as: (a) the existence or operation of the business activity is not apparent or

detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all applicable zoning requirements, without the need for a variance; (c) the business activity does not involve door-to-door solicitation of residents of the Properties; (d) the business activity does not, in the reasonable judgment of the Board of Directors, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Properties which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; (e) the business activity is consistent with the residential character of the Properties, does not create a hazardous or dangerous condition nor threaten the security or safety of other occupants of the Properties, and is not a nuisance nor an unreasonable annoyance or offensive use, all as may be determined in the sole discretion of the Association's Board of Directors. Owner must obtain the approval of the Board of Directors considering the foregoing five issues. Such approval shall not be unreasonably withheld by the Board of Directors

The terms "business", "trade", "industry", "occupation" and "profession" as used in this Section, shall be construed to have their ordinary, generally-accepted meanings and shall include, without limitation, any occupation, work or activity which involves the provision of goods or services to persons other than the provider's immediate family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or whether a license is required. The leasing of a Lot in accordance with this Declaration shall not be considered a business or trade within the meaning of this Section.

SECTION 9.03. PROHIBITED STRUCTURES. No Owner shall at any time place on such Owner's Lot or any other portion of the Properties, any mobile, manufactured or modular home, nor shall any tent, shack, camper or other temporary structure of a similar nature be used as a residence either temporarily or permanently upon any Lot with the limited exception of construction trailers for use as offices for overseeing construction and sales during the construction process for the development and then only for the use of the contractor performing such construction and sales. Such construction trailers shall not be permitted to remain on the Properties after the period of construction and sales.

SECTION 9.04. ANIMALS. No animal, livestock or poultry of any kind shall be raised or kept on any Lot, except that no more than 2 household pets including but not limited to dogs, cats and other usual household pets, may be kept and maintained thereon, provided that such pets shall not be a danger or menace to others, that they are not kept or maintained for any commercial purposes or in such a manner to be offensive, threatening or dangerous to the residents of the Properties and provided further that they are kept, maintained and controlled in compliance with: (i) all applicable laws, ordinances and regulations of the State of North Carolina, Durham County and the City of Raleigh, (ii) such rules and regulations as the Board of Directors may adopt from time to time, and (iii) the keeping of such animals does not increase the premiums for any insurance maintained by the Association or which will result in the cancellation of any such insurance. In the event of a dispute over whether an animal is a permitted household pet for purposes hereunder, the determination of the Declarant during the period of Class B Membership and thereafter by the Board of Directors shall be final. Puppies and kittens in excess of the numbers set forth above may be kept only until old enough to be safely separated from their mother. The Board of Directors shall have the

absolute power to prohibit any particular pet from being kept on the Properties, including inside a residence, if the Board of Directors in its sole and absolute discretion determines that the pet is threatening, menacing, dangerous, a nuisance, or otherwise has a negative impact on the Properties. Additionally, no kennel or dog run or similar structure shall be constructed or allowed to remain on any Lot.

SECTION 9.05. OUTSIDE ANTENNAS. No outside radio or television antennas or discs shall be erected on any Lot or Townhome within the Properties unless and until permission for the same has been granted by the Declarant, the Board of Directors or its Architectural Committee in accordance with Article 6 of this Declaration. To the extent this restriction may later be determined to be unenforceable pursuant to applicable laws, including but not limited to any rules and regulations promulgated by the Federal Communication Commission (as from time to time may be amended), an Owner shall nevertheless be restricted in its placement of said antennas to an area which is least visible from the front of the Townhome and which causes or is likely to cause the least interference with the placement and use of antennae and disks by other Owners. Any permitted antenna or disk shall be installed, maintained and replaced in accordance with rules and regulations adopted by the Board from time to time. Nothing in this section, however, shall prohibit (but shall not obligate) the Declarant or the Association from erecting a central master antenna, satellite dish or other similar master telecommunication system for the benefit of the Lots and charging fees for usage thereof.

SECTION 9.06. INSURANCE RISKS. Nothing shall be kept and no activity shall be carried on in any Townhome, Lot or on the Common Areas , nor shall any Owner do or keep anything, nor cause or allow anything to be done or kept on his Lot, or in his Townhome or on the Common Areas , which will increase the rate of insurance, applicable to residential use, for the Properties or the contents thereof or which will result in the cancellation of insurance on any portion of the Properties, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Areas .

SECTION 9.07. SIGNS. No Owner shall display, or cause or allow to be displayed, to public view on his Lot any sign, placard, poster, billboard, or identifying name or number on any portion of a Lot, the Common Area or the right-of-way of any street or road within the Properties except as permitted in this Declaration or as required by the Raleigh City Code. Notwithstanding the foregoing, the Declarant and each Owner, or their respective agents, may place a single "For Sale" or "For Rent" sign on any Lot they own and any political sign if in compliance with North Carolina General Statute § 47F-3-121. During the development of the Properties and the marketing of Lots, the Declarant, builders and their realtors may maintain offices and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. No Owner, other than the Declarant, shall display, or cause or allow to be displayed, to public view on his Lot any "For Sale," "For Rent" or political signs which exceeds 24 inches in width and 24 inches in height. The Board of Directors may adopt Rules and Regulations concerning the color and placement of signs by Owners other than the Declarant. An approved sign not exceeding 24 inches in width and 24 inches in height advertising a yard sale or other temporary activity may be displayed on a Lot for no more than 48 consecutive hours. Notwithstanding the foregoing, the Board of Directors has the authority to require any sign, other

than a sign maintained by the Declarant, be removed if it determines, in its sole discretion, such sign to be detrimental to the Properties. Easements are reserved as shown and designated on the recorded plats of the Properties to erect and construct entrance signs and landscape or street scape areas .

SECTION 9.08. STRUCTURAL INTEGRITY. Nothing shall be done in or to any Townhome or in, to, or upon any of the Common Areas which will impair the structural integrity of any building, Townhome, or portion of the Common Areas or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

SECTION 9.09. NUMBER OF OCCUPANTS. Except as required by the Raleigh City Code, no Lot shall be rented to or occupied by a greater number of unrelated individuals than the number of bedrooms in the Townhome on such Lot as approved in accordance with Article 6 of this Declaration. No Lot shall be rented to or occupied by a number of individuals, whether or not unrelated, which exceeds twice the number of bedrooms in the Townhome on such Lot as approved in accordance with Article 6 of this Declaration; provided, however, a Lot may be rented to or occupied by a number of individuals which is not more than three (3) times the number of bedrooms in the Townhome on such Lot as approved in accordance with Article 6 of this Declaration so long as all such individuals occupying such Townhome are within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) or who are legal guardians and wards. For purposes of this Section, "unrelated individuals" means individuals who are neither within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) nor who are legal guardians and wards; provided, however, siblings shall be considered unrelated individuals unless one of their parents or legal guardians also occupies the same Lot as such parent's or legal guardian's principal residence.

SECTION 9.10. MAINTENANCE OF LOTS. Each Owner shall keep his Lot in an orderly condition and shall keep the Improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other causality. No clothesline may be erected or maintained on any Lot. Except to the extent of any maintenance by the Association, each Owner shall maintain and replace the Yard Improvements on his Lot in a clean and neat condition, and shall keep his landscaping trimmed so as not to be unsightly. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever nor for the storage of any property or thing which will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots, and no trash, rubbish, stored materials, wrecked or inoperable vehicles, vehicles unlicensed for more than thirty (30) days, or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, or other debris for collection by governmental or other similar garbage and trash removal units. In the event that any Owner fails or refuses to comply with any of the foregoing, the Declarant or Association may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contract to purchase such Lot, or by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant or Association may enter and correct the same at Owner's expense. Each Owner, by acquiring a Lot subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant or the Association. No such entry as provided herein shall be deemed a trespass.

SECTION 9.11. GARBAGE CANS AND TRASH REMOVAL. Garbage cans or approved dumpsters shall be located or screened so as to be concealed from view of neighboring Lots, Common Areas and street rights of way. All rubbish, trash, and garbage shall be regularly removed from any Lot and shall not be allowed to accumulate thereon. Trash spillage shall be the responsibility of the subject Owner for removal. Yard waste must be disposed of properly and not deposited on any other Lot, the Common Areas or street rights of way within the Properties. Notwithstanding the foregoing, the Declarant reserves for itself and its approved builders of Townhomes within the Properties the right to dump and bury rocks, trees, stumps and similar debris as needed for efficient development of the Properties provided that such dumping and burying are done according to good building practice and in accordance with all applicable governmental laws and regulations.

SECTION 9.12. NUISANCES. No immoral, improper, offensive or unlawful use shall be made of the Properties, or any part thereof, and all valid laws, orders, rules, requirements, ordinances and regulations of all governmental agencies having jurisdiction thereof relating to any portion of the Properties shall be observed. No noxious or unreasonably offensive activities shall be carried on upon any Lot or other portion of the Properties, nor shall anything be done thereon which may be or become a nuisance or an unreasonable annoyance to the neighborhood. Activities associated with the development of the Properties and the construction of Townhomes on the Properties shall not be deemed offensive nor an annoyance or nuisance if conducted in accordance with the ordinances of the City. Other than in connection with the development of the Properties or the construction and sale of Lots and Townhomes, no trade materials or inventories may be stored upon a Lot.

SECTION 9.13. RULES AND REGULATIONS. The Board of Directors shall have the power to formulate, adopt, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the yard spaces of each Lot and the Common Area. All rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the Owners and available to them for reasonable inspection during normal business hours.

