

WAKE COUNTY, NC 474
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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Prepared by and hold for: Ragsdale Liggett PLLC (Commercial Real Estate- Box #161)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SANCTUARY PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration"), is made this 10th day of September, 2013, by SANCTUARY PARK PARTNERS, LLC, a North Carolina limited liability company (hereinafter called "Declarant"), with its principal office in Wake County, North Carolina.

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property (the "Property") located in Wake County, North Carolina, as more particularly described on attached Exhibit "A", attached hereto and incorporated herein by reference for a more complete and accurate description, and which, as approved by the City of Raleigh, North Carolina, is being developed in phases as a single family residential development known as "SANCTUARY PARK".

WHEREAS, Declarant desires to subject the Property to the protective covenants, conditions and restrictions set forth herein for the purpose of insuring the best use and most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to insure the highest and best development of the Property; to encourage and secure the erection of attractive structures with appropriate locations on the Lots; to secure and maintain proper setbacks from streets and adequate free spaces between structures; to provide for the continued maintenance, including irrigation, if any, of any Common Area, including the landscaped entrance to the Subdivision; and in general to provide adequately for a high type and quality of improvements on the Property and thereby to enhance the values of investments made by the Owners; and

WHEREAS, Declarant has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, SANTUARY PARK HOMEOWNER'S

ASSOCIATION, INC. for the purpose of exercising the functions aforesaid and which are hereinafter more fully set forth.

**ARTICLE I
RALEIGH CITY CODE REQUIREMENTS**

**PART A
DEFINITIONS AND GENERAL REQUIREMENTS**

Section 1. 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 3 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. The name of the Association is SANCTUARY PARK HOMEOWNER'S ASSOCIATION. 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) "Builder" is defined as a general contractor who is an Owner solely for the purpose of constructing a single family residence on a Lot to be sold to a third party purchaser, but shall not include a general contractor constructing a single family residence for itself, one or more of its principals or an affiliate

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

(h) "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.

(i) "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.

(j) "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 including but not limited to the street lighting system leased from Duke Energy;
- (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.

(k) "Declarant" is defined as SANCTUARY PARK PARTNERS, LLC, a North Carolina limited liability company, its successors and assigns.

(l) "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 December 31, 2020 (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.

(m) "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).

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

(o) "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.

(p) "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.

(q) "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.

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

(s) "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.

(t) "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 8 of Part A of this Article.

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

(v) "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.

(w) "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.

(x) "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.

(y) "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.

(z) "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.

(aa) "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 7.27 acres.

(ab) "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.

(ac) "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).

(ad) "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.

(ae) "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. 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 3. 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 4. 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 5. 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; provided, however, solely for the purposes of this Section 5(a), the term Owner shall not include the Declarant. Provided further, a Lot owned by a Builder shall only be subject to twenty-five percent (25%) of the annual assessment levied in accordance herewith.

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 2013, the annual assessment per Lot is \$665.00. 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 a 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 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 6. 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 7. 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 8. 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 9. 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 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 11. Intentionally deleted

Section 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 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 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 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 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 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 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)**

The Property is subject to that certain Declaration of Maintenance Covenant and Grant of Protection Easements for Stormwater Control Facilities recorded in Book 15306, Page 1721, Wake County Registry.

**ARTICLE II
VOTING RIGHTS**

Classes of Voting Membership. The Association shall have two classes of voting membership. Members are divided into classes for the sole purpose of computing votes and except as otherwise specifically set for in this Declaration, shall not vote as a class.

Class A. "Class A Members" shall be all those Owners of Lots, with the exception of Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership under Article I, Part A, Section 6(a). Pursuant to the Act, when more than one Person holds such interest in any Lot, all such persons shall be Members, and the vote for Lot shall be exercised as the majority of such Persons among themselves determine. In no event, however, may more than one vote be cast with respect to any Lot. Fractional voting shall be prohibited. At any meeting of the Members, a representation by any of such Persons that a majority of such Persons have agreed as to the vote for such Lot shall be conclusive unless another of such Persons contests such representation at such meeting prior to the casting of such vote.