SECTION 9.14. SUBDIVISION OF LOT. No Lot shall be subdivided except with the prior written approval of the Declarant or its assigns, if during the period of Class B membership, and thereafter with the prior written approval of the Board; provided, however, the Declarant reserves the right to subdivide, re-subdivide or recombine any Lot or other property in the Properties owned by the Declarant. Any subdivision, re-subdivision or recombination of the Properties or any portion thereof shall be done in accordance with all applicable laws and regulations.

SECTION 9.15. OPEN SPACE PRESERVATION AND PROTECTION AREAS. See also Article 2, Part C, Section 2.01 of this Declaration. The landscaping within the 35 foot wide natural protective yard along Shady Grove Road is required by the zoning ordinances of the City of Raleigh, and removal of this landscape without the prior approval of the City of Raleigh is a violation potentially subjecting each lot violator to significant daily civil penalties and other enforcement actions. Within the 35 foot wide natural protective yard along Shady Grove Road, it

shall be the responsibility of the Association to replant the landscape per the Raleigh City Code, Sections 10-2082.12(b) and 10-2082.5..

SECTION 9.16. MISCELLANEOUS SETBACK. No fence, wall, storage shed or similar type of structure or any other kind of obstruction shall be permitted within the area lying within five (5) feet of the adjoining Townhome that will obstruct such access to the adjoining Townhome.

SECTION 9.17. DEVELOPMENT RIGHTS RESERVED. Declarant reserves and shall have the right to exercise, without any consent, approval or authorization of any other Owner or the Board of Directors, all special declarant rights as provided in this Declaration and/or as permitted in the Planned Community Act, including but not limited to, any right (i) to complete Improvements indicated on plats and plans filed with this Declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the Properties, and models; (iv) to use easements through the Common Areas for the purpose of making Improvements within the Properties; (v) to make the Properties subject to a master association; and (vi) to appoint or remove any officer or member of the Board of Directors of the Association during the period of Class B Membership. Notwithstanding any provisions or restrictions contained in this Declaration, and rules and regulations adopted hereunder or any amendments to the foregoing, it shall be expressly permissible for the Declarant, and its respective agents, employees and approved builders during the period of Class B membership to maintain such facilities and carry out such construction activities as may be reasonably required, convenient or incidental to the development, improvement, completion and sale of any portion of the Properties, including without limitation, the installation and operation of sales and construction trailers and offices, sales models and appropriate signs; provided, however, that in the event a sales office has been maintained in any portion of a Lot such sales office must be removed and the original intended and approved use of such structure must be restored prior to conveyance from the Declarant or its assigns to any third party purchaser.

ARTICLE 10 - EASEMENTS/BUFFERS

SECTION 10.01. UTILITIES. Easements for the installation and maintenance of utilities (including, but not limited to water, sewer, gas, electricity, telephones, telecommunications, cable television and other utilities, such as a master antenna system) and drainage facilities are reserved as indicated on the recorded plats of the Properties. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Association shall have the power and authority to grant and establish upon, over and across the Common Areas such additional easements as are necessary or desirable for the providing of service or utilities to the Common Areas or Lots.

SECTION 10.02. ENCROACHMENTS. Unless in violation of any setback requirement in the Raleigh City Code, and in the event that any Improvements on a Lot shall encroach upon any Common Areas or upon any other Lot as a result of the initial Improvements constructed by Declarant or home builder or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the

continuance of such encroachment upon the Common Areas or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Areas shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Areas into any such Lot for so long as such encroachment shall naturally exist. It is impermissible for any Owner of the Association to expand any such encroachment.

SECTION 10.03. STRUCTURAL SUPPORT. Every portion of a Townhome on a Lot which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the building.

SECTION 10.04. EASEMENT FOR GOVERNMENTAL AGENCIES. See also Article 2, Part A, Section 2.15 of this Declaration.

SECTION 10.05. WALKS, DRIVES, PARKING AREAS AND UTILITIES. All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, Stormwater Control Measures, gas lines, telephone and electric power lines, cable television lines, and other public utilities as shall be established prior to the conveyance of such Lots or the Common Area by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Properties without the assent of the membership except where the assent of the membership is required by applicable law. If a Lot is served by a driveway as indicated on a recorded plat of the Properties (provided such plat was approved by the Declarant or the Association), there is created an appurtenant easement over the Common Areas in favor of such Lot for the construction, reconstruction, repair and maintenance of such driveway and for the exclusive use of such driveway for ingress, egress, regress and parking purposes. Such driveway easement is subject to water, sewer, cable and utility lines lying under such driveway and the repair and maintenance of such lines. The Association and the other Owners shall not obstruct or interfere with the use of such driveway except as is incidental to the repair and maintenance of Common Areas and water, sewer, cable and utility lines. If the Association obstructs or interferes with the permitted uses of such driveway, the Association shall make reasonable efforts to provide alternative parking for such Lot during the period of obstruction or interference.

SECTION 10.06. EASEMENTS APPURTENANT TO LOTS. All private streets and driveway areas in the Common Areas shall be subject to an easement in favor of every Lot to which they are adjacent or which they are intended to serve and shall be deemed appurtenant to each such Lot, whereby the Owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

SECTION 10.07. EMERGENCIES, ETC. Every Lot and Townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome on any Lot and that endangers any Lot or portion of the Common Areas, or as necessary to correct any grading for drainage purposes.

SECTION 10.08. EASEMENTS TO ASSOCIATION. An easement is hereby granted to the Association, its officers, agents, employees, and authorized representatives, including but not limited to management companies, to enter in or to cross over the Common Area in connection with the exercise of any right, duty or obligation of the Association under this Declaration or its Organizational Documents.

SECTION 10.09. EASEMENT AND RIGHT OF ENTRY FOR REPAIR, MAINTENANCE AND RECONSTRUCTION. Each Owner of a Lot shall have shall have a perpetual access easement over the adjoining Lots and/or Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of the Townhome on such Owner's Lot. Such repair, maintenance or reconstruction shall be done expeditiously, in good and workmanlike manner and in compliance with all applicable laws, ordinances and regulations, and upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

SECTION 10.10. ACCESS EASEMENT. Each Owner shall have the right to ingress and egress over, upon and across the Common Area as necessary for access to his Lot and shall have the right to lateral support for his Lot.

SECTION 10.11. EASEMENT RESERVED BY DECLARANT FOR DEVELOPMENT. Until seven (7) years from the date of this recording, notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns including, but not limited to Persons constructing dwellings and other Improvements on the Common Area or Lots, a nonexclusive, right, privilege and easement over, under, in, and/or on the Common Area, without obligation and without charge, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Properties, including but not limited to construction of the Amenities and installation of utilities. The reserved easement shall constitute a burden on the title to the Properties and specifically includes, but is not limited to:

- A. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on and through the Common Area; and the right to construct the Amenities; and the right to tie into any portion of the Properties with driveways, parking areas, and walkways; and except as prohibited by the Raleigh City Code, the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing unless required by the Raleigh City Code), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities, constructed or installed in, on, under, and/or over the Properties; and any damage caused by the exercise of such rights shall be repaired and the damaged property shall be restored to as near the same condition, as reasonable and practical, as that which existed prior to the exercise of such rights;

- B. The right to construct, install, replace, relocate, maintain, authorize, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, desirable, or incidental to the construction and sale of residences on the Lots;
- C. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any portion of the Properties, including, without limitation, Lots or Common Areas conveyed to the Association, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto; and
- D. This section may not be amended without the written consent of Declarant.

SECTION 10.12. DRAINAGE. The Declarant reserves for itself and its assignees, including but not limited to the Association, the right and easement to enter upon any Lot or the Common Area for the purpose of altering the flow of surface water in, on or across such Lot or Common Area in order to correct surface water drainage problems existing on any Lot or the Common Area and for the purpose of installing, repairing, replacing and maintaining Stormwater Control Measures. Any alterations made pursuant to the foregoing easement shall be made at the sole cost and expense of the Declarant or its assigns, as the case may be, and shall not unreasonably interfere with the Owner's use and enjoyment of his Lot. Declarant hereby agrees that in exercising the rights reserved above, all debris, materials, excess soil and rock from an affected Lot shall be removed, all excavations shall be filled, all topsoil and grass on all disturbed earth shall be replaced and reseeded. Except in accordance with the Raleigh City Code, Declarant may give its written consent to an Owner to alter the flow of surface water in, on or across such Owner's Lot in order to correct surface water drainage problems existing on such Lot; provided, however, that the Declarant during the period of the Class B Membership, and thereafter the Board of Directors or the Architectural Committee, as the case may be, must give its written approval to the Owner's plan to alter the flow of surface water on such Owner's Lot.

SECTION 10.13. TRANSIT EASEMENT. A transit easement has been granted to the City of Raleigh in the Common Areas along Shady Grove Road.

SECTION 10.14. GREENWAY EASEMENT. A greenway easement has been dedicated to the City of Raleigh as shown on the recorded Map which is defined in Section 1.14 of this Declaration.

ARTICLE 11 -ANNEXATION OF ADDITIONAL PROPERTIES

SECTION 11.01. BY DECLARANT. If on or before January 1, 2012, the Declarant should develop additional lands adjacent to or directly across the street from the Properties, such additional lands may be annexed by the Declarant to said Properties without the assent of the Class A membership. In the event of annexation by the Declarant, the Declarant shall not be required to build

the same or substantially similar type of dwelling units and the Declarant specifically reserves the right to build dwelling units of different types, styles, colors, sizes and prices.

SECTION 11.02. BY ASSOCIATION. Any other annexation of additional land shall require the assent of two-thirds (2/3) of each Class of Membership of the Association.