Class B. "Class B Member" shall be the Declarant. The Class B member shall be entitled to eight (8) votes for each Lot shown on the subdivision plat until that Lot or Lots is/are sold, transferred or conveyed by the Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) Declarant's written consent to termination; or
- (b) When the total votes outstanding in Class A equal the total votes outstanding in Class B.

Notwithstanding anything contained in sub-paragraph (b) above to the contrary, the Class B membership shall be reinstated if, after the events described in sub-paragraph (b) above, and before the time stated in sub-paragraph (c) above, Declarant annexes additional lands to the Property in accordance with the provisions of Article I, Part A, Section 13.

Majority Vote. Except as otherwise provided in this Declaration, the Articles, Bylaws and any Association action requiring the approval of the Members shall require the vote or written assent of a majority of the total Association vote, provided quorum requirements have been met.

**ARTICLE III
ARCHITECTURAL CONTROL, BUILDING AND USE RESTRICTIONS**

Section 1. Building Sites. Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for single-family residential purposes only. The minimum lot size shall be 10,890 square feet. The lay of each Lot as shown on the recorded plat shall be substantially adhered to, provided, however, that with the prior written approval of the Declarant (as long as Class B Membership exists) or the Board and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one Lot may be used as one Building Site. In no event, however shall a Lot or group of Lots be resubdivided or recombined in violation of any applicable zoning or other laws in force at the time of the change. Declarant reserves the right to utilize any Lot for purposes of constructing a road to access adjacent property, subject to approval by all necessary governmental authorities.

Section 2. Setbacks. Building setbacks of all structures on any Lot shall be as set forth on any recorded plat of the Properties. For the purposes of this covenant, eaves, steps, carports, decks, walkways, driveways, fences and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Building Site to encroach upon another Lot. Provided it otherwise complies with the applicable City of Raleigh zoning ordinances and setback requirements, Declarant, as long as Class B Membership Exists, or Board may approve by written waiver a violation of these requirements.

Section 3. Structures. Improvements on any Lot shall be limited to a single-family residential structure. No residential structure, which has a minimum area of less than 2,500 square feet of heated area for a one story residence and 2,500 square feet for a one and one-half or two story residence exclusive of porches, basement and garage, shall be erected or placed on any Lot. All buildings and structures erected upon Lots shall be of new construction. No structures of a temporary character, manufactured home, modular home, trailer, tent, shack, garage, barn or other out-building shall be used on any portion of the Property at any time as a residence either temporarily or permanently. No storage shed, garage or other out-building shall be constructed, used or permitted on any portion of the Property without the prior written approval of the Declarant (as long as Class B Membership exists) or the Board.

Section 4. Declarant Facilities. Notwithstanding any provision in this Article to the contrary, for ten (10) years following the date of incorporation of the Association, Declarant may, subject to all applicable laws of the City of Raleigh, maintain such facilities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots. These facilities shall include but not be limited to a business sales office, storage area, construction yards and signs.

Section 5. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Lots, except that a reasonable number of domesticated, household pets may be kept, provided they are (a) not maintained for commercial purposes; (b) reasonably restrained while outside the residential structure; and (c) not permitted access to an outside shelter which is (i) not approved by the Declarant, the Board or the Architectural Committee, or (ii) visible from the street.

Section 6. Screening. All clothes lines, equipment, garbage cans, recycling bins, service yards, wood piles, or storage piles shall be kept screened by adequate Improvements so as to screen them from view from the street and adjoining property. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate.

Section 7. Leasing. No Lot or any portion of the improvements situated thereon shall be leased for transient purposes, except that an Owner may lease not less than the entire residential structure on its Lot provided that each lease must be in writing, must be for a period of not less than ninety (90) days, and must provide that it is subject to this Declaration and the Bylaws and that any failure by a tenant to comply with such shall be a default under the lease.