SECTION 11.03. PROCEDURE. See also Article 2, Part A, Section 2.13 of this Declaration. Annexation of additional land shall be accomplished by recording in the Durham County Registry a Declaration of Annexation, duly executed by the Association, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. In the event of annexation by the Declarant pursuant to Section 11.01 of this Declaration, the Declarant shall have the right to amend or supplement the terms of this Declaration as applicable to the additional lands as the Declarant deems advisable for the types, styles, colors, sizes and prices of the dwelling units to be developed on the additional lands. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation. Upon annexation, the additional lands shall be used only for residential and ancillary purposes and shall be subject to this Declaration and all Owners shall automatically become Members of the Association. Common Areas within newly annexed additional lands shall be conveyed to the Association prior to the sale of the first Lot within the newly annexed additional lands. Title to such Common Areas shall comply with Section 3.03 of this Declaration. No Declaration of Annexation for additional land shall be valid without the prior written approval of the Raleigh City Attorney or his/her deputy in accordance with Article 2, Part A, Section 2.13 of this Declaration.

The Declaration of Annexation filed with respect to the Additional Properties in the Durham County Registry shall extend the scheme of this Declaration and the jurisdiction of the Association to such additional lands and thereby subject such additional lands to the rights, benefits, agreements, easements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined. At the time of the filing of each Declaration of Annexation, there shall be recorded in the Durham County Registry a Map or Maps which show the boundary lines of each Lot annexed pursuant to such Declaration of Annexation and which delineates all Common Areas annexed pursuant to such Declaration of Annexation.

The obligation for Owners of Lots in any portion of the additional lands to pay the assessments described in Article 2 and Article 5 hereof shall commence upon the filing of the Declaration of Annexation in the Durham County Registry annexing such portion. The Owners of such Lots shall have the same voting rights as the Owners of Lots in the Properties, and such voting rights shall commence as of the date of the filing of the Declaration of Annexation.

ARTICLE 12 - RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 12.01. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS.

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

SECTION 12.02. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

- A. To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by an accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by May 15th of each calendar year;
- B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions, the Organizational Documents of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self management by the Association;
- C. To receive notice of any condemnation or casualty loss affecting the Common Area or any portion thereof;
- D. To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- E. To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Area, other than those specific rights vested in the Association under Article II hereof; and
- F. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such institutional Lender, or to the place which it may designate in writing.

SECTION 12.03. REQUIREMENTS OF INSTITUTIONAL LENDER. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by certified mail at the address of the Association's registered agent identifying the Lot or Lots upon which any such Institutional Lender holds any first mortgage

together with sufficient pertinent facts to identify such mortgage, or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

RBC Centura Bank ("Beneficiary") holds the beneficial interest in that certain Deed of Trust (the "Deed of Trust") to CB Services Corp. as Trustee ("Trustee") dated May 26, 2004, recorded in Book 4407, Page 474, Durham County Registry, which Deed of Trust encumbers all or a portion of the Properties described in the Declaration. Beneficiary and Trustee hereby consent to the recordation of the Declaration and subordinate the Deed of Trust to the Declaration.

ARTICLE 13 - GENERAL PROVISIONS

SECTION 13.01. UTILITY CHARGES. The Declarant reserves the right to subject a Lot (prior to the conveyance of such Lot to a third party) and any other portion of the Properties, to contracts with public utility companies for the installation of underground utility service and the installation of street lighting. Declarant further reserves the right to connect to each Lot necessary water and sewer service which may require a continuous monthly charge to the Owner of the Lot. Upon acceptance of a deed to the Lot each Owner agrees to pay said continuing monthly charges, if any.

SECTION 13.02. ENFORCEMENT. The Association and each Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration and the Organizational Documents. Failure by the Association or by any Owner to enforce any such restriction, condition, covenant, reservation, lien or charge shall in no event be deemed a waiver of the right to enforce any such restriction, condition, covenant, reservation, lien or charge at any other time or in connection with the same or any other event, nor shall it be deemed a waiver of the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

SECTION 13.03. INSURANCE. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his Townhome except that the amount shall not be required to exceed the replacement cost of the Townhome. An Owner shall exhibit to the Board, upon demand, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be added to and become a part of the annual assessment of the Owner and shall constitute a lien against such Owner's Lot until paid.

In the event the Association becomes the Owner of any buildings, or other improvements, or personal property, located within the Common Areas or such other areas that the Association is responsible for, the Board of Directors shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage. Such coverage shall provide

protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to buildings and properties similar in construction, location and use. The premiums for such insurance policies shall be a Common Expense of the Association.

The Board of Directors shall also procure and maintain public liability and property damage insurance, insuring: each member of the Board of Directors; the manager, if any; and the Association against any liability to the public or to the Owners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use of the Common Areas, or such other areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board of Directors, but in no event shall it be less than \$1,000,000.00 per occurrence with regard to the Association and each individual director.

There shall also be obtained such other insurance coverage as the Board of Directors shall determine from time to time to be desirable and necessary. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors as a Common Expense of the Association.

(Recommendation to Owners - If a Townhome is damaged by fire or other casualty, and if such damage results in damage to an adjacent Townhome, there may be prolonged disputes between the insurance carriers of the adjacent damaged Townhomes (which may, in turn, delay the settlement of claims) unless the insurance protection on both Townhomes is provided by the same carrier. It is therefore recommended that the owners of all Townhomes located within each building purchase their fire and casualty insurance from the same insurance carrier.)

SECTION 13.04. FIDELITY BONDS. The Association shall maintain blanket fidelity bonds or other similar insurance coverage for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, fidelity bonds or other similar insurance coverage shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three months' aggregate assessments on all Lots plus reserve funds.

Fidelity bonds required herein shall:

- A. name the Association as an obligee;
- B. contain waivers by the issuers of the fidelity bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and
- C. to the extent available without the payment of an additional premium, provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any institutional lender servicing on behalf of the Federal National Mortgage Association any loan secured by any Lot.

The premiums on all such fidelity bonds for the Association (including premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a Common Expense.

Notwithstanding anything to the contrary, in lieu of fidelity bonds, insurance providing similar coverage or protection may be provided and references to "fidelity bonds" shall include such insurance.

SECTION 13.05. AMENDMENT. The covenants, conditions and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time, this Declaration shall automatically be extended for successive periods of ten (10) years each. Except as specifically otherwise provided herein, the covenants, conditions and restrictions of this Declaration may be amended as provided in this Article by the affirmative vote of or by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots. Such amendments shall have the prior written approval of the Raleigh City attorney or his deputy before it shall be effective. Evidence of such approval shall be indicated by the signature of the Raleigh City attorney or his deputy on the recorded amendment. Any amendments must be recorded in the Office of the Register of Deeds of Durham County, North Carolina, or such other place as designated for the recording of documents affecting real estate (the "Durham County Registry").

SECTION 13.06. VA/HUD APPROVAL. As long as there is a Class B membership, the following actions will require prior approval of the VA and/or HUD: annexation of additional properties (except as permitted by applicable HUD or VA regulations for annexations by the Declarant pursuant to a right reserved under the Declaration), mergers, consolidations and dissolution of the Association, mortgaging of Common Areas, withdrawal of or dedication of or other transfer of Common Areas to persons other than the Association, and amendment of this Declaration.

SECTION 13.07. CITY APPROVAL REQUIRED FOR CERTAIN AMENDMENTS. No amendment to the Declaration affecting Stormwater Control Measures or the replacement fund shall be made without the prior written consent of the Raleigh City Attorney or his deputy.

SECTION 13.08. CERTIFICATE OF AMENDMENTS. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

A. Reasonably assure itself that the amendment has been approved or executed by the Owners of the required number of Lots (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined).

B. Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that these were executed. The following form of certification is suggested:

"CERTIFICATION OF VALIDITY OF AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MULBERRY PARK TOWNHOMES

By authority of its Board of Directors, the Mulberry Park Townhomes Association, Inc. hereby certifies that the foregoing instrument has been duly approved or executed by the Owners of sixty-seven percent (67%) of the Lots of the Mulberry Park Townhomes and is therefore a valid amendment to existing Declaration Of Covenants, Conditions and Restrictions For Mulberry Park Townhomes.

**MULBERRY PARK TOWNHOMES
ASSOCIATION, INC.**

BY: _____
President

C. Immediately and within the thirty (30) day period, aforesaid, cause the amendment to be recorded in the Office of the Register of Deeds of Durham County, North Carolina.

All amendments shall be effective from the date of recordation in the Office of the Register of Deeds of Durham County, North Carolina; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded and indexed as provided in this section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all Persons thereafter purchasing any Lot. All amendments shall be approved as set forth herein, as required.

SECTION 13.09. DECLARANT UPDATES. Notwithstanding any other provision of this Declaration to the contrary, the Declarant shall have the unilateral right, without the joinder or consent of any other Owner or other party, to update the Stormwater Facilities Operation and Maintenance Manual and Budget for Mulberry Park Townhome Community which is attached as Exhibit C to this Declaration to include provisions and costs for additional installed Stormwater Control Measures required or approved by the City of Raleigh. No such update to the Stormwater Facilities Operations and Maintenance Manual and Budget for Mulberry Park Townhome Community shall be made without the prior written approval of the City of Raleigh Department of Public Works Stormwater Division and the Raleigh City Attorney or his deputy.

SECTION 13.10. VOTING. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Association's By-Laws.