Section 8. Utility Devices. Without the prior written approval and the authorization of Declarant (as long as Class B Membership exists) or the Board, no exterior television or radio antennas, satellite dishes or solar panels or other utility devices, of any sort shall be placed, allowed or permitted upon any portion of the exterior of the improvements to be located upon any Lot. Television satellite dish antennae less than 24' in diameter, however, may be approved by Declarant (as long as Class B Membership exists) or the Board.

Section 9. Business/Obnoxious Activity. No business activity of any kind or any obnoxious or offensive activity shall be conducted on any Lot or the improvements located thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. No Lot shall be used in any way or for any purpose which may endanger the health of or unreasonably disturb an Owner or its tenants or invitees. No "For Sale" signs exceeding four (4) square feet in dimension, advertising signs, rent signs, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Properties and in no event in the Common Area. The foregoing covenants shall not, however, apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agent and assigns, for ten (10) years following the date of incorporation of the Association.

Section 10. Vehicles. Boats, automobiles, watercraft, recreation vehicles, mobile homes, trailers (with or without wheels), commercial vehicles of any type, motorized camper, trucks and tractors (the "Vehicles") of an Owner or member of its family, tenants or contract purchasers shall be parked and stored within its Lot in full compliance with, and shall not be in violation of, any ordinance of the City of Raleigh. No Owner or its tenant(s) or contract purchasers shall park or store an inoperative, unlicensed, unsightly or abandoned Vehicle of any Lot or on the streets on the Properties.

Section 11. Above-Ground Tanks. No exposed above-ground tanks (except for approved recreational swimming pools) will be permitted for the storage of fuel or water or any other substance. Notwithstanding such, tanks may be placed above-ground provided they are kept within a screened enclosure which must exceed in height by at least one (1) foot any such tank as maybe placed therein. The screened enclosure shall be subject to the Board's prior approval.

Section 12. Lawn Ornaments. Decorative lawn ornaments must be approved in writing by the Board prior to installation or placement on any Lot.

Section 13. Window Treatments. No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

Section 14. Fences.

(a) **Fences in general.** No fence or wall shall be erected or maintained on the side yard of any Lot nearer to the street than the back building line of the house. No fences or walls shall be constructed in the front yard of any Lot, except for fences erected in conjunction with model homes or sales offices. All fences constructed require prior written consent of the Declarant (as long as Class B membership exists) or the Board. Perimeter fencing and privacy fencing around patios, decks or pools may not exceed five (5) feet in height.

(b) **Pool fences.** It shall be a requirement within the Properties that any pool constructed within the Properties, whether above-ground or in-ground shall be surrounded by a non-climbable perimeter fence of a least five (5) feet in height and equipped with a self-closing mechanism on all gates. The design for swimming pool and fence construction must be submitted to Declarant (as long as Class B membership exists) or the Board for prior written approval, and said approval will not be given unless the plans therefore include a perimeter fence in compliance with this sub-paragraph. The minimum fence requirements contained in sub-paragraph (a) above shall apply to any pool fences constructed within the Property.

Section 15. Intentionally deleted

Section 16. Maintenance. Each Owner shall keep its property free of tall grass, undergrowth, dead trees, trash and rubbish and shall otherwise properly maintain said property and the improvements located thereon so as to present a pleasing appearance. In the event an Owner does not, in the reasonable opinion of the Board, properly maintain the same, Declarant and/or Association may have the required work done and the costs incurred for such work, plus a service charge of fifteen percent (of such costs) shall be assessed against the Owner.

Section 17. Governmental Regulations. Each Owner shall comply with all laws, ordinances, governmental building codes, health regulations, zoning restrictions and the like applicable to its Lot and/or Common Areas and Open Space. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 18. Additional Restrictions. The Association or the Board shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Property.