SECTION 13.11. SEVERABILITY. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

SECTION 13.12. GENDER AND GRAMMAR. The singular, wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make provisions hereby apply to either corporations or individuals, man or woman, shall in all cases be assumed as though in each case fully expressed.

SECTION 13.13. LIABILITY EXEMPTIONS. In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to the Common Area or the Lots or to their occupants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, the Owners or their occupants. In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the Association and Owners in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

SECTION 13.14. ADDRESS. Each Member agrees to keep Association informed of his address at any time and any notice sent or delivered to said address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as the Ownership of each Lot. If a Member fails to provide the Association with its address or otherwise fails to keep its address current, the Association may use the address shown on the Durham County tax records for the Owner of the Lot for which such membership exists as the Member's address.

SECTION 13.15 DISPUTE RESOLUTION.

A. **Consensus for Association Action.**

(1) Except as provided in this Section, the Association may not commence a legal proceeding or an action under this Article without the approval of at least two-thirds of the Members of each Membership Class. This Section shall not apply, however, to (i) actions brought by the Association to enforce this Declaration or the Organizational Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(2) Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any Improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

B. **Alternative Method for Resolving Disputes.** Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any builder, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 13.15(C) herein (collectively, "Claims") to the procedures set forth in Section 13.15(D) herein.

C. **Claims.** Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (a) arising out of or relating to the interpretation, application or enforcement of the Declaration or the Organizational Documents or the rights, obligations and duties of any Bound Party under the Declaration or the Organizational Documents; (b) relating to the design or construction of Improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 13.15(D).

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.15(D):

(1) any suit by the Association against any Bound Party to enforce the provisions of Article 4 (Covenant For Assessments);

(2) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article 6 (Architectural Control and Building Restrictions), Article 8 (Exterior Maintenance) or Article 9 (Use Restrictions) of this Declaration;

(3) any suit between or among Owners, which does not include Declarant, a Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration or the Organizational Documents; and

(4) any suit in which any indispensable party is not a Bound Party. With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 13.15(D) of this Declaration.

D. Mandatory Procedures.

(1) **Notice.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- a. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- b. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- c. the proposed remedy; and
- d. the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(2) **Negotiation and Mediation.**

- (a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (b) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Supplemental Mediation Procedures for Residential Construction.

- (c) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
- (d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Section and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth herein. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

(3) **Binding Arbitration.**

- (a) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Supplemental Arbitration Procedures for Residential Construction. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000.00, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.
- (b) Unless provided otherwise by AAA's Supplemental Arbitration Procedures for Residential Construction, each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be

awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

- (c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

E. **Amendment of Article.** Notwithstanding any other provision to the contrary, without the express prior written consent of Declarant, this Article may not be amended for a period of twenty years from the effective date of this Declaration.

SECTION 13.16. PROHIBITION AGAINST ASSOCIATION ENTERING INTO LONG TERM CONTRACT WHILE DECLARANT IN CONTROL OF BOARD OF DIRECTORS. Any contract or agreement entered into by the Association during any period of Class B Membership shall be subject to the right of the Association to terminate such contract or agreement, without cause, which is exercisable without penalty at any time upon not more than 90 days notice to the other party.

SECTION 13.17. CONFLICTS. In the case of any conflict between the Declaration and the Articles of Incorporation or By-Laws of the Association, the Declaration shall control, and in the case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles shall control.

[The rest of this page is left blank. Signatures are on the following page.]

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed in its company name by its duly authorized officer as of the day and year first above written.

SATTERWHITE CONSTRUCTION, INC.,
a North Carolina corporation

BY: [Signature] (PES)
Jesse W. Satterwhite, Jr. President

RBC CENTURA BANK, a North Carolina
banking corporation

By: _____

CB SERVICES CORP., Trustee

By: _____

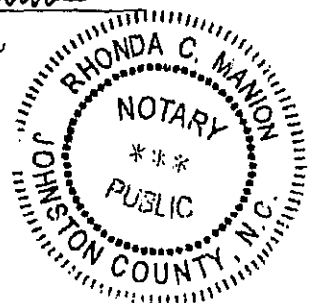
STATE OF NORTH CAROLINA
COUNTY OF Johnston

I, Rhonda C. Manion, a Notary Public of the County and State aforesaid do certify that JESSE W. SATTERWHITE, JR. personally came before me this day and acknowledged that he is President of SATTERWHITE CONSTRUCTION, INC., a North Carolina corporation, and that he as President being authorized to do so/ ^{voluntarily} executed the foregoing on behalf of the corporation.

WITNESS my hand and notarial stamp or seal, this the 2 day of February, 2006.

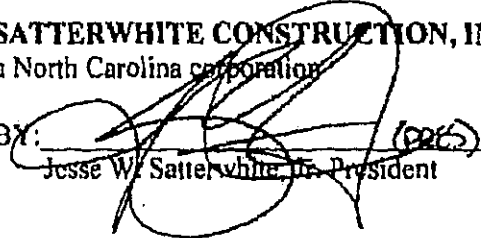
My commission expires: 6-19-2010

[Signature]
Notary Public
Rhonda C. Manion



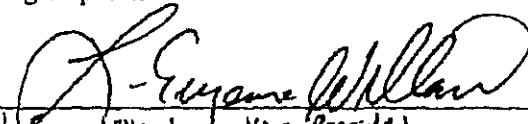
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed in its company name by its duly authorized officer as of the day and year first above written.

SATTERWHITE CONSTRUCTION, INC.,
a North Carolina corporation

By:  (PRL)
Jesse W. Satterwhite, Jr. President

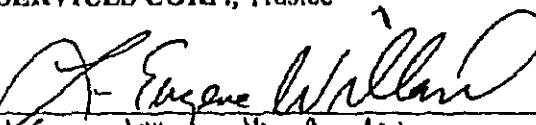
RBC CENTURA BANK, a North Carolina
banking corporation

By:


L. Eugene Willard Vice President

CB SERVICES CORP., Trustee

By:


L. Eugene Willard Vice President

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid do certify that JESSE W. SATTERWHITE, JR. personally came before me this day and acknowledged that he is President of SATTERWHITE CONSTRUCTION, INC., a North Carolina corporation, and that he as President being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and notarial stamp or seal, this the _____ day of _____, 2006.

Notary Public

My commission expires: _____

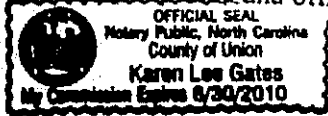
NORTH CAROLINA

COUNTY OF ~~WAKE~~ mecklenburg

LENDER ACKNOWLEDGEMENT

I, Karen Lee Gates, a Notary Public for said County and State, do hereby certify that Eugene Wiland VP of RBC CENTURA BANK, a North Carolina banking corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this 31st day of January, 2006.



Karen Lee Gates
Notary Public
Karen Lee Gates

My Commission Expires: _____

NORTH CAROLINA

COUNTY OF ~~WAKE~~ mecklenburg

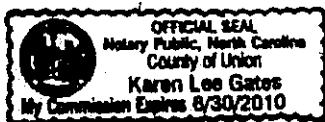
TRUSTEE ACKNOWLEDGEMENT

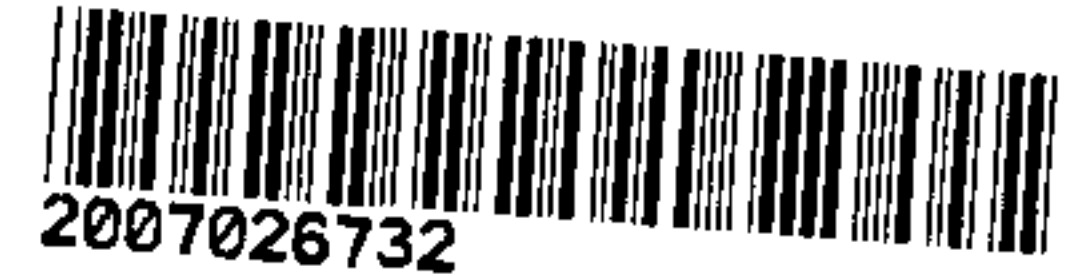
I, Karen Lee Gates, a Notary Public for said County and State, do hereby certify that Eugene Wiland VP of CB SERVICES CORP., Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this 31st day of January, 2006.

Karen Lee Gates
Notary Public
Karen Lee Gates

My Commission Expires: _____





FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2007 JUN 13 03:12:22 PM
BK:5641 PG:809-822 FEE:\$50.00

INSTRUMENT # 2007026732

Prepared by and return to:
Harold E. Russell, Jr., Attorney at Law
P.O. Box 19001
Raleigh, NC 27619

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

**FIRST AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR MULBERRY PARK
TOWNHOMES**

This Amendment is made and effective as of the date of recordation in the Durham County Registry by Satterwhite Construction, Inc. hereafter referred to as "Declarant", Ricardo J. Latorre, Ricardo Latorre and wife, Marlene Latorre, Barbara D. Johnson, Nicole L. Butcher, Donna C. Stauffacher, Alicia Satterwhite, John W. Marvill and wife, Diane C. Figueroa and Clarence W. Marvill and wife, Francine M. Marvill.

WITNESSETH:

WHEREAS, the Declarant is the owner of all the lots in Mulberry Park excepting only Lots 96 owned by Ricardo J. Latorre and wife, Marlene Latorre, Lot 102 owned by Ricardo Latorre, Lot 98 owned by Barbara D. Johnson, Lot 101 owned by Nicole L. Butcher, Lot 93 owned by Alicia Satterwhite, Lot 79 owned by Donna C. Stauffacher and Lot 100 owned by John W. Marvill and wife, Diane C. Figueroa and Clarence W. Marvill and wife, Francine M. Marvill. The lots owned by Latorre, Latorre and wife, Marlene Latorre, Johnson, Butcher, Alicia Satterwhite, Marvill and wife, Diane C. Figueroa and Marvill and wife, Francine M. Marvill are shown on Plat Book 176, Page 340; and the lot owned by Stauffacher is shown on Plat Book 172, Page 109; and

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Mulberry Park are recorded in Book 5226, Page 713, Durham County Registry; and

WHEREAS, it is the desire of the undersigned to amend said Declaration recorded in Book 5226, Page 713 as hereinafter provided.

NOW THEREFORE, the undersigned hereby consent to the deletion of Article 8, Sections 8.01 and 8.02 and the inclusion of a new Article 8, Sections 8.01 and 8.02 as follows:

ARTICLE 8

Exterior Maintenance

Section 8.01. Maintenance by Association. The Association shall repair and maintain the Common Area and any improvements, utilities and facilities located on the Common Area. This responsibility shall also include, without limitation, maintenance, repair and replacement of all landscaping and grassed areas, fencing, private roadways, private alleyways and private streets, private utilities, retaining walls, signage, Common Area driveways and parking areas, sidewalks, walking paths or nature trails, lakes, ponds or streams, including retention ponds, and other improvements or utilities situated on the Common Area. The Association may, but shall not be obligated to, provide enhanced landscaping and maintenance to those areas and medians located within the rights-of-way for streets located within the Property. Any maintenance or enhancement called for herein shall be subject to governmental authorities' rules and regulations in the City, such as the Raleigh City Code.

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, exterior building surfaces [with the exception of entry doors (including garage doors) and their appurtenant hardware and all the exterior glass including windows and patio doors, all of which shall be maintained, repaired and replaced by the Owner] trees, landscaping, grass, fencing, walks, driveways (as hereinafter limited) and other exterior improvements. Such maintenance as to the Lots in use shall also include the mowing and trimming of grass. Maintenance of the driveway constructed by the Declarant on each Lot shall extend only to the exterior face of the garage door, beyond which such maintenance, repair and replacement shall be the responsibility of such Owner. The Association shall maintain any portion of any sewer main to which such line is connected, provided that the Owner of each Lot shall be responsible for all repair, replacement and clean out sewer lines and facilities located upon such Owner's Lot behind the clean-out to (and including the lines and facilities servicing) the townhome unit. Exterior maintenance required by the Association hereunder shall not include the cleaning of patios, walkways, stoops or areas inside the garage door on the Lots, all of which shall be the responsibility of the Owner. The determination of the need, quality, extent and cost of such maintenance and repairs shall be made by the Board of the Association, which determination shall be reasonable and made upon consistent and non-arbitrary principles adopted by the Board.

The Declarant is responsible for construction of streets and roads within the Property. The Association shall undertake the management, operation, maintenance, repair, servicing, replacement and renewal of all private streets and private utilities constituting Common Areas and all improvements thereon. The Declarant shall be responsible for and maintain all other streets and roads within the Property until such

roads are accepted for maintenance by the applicable governmental authority. Following any irrevocable acceptance of the streets and roads for maintenance as public rights of way by applicable governmental entities, the Association shall maintain such streets and roads to the extent such activities are not performed by the applicable governmental entities. Maintenance for private streets, private water lines and private sewer lines shall be the responsibility of the Association along with the maintenance of any private easements.

8.02 Maintenance by Owners Except as provided in Section 8.01, above, all repair, maintenance and replacement of the improvements and utilities located upon an Owner's Lot shall be the responsibility of the Owner thereof. Without limiting the generality of the foregoing, and subject to the requirements of Article 8 and Section 10.09 of the Declaration, an Owner shall be responsible for replacement and reconstruction of improvements on his or her Lot required because of damage or destruction by fire or other casualty. Each Owner shall maintain, repair and replace, as his or her expense, all exterior light fixtures attached to the Owner's unit and all interior portions of the improvements which shall need repair, including bathroom and kitchen fixtures, light fixtures or other electrical or plumbing equipment, utility pipes, lines and fittings serving the Lot. Further, each Owner shall repair, maintain, and replace, at his or her expense, the heating and air conditioning systems servicing said Owner's unit, whether located on the Owner's Lot or in the Common Area adjacent to the Lot. Each Owner shall be responsible for interior pest control.

All terms used herein shall be constructed pursuant to the definitions contained in the Declaration.

In Witness Whereof, the Declarant, Ricardo J. Latorre, Ricardo Latorre and wife, Marlene Latorre, Barbara D. Johnson, Nicole L. Butcher and Donna Stauffacher* have caused this Amendment to the Declaration to be executed as of the dates so indicated by the notarization of their signatures.

*and Alicia Satterwhite, John W. Marvill and wife, Diane C. Figueroa and Clarence W. Marvill and wife, Francine M. Marvill

SATTERWHITE CONSTRUCTION, INC.

By: Alicia M. Satterwhite (AVP)
Assistant Vice President
Ricardo Latorre
Ricardo J. Latorre

Ricardo Latorre

Marlene Latorre

Marlene Latorre

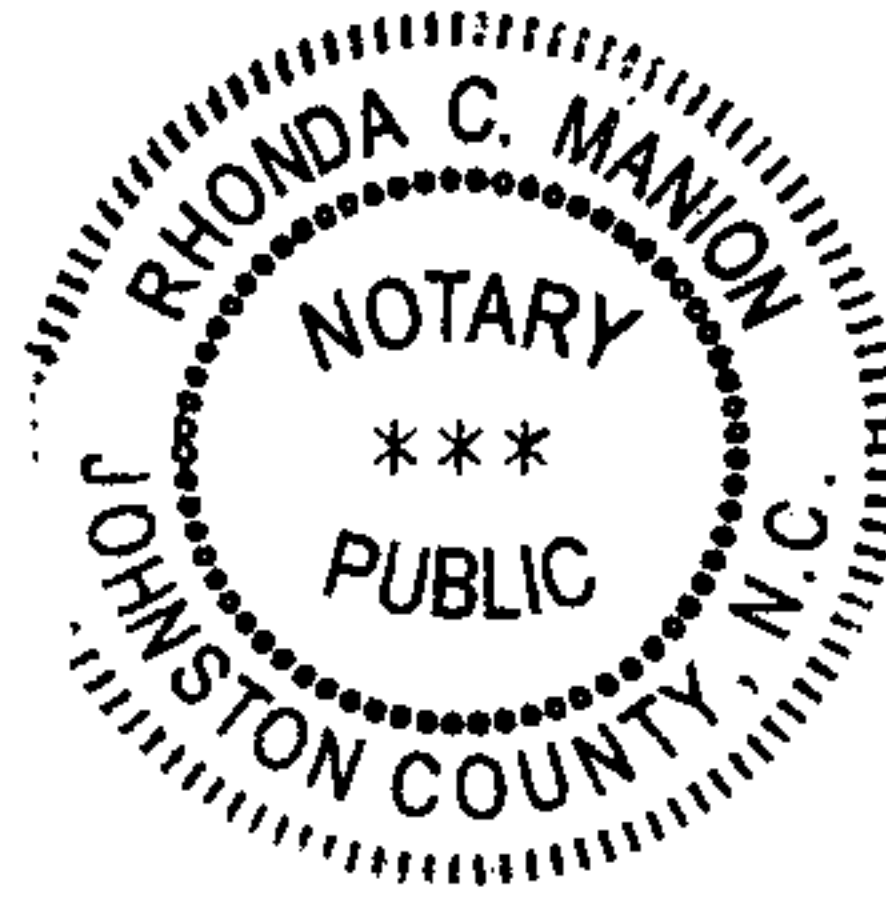
State of North Carolina

County of Johnston

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Alicia M. Satterwhite, *Asst VP of Satterwhite Construction, Inc.*
Date: June 7, 2007

Rhonda C. Manion
Rhonda C. Manion, Notary Public

My Commission expires: 6-19-2010



Barbara D. Johnson

Nicole L. Butcher
Nicole L. Butcher

Donna C. Stauffacher

Consented to:
City of Raleigh

By: *Bryant A. Hill*
Associate City Attorney

State of NORTH CAROLINA

County of WAKE

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: NIKOLE L. BUTCHER

Date: 6/5, 2007

[Signature] ELIZABETH MICHAEL CROWTHER ANGLE
(print name) Notary Public

My Commission expires: 7/13/2010

State of _____

County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Ricardo J. Latorre

Date: _____, 2007

_____, (print name) Notary Public

Barbara D. Johnson

Nicole L. Butcher

Donna C. Stauffacher
Donna C. Stauffacher

Consented to:
City of Raleigh

By: _____

State of _____

County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____

Date: _____, 2007

_____, (print name) Notary Public

My Commission expires: _____

State of _____

County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Ricardo J. Latorre

Date: _____, 2007

_____, (print name) Notary Public

State of _____

County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Nicole L. Butcher

Date: _____, 2007

_____, (print name) Notary Public

My Commission expires: _____

State of N.C.