Section 19. Anti-Discrimination. No action shall at any time be taken by the Association or the Board in the enforcement or interpretation of these Covenants and Restrictions which in any manner would unfairly discriminate against any Owner in favor of any of the other Owners.

Section 20. Waiver. Notwithstanding anything above to the contrary, Declarant (as long as Class B Membership exists) and the Board shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any of the other Lots subject to this Declaration.

No waiver shall be effective if it shall cause the Lot or structures thereon to be in non-conformance with any applicable governmental ordinances.

**ARTICLE IV
ARCHITECTURAL CONTROL AND INSPECTION**

Section 1. Powers. The Declarant and the Board shall have the right to refuse approval of any plans and specifications for an improvement proposed to be constructed on a Lot or (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetics or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Declarant and the Board shall consider the suitability of the proposed improvement and materials to be used in that improvement, the site upon which they are proposed to be erected, and the effect of the improvement on adjacent or neighboring property. There is specifically reserved unto the Declarant and the Board the right of entry and inspection upon any Lot for the purpose of determining whether there exists any construction of any improvement which violates the terms of any approval by the Declarant or the Board or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. The Declarant and Board are specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs and expenses, including reasonable attorneys' fees.

Section 2. Approval of Plans and Specifications. No improvement shall be commenced, erected, or maintained upon any Lot, nor shall any improvement be repaired or rebuilt after destruction by any hazard until completed Plans & Specifications, showing the nature, kind, space, height, materials, and location of the improvement, shall have been submitted to and approved in writing by the Declarant or the Board. A failure to approve or disapprove completed Plans and Specifications within thirty (30) days after they have been submitted shall be deemed to be an approval of those Plans Specifications. Neither the Association, the Association's Board or the Declarant or any officer, employee, director or members thereof shall be liable for damages to any persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications. Every person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages.

**ARTICLE V
EXTERIOR MAINTENANCE**

Section 1. Duty to Maintain. It shall be the duty of each Owner to properly maintain its Lot and all improvements constructed on such Lot in a reasonably neat and orderly manner, keeping its Lot sightly and in good repair.

Section 2. Remedies of Association. If, in the opinion of the Association, an Owner shall fail to maintain its property in a manner which is reasonably neat and orderly, or shall fail to keep the improvements constructed thereon in a state of repair so as not to be unsightly, the Association in its discretion, by the affirmative vote of two-thirds of the members of the Board, and following

ten (10) days written notice to said Owner, may enter upon and make, or cause to be made, repairs to such improvements and perform such maintenance on such property as the removal of trash, cutting of grass, pruning of shrubbery, seeding and correct items required for erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. All costs incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such costs, shall be added to and become a part of the assessment to which such property is subject.

ARTICLE VI GENERAL PROVISIONS

Section 1. Enforcement. Declarant (as long as Class B membership exists), the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges, now or hereafter imposed, the provisions of this Declaration. In addition to all other remedies granted herein, the Board may impose fines against any Lot and Owner for a failure to comply with any of the restrictions, conditions, covenants, reservations, liens and charges, now or hereafter imposed, the provisions of this Declaration. The fines shall be treated as a Special Assessment otherwise due to the Association from the Owner. Such fines shall be paid not later than thirty (30) days after notice of the assessment is given to the offending Owner. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which Association may be otherwise legally entitled. Any such fine paid by the offending Owner shall nevertheless be deducted from or offset against any damages the Association may otherwise be entitled to recover by law from the offending Owner. Fines shall be as follows:

- a) First non-compliance or violation: a fine not in excess of fifty dollars (\$50.00);
- b) Second non-compliance or violation: a fine not in excess of one hundred dollars (\$100.00); and
- c) Third and subsequent non-compliance or violation, or violations that are of a continuing nature: a fine not in excess of one hundred dollars (\$100.00) for each week of continued violation or non-compliance.

Failure by the Declarant (as long as Class B membership exists), Association or by any Owner to enforce any covenant or restriction hereby contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses or phrases would have been and are imposed irrespective of the fact that any one or more of the other paragraphs, sections, sentences, clauses or phrases became illegal, null or void.

Section 3. Duration and Amendments.

(a) The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefits of and be enforceable by the Association, Declarant (so long

as Class B membership exists) or the Owner of any property subject to this Declaration, their respective legal representative, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless the Association approves a change in the Covenants and Restrictions. The Covenants and Restrictions of this Declaration may be amended at any time if seventy-five percent (75%) of the vote of each class of Members at a duly called meeting of the Association at which a quorum is present approves the amendment. Provided, however, that prior to the sale of the first Lot, this Declaration may be amended by Declarant without consent of the Members.

(b) Declarant, so long as Class B membership exists, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Properties or to qualify the Properties or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a government agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the City of Raleigh, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

(c) No amendment which would change or delete any provision herein required by any governmental authority shall become effective until submitted to and approved by that authority. Further, no amendment to any portion of Article I shall be made without the expressed written consent of the Raleigh City Attorney or his/her deputy as set forth in Article I, Part A, Section 4 of this Declaration.

Section 4. Availability of Documents. The Association will have current copies of the Declaration, Bylaws, and other rules concerning Sanctuary Park Subdivision as well as the Association's own books, records and financial statements available for inspection during normal business hours by Owners and by holders, insurers and guarantors of first mortgages that are secured by Lots in Sanctuary Park Subdivision. The Association may charge a reasonable fee for providing copies of the Association's own books, records and financial statements.

Section 5. Condemnation. Whenever all or any part of the Common Area or Open Space shall be taken by an entity having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association. Unless otherwise required by law at the time of such taking, any award made therefore shall be disbursed by the Association as hereinafter provided. If at least sixty-seven percent (67%) of the Members decide within sixty (60) days after such taking to replace any condemned improvements, or any part thereof, on the remaining lands which are part of the Common Area, then the Board of the Association shall arrange for

such replacements. The Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the property is to be repaired or reconstructed, after payment of all costs incident to such award.

Section 6. Disputes. In the event of any dispute arising concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

Section 7. Voting. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Association's Bylaws.

Section 8. Member Addresses. Each Member agrees to keep the Association informed of its address and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of its ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the ownership of each Lot.

Section 9. Owner Responsibility. Notwithstanding anything in this Declaration to the contrary, an Owner shall be responsible for any and all violations of these Declarations by its employees, agents, subcontractors, tenants, guests and invitees. When a party to this Declaration consists of more than one individual or entity, such party's liability hereunder shall be joint and several.

Section 10. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 11. Number and Gender. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

Section 12. No Exemption. No Owner or other party may exempt itself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Owner's Lot or the Common Areas.

Section 13. Subdivision Covenants. It is contemplated by Declarant that within the Property there may be a number of separate, distinct residential subdivisions or sections that will be subjected to this Declaration. It is further contemplated by Declarant that because of varying lot sites, marketing considerations and other factors, it may be necessary or desirable to impose additional and different covenants, conditions and restrictions on such subdivisions or sections which are applicable solely to such subdivisions or sections. Accordingly, in addition to any other rights reserved to Declarant herein Declarant further reserves the right to subject such subdivisions and sections to additional and different subdivision restrictive covenants as Declarant, in its discretion, may from time to time determine. This right also includes the right to subject more than one subdivision or section to the same subdivision restrictive covenants.

Section 14. Subdivision, Combination of Multiple-Family Lots. No Lot shall be subdivided without obtaining the written consent of Declarant (as long as Class B membership exists) or the Board and the approval of the City of Raleigh. One or more Lots may be combined into a single

Lot with the written consent of Declarant (as long as Class B membership exists) or the Board so long as such recombination complies with the Raleigh City Code. Upon such combination and consent, the resulting Lot shall be considered as one Lot for the purposes of this Declaration. Provided, however, that the foregoing shall not prohibit or restrict the right (which is hereby reserved) of Declarant, in compliance with the Raleigh City Code, to subdivide, combine, re-subdivide, recombine, or re-record maps relating to, any Lot owned by Declarant, subject to this Declaration.