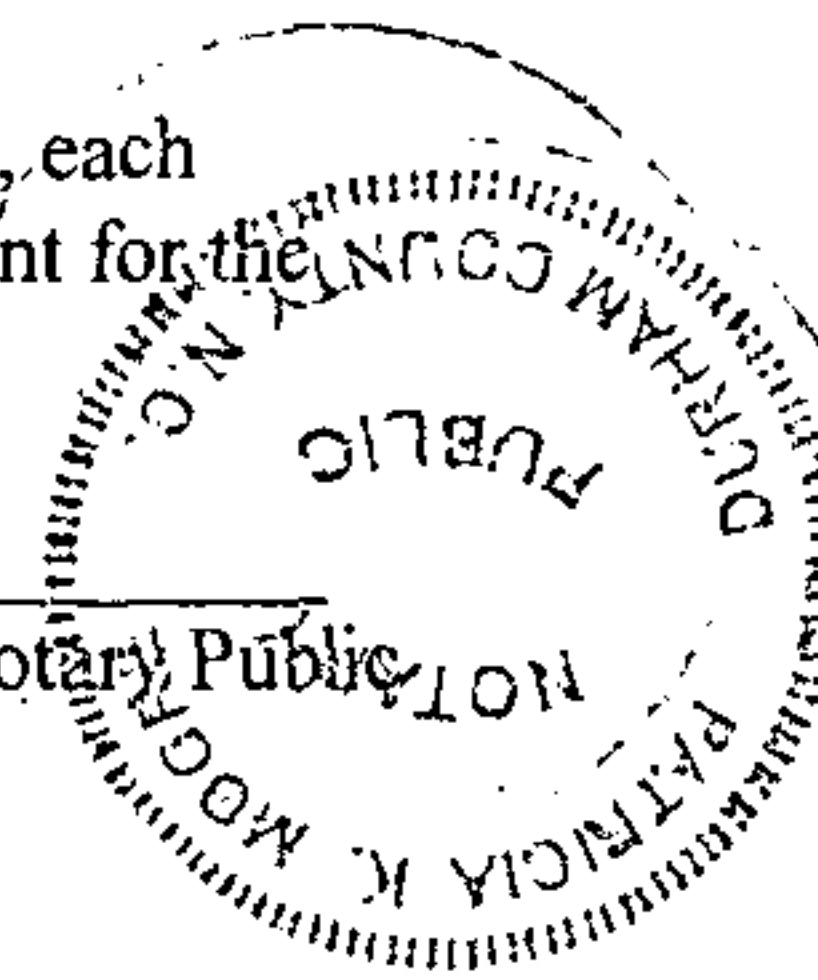
County of Durham

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Donna C. Stauffacher.

Date: May 19, 2007

Patricia K. Moore
PATRICIA K. MOORE, (print name) Notary Public

My Commission expires: 03-06-2012



Barbara D. Johnson
Barbara D. Johnson

Nicole L. Butcher

Donna C. Stauffacher

Consented to:
City of Raleigh

By: _____

State of NC

County of Wake

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Homeowners

Date: 05-16 -, 2007

Carlene W. Stevens
Carlene W. Stevens, (print name) Notary Public

My Commission expires: 05-23-09

State of NC

County of Wake

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Ricardo J. Latorre

Date: 05-16 -, 2007

Carlene W. Stevens
Carlene W. Stevens, (print name) Notary Public



My Commission expires: 05-23-09

State of _____

County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Ricardo Latorre

Date: _____, 2007
_____, (print name) Notary Public

My Commission expires: _____

State of _____

County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Marlene Latorre

Date: _____, 2007
_____, (print name) Notary Public

My Commission expires: _____

State of NC

County of Wake

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Barbara D. Johnson

Date: 05-16-, 2007

Carlene W. Stevens
Carlene W. Stevens, (print name) Notary Public

My Commission expires: 05-23-09



My Commission expires: _____

State of _____

County of _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Ricardo Latorre

Date: 5/17, 2007

Maritza Gonzalez, (print name) Notary Public

My Commission expires: _____



Maritza Gonzalez
My Commission DD216892
Expires May 28, 2007

State of Florida

County of Dade

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Marlene Latorre

Date: 5/17, 2007

Maritza Gonzalez, (print name) Notary Public

My Commission expires: _____



Maritza Gonzalez
My Commission DD216892
Expires May 28, 2007

State of Florida

County of Dade

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Barbara D. Johnson

Date: _____, 2007

_____, (print name) Notary Public

My Commission expires: _____

by Alicia M. Satterwhite
Alicia Satterwhite

John W. Marvill
John W. Marvill

Diane C. Figueroa
Diane C. Figueroa

Clarence W. Marvill
Clarence W. Marvill

Francine M. Marvill
Francine M. Marvill

State of North Carolina

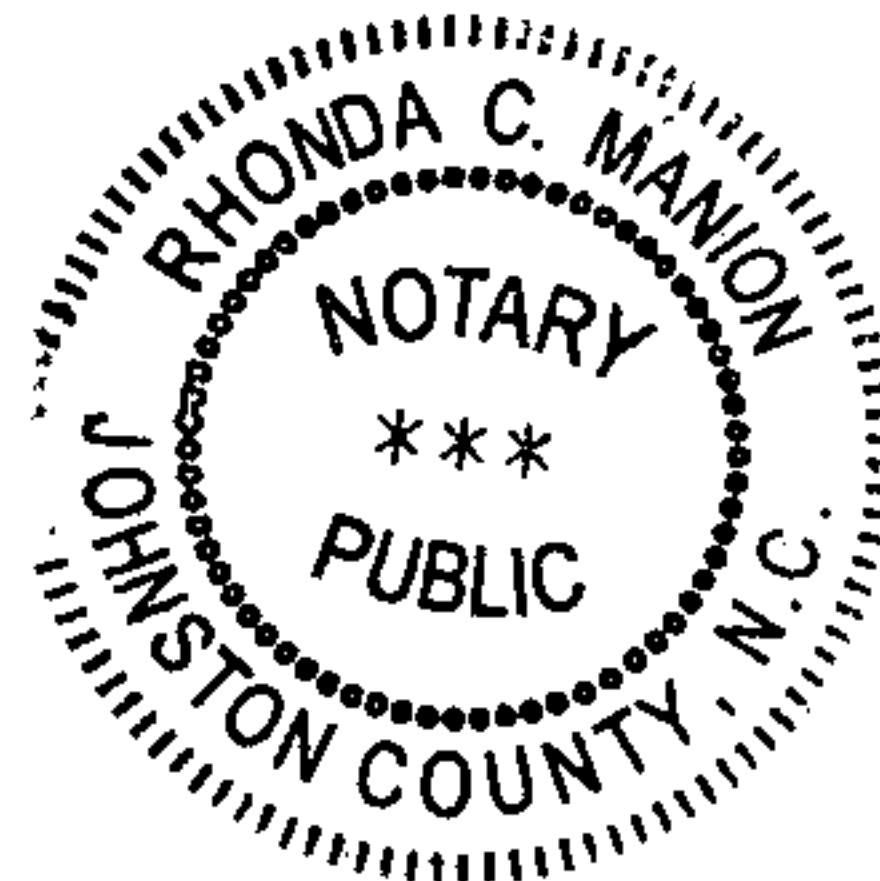
County of Johnston

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Alicia Satterwhite

Date: June 1, 2007

Rhonda C. Manion
Rhonda C. Manion, (print name) Notary Public

My Commission expires: 6-19-2010



State of North Carolina

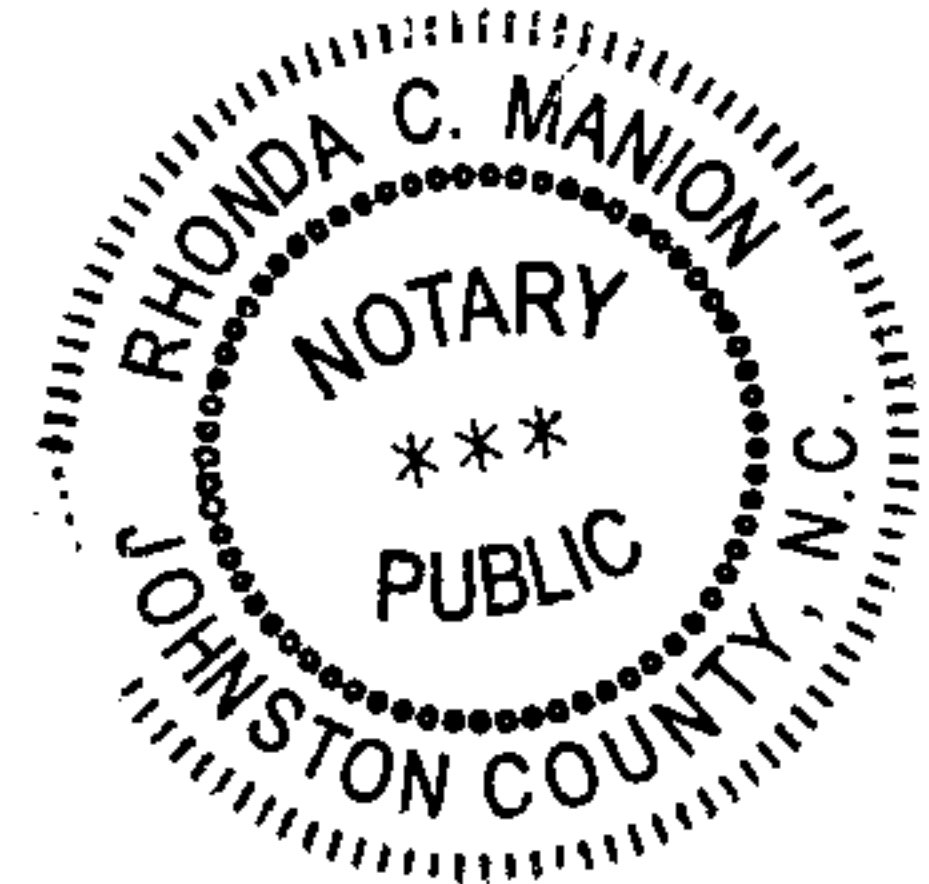
County of Johnston

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: John W. Marvill and wife, Diane C. Figueroa

Date: June 1, 2007

Rhonda C. Manion
Rhonda C. Manion, (print name) Notary Public

My Commission expires: 6-19-2010



State of North Carolina

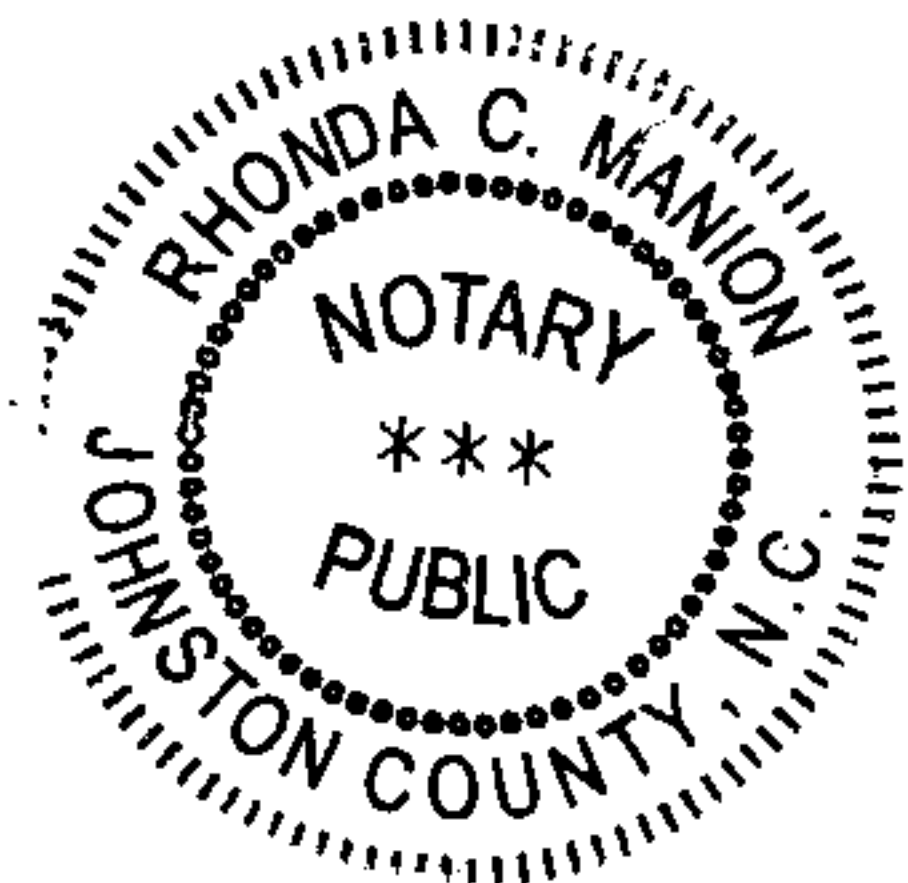
County of Johnston

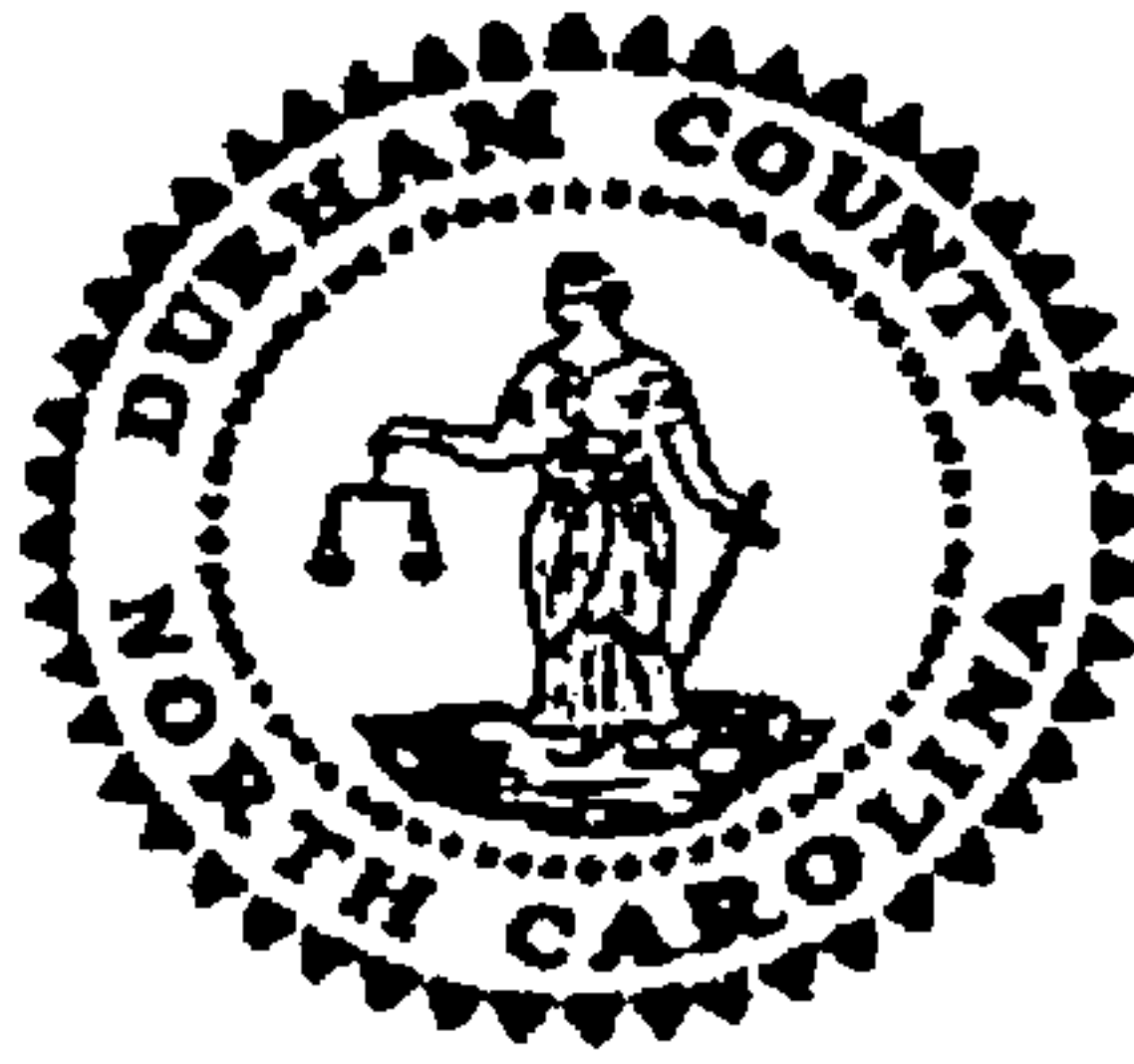
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Clarence W. Marvill and wife, Francine M. Marvill

Date: June 1, 2007

Rhonda C. Manion
Rhonda C. Manion, (print name) Notary Public

My Commission expires: 6-19-2010





WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 06/13/2007 03:12:22 PM
Book: RE 5641 Page: 809-822
Document No.: 2007026732
AMD 14 PGS \$50.00
Recorder: SHARON M CEARNEL



2007026732



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2008 SEP 08 02:23:29 PM
BK: 6054 PG: 415-420 FEE: \$26.00

INSTRUMENT # 2008036555

Prepared by and mail to after recording:

Russell Law Group, PLLC
Grayson G. Russell
P.O. Box 19001
Raleigh, NC 27619

NORTH CAROLINA
DURHAM COUNTY

**SECOND AMENDMENT TO THE
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR MULBERRY PARK TOWNHOMES**

THIS AMENDMENT TO DECLARATION, made on the date hereinafter set forth by
SATTERWHITE CONSTRUCTION, INC., a North Carolina corporation, hereinafter referred to
as the "Declarant".

WITNESSETH:

THAT WHEREAS, a certain Declaration of Covenants, Conditions and Restrictions for
Mulberry Park Townhomes was recorded in Book 5226, Page 713, Durham County Registry (the
"Declaration");

WHEREAS, the Declaration was amended by an instrument recorded in Book 5641, Page
809, Durham County Registry (the "First Amendment");

WHEREAS, the Declaration, pursuant to Section 13.05 of the Declaration, may be amended by the affirmative vote of or by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots;

WHEREAS, the Declarant is the owner of approximately one hundred sixty two (162), but no less than sixty-seven percent (67%) of the two hundred (200) lots in Mulberry Park Townhomes; and

NOW, THEREFORE, the Declarant, pursuant to Section 13.05 of the Declaration, hereto desires to amend the Declaration of Covenants, Conditions and Restrictions recorded in Book 5226, Page 713, as follows:

1. Article IX, Section 9.09 is hereby deleted in its entirety and a new Article IX, Section 9.09 Number of Occupants and Leasing of Lots shall read as follows:

A. Unless otherwise provided in the Raleigh City Code, no Lot shall be rented to or occupied by a greater number of unrelated individuals than the number of bedrooms in the Townhome on such Lot as approved in accordance with Article 5 of this Declaration. No Lot shall be rented to, leased or occupied by a number of individuals, whether or not unrelated, which exceeds twice the number of bedrooms in the Townhome on such Lot as approved in accordance with Article 5 of this Declaration; provided, however, a Lot may be rented to, leased or occupied by a number of individuals which is not more than three (3) times the number of bedrooms in the Townhome on such Lot as approved in accordance with Article 5 of this Declaration so long as all such individuals occupying such Townhome are within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) or who are legal guardian and ward. For purposes of this Section, "unrelated individuals" means individuals who are neither within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) nor who are legal guardian and ward; provided, however, siblings shall be considered unrelated individuals unless one of their parents or legal guardian also occupies the same Lot as such parent's or legal guardian's principal residence.

B. Any lease between an Owner and a tenant for the lease or rental of such Owner's Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, and that any failure by the tenant to comply with the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, shall be a default under the terms of the lease. All leases or

rentals of Lots shall be in writing and shall be for a term of not less than three hundred sixty (360) days. Copies of all lease agreements must be delivered to the Association promptly after the execution thereof.

C. The maximum number of Lots which may be leased or rented shall be limited to ten percent (10%) of the Lots. However, in the event an Owner wishes to lease or rent their Lot and the maximum number of Lots are already being leased or rented, said Owner may request a hearing before the Board to request a hardship waiver of this restriction. The Board may, but shall not be required, in the Board's sole and absolute discretion, waive this restriction to allow the Lot to be rented.

2. In Article XIII, Section 13.05 of the Declaration, the following language shall be deleted in its entirety:

"Such amendments shall have the prior written approval of the Raleigh City attorney or his deputy before it shall be effective. Evidence of such approval shall be indicated by the signature of the Raleigh City attorney or his deputy on the recorded amendment."

and the following shall be substituted therefor:

"Notwithstanding the foregoing, no amendment affecting either provisions of this Declaration involving stormwater or the maintenance or operation of Stormwater Control Measures or any provisions of this Declaration required by the Raleigh City Code shall be effective unless approved by the City of Raleigh, as evidenced by the signature of the City's Director of Public Works (or their deputy) or the City's Director of Planning (or their deputy) on the recorded original."

3. Article XIII, Section 13.06 of the Declaration, shall be deleted in its entirety.

Except as herein amended, the Declaration and First Amendment shall remain in full force and effect.

[Signature page to follow]

This 12 day of August, 2008.

SATTERWHITE CONSTRUCTION, INC.

BY:

Jesse W. Satterwhite, Jr., President

(PRES)
(SEAL)

NORTH CAROLINA

Wake COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jesse W. Satterwhite, Jr.

Date: 08-12-08

Carlene W. Stevens

Signature of Notary Public

Printed Name: CARLENE W. STEVENS

My Commission Expires: 05-23-09

CERTIFICATION OF VALIDITY OF AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
MULBERRY PARK TOWNHOMES

By authority of its Board of Directors, the Mulberry Park Townhomes Association, Inc. hereby certifies that the foregoing instrument has been duly approved or executed by the Owners of sixty-seven percent (67%) of the Lots of the Mulberry Park Townhomes and is therefore a valid amendment to existing Declaration of Covenants, Conditions and Restrictions For Mulberry Park Townhomes.

MULBERRY PARK TOWNHOMES
ASSOCIATION, INC.

BY:

Jesse W. Satterwhite, Jr., President

(PRES)



NORTH CAROLINA

Wake COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jesse W. Satterwhite, Jr.

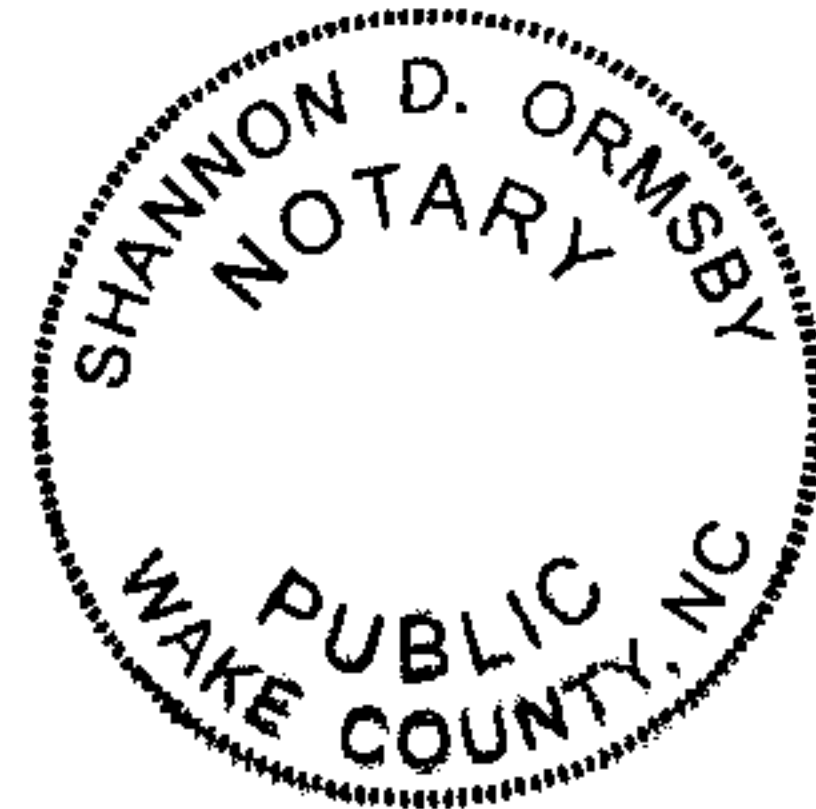
Date: 8-12-08

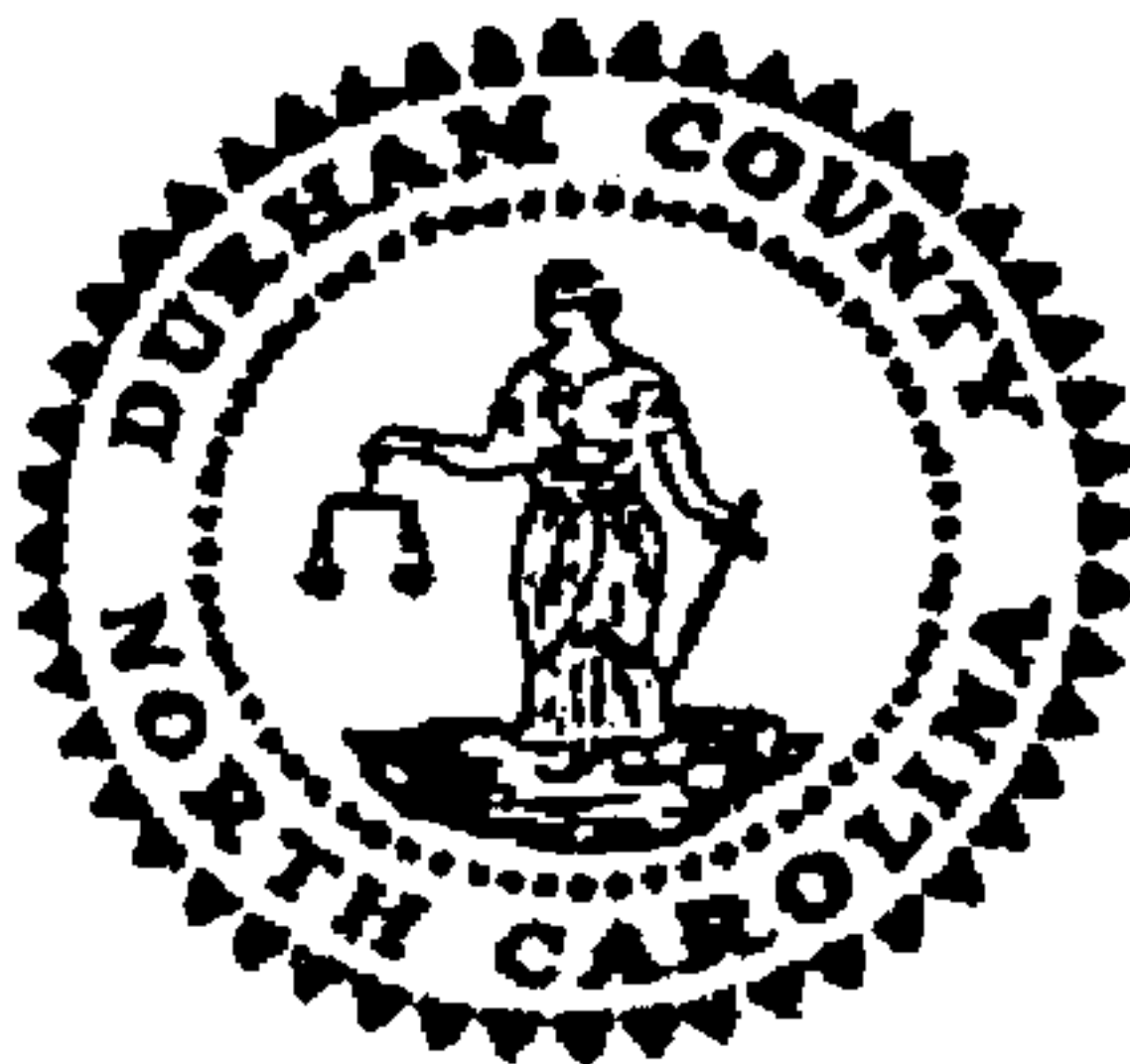
Shannon D. Ormsby
Signature of Notary Public
Printed Name: Shannon D. Ormsby
My Commission Expires: 12-10-09

REVIEWED AS TO FORM:

By: Bradford A. Williams (SEAL)

Printed Name: Bradford A. Williams
(Associate) ~~(Deputy)~~ City Attorney





WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording
and/or cancellation.

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AMD 6 PGS \$26.00

Recorder: APRIL J WILLIAMS



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