Section 15. Conflict Between Declaration and Articles of Incorporation. Whenever there exists a conflict between the provisions of this Declaration and the Articles or Bylaws, the provisions of this Declaration shall control, and whenever there is a conflict between the provisions of the Articles and Bylaws, the Articles shall control.

Section 16. No Infringement on Provisions of Article I. Nothing in this Declaration shall be construed to limit the exercise of the rights of the Association or the City of Raleigh as established in Article I hereof. To the extent that any provisions of the Declaration are in conflict with provisions of Article I, the provisions of Article I shall control.

Section 17. Laws of North Carolina. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America.


Section 18. Assignment. Declarant specifically reserves the right, in its sole discretion, at any time and from time to time, to assign (temporarily or permanently) any or all of its rights, privileges and powers under this Declaration or under any amendment thereto.

Section 19. Reserved Declarant Rights. Declarant reserves the following development rights: (i) to impose supplemental conditions, restrictions and changes upon newly annexed Property; (ii) to appoint and remove any member or members of the Board; (iii) to delegate the management and obligations of the Association to a professional management organization; and (iv) to reallocate residential structures or Lots within the Properties.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed under seal this the 10th day of September, 2013.

DECLARANT:

SANCTUARY PARK PARTNERS, LLC, a North Carolina limited liability company

By: 
Joseph E. Jacobs, Jr., Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, a Notary Public of the State and County aforesaid, do hereby certify that **Joseph E. Jacobs, Jr., Member/Manager of SANCTUARY PARK PARTNERS, LLC, a North Carolina limited liability company**, personally appeared before me and acknowledged the voluntary execution of the foregoing instrument on behalf of the company for the purposes expressed herein. Witness my hand and official seal this the 10th day of September, 2013.

(SEAL)

Lore Weber-Gottberg

Notary Public



My Commission Expires: 11-27-15

Exhibit "A"

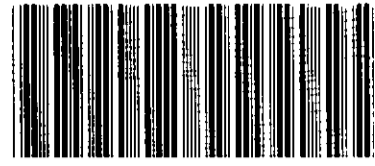
PARCEL ONE

BEGINNING at a point located 83.96 feet westerly from the northeastern corner of Lot 2 as shown on map recorded in Book of Maps 2001, Page 1405, Wake County Registry; thence from said beginning point South 05 degrees 34 minutes 59 seconds West 193.01 feet to a point; thence North 86 degrees 02 minutes 25 seconds West 105.00 feet to a point; thence North 05 degrees 29 minutes 51 seconds East 193.00 feet to a point; thence North 04 degrees 02 minutes 38 seconds East 13.49 feet to a point; thence South 85 degrees 57 minutes 12 seconds East 105.27 feet to a point; thence South 04 degrees 02 minutes 48 seconds East 13.93 feet to the point and place of **BEGINNING**, containing approximately 0.47 acre, more or less as shown on a survey entitled "Survey for SP Partners, LLC" dated August 7, 2012 and prepared by John A. Edwards & Company Consulting Engineers.

PARCEL TWO

BEING all of Lots 1, 2 and 3, as shown on plat recorded in Book of Maps 2001, Page 1405, Wake County Registry, being more fully described as follows:

BEGINNING at a flat iron located in the northeastern corner of Lot 2 as shown on map recorded in Book of Maps 2001, Page 1405, Wake County Registry; thence South 05 degrees 34 minutes 59 seconds West 585.28 feet to an existing iron pipe; thence North 70 degrees 21 minutes 10 seconds West 313.82 feet to an existing concrete monument; thence North 85 degrees 41 minutes 00 seconds West 313.46 feet to an existing iron pipe; thence North 07 degrees 22 minutes 48 seconds East 499.98 feet; thence South 83 degrees 27 minutes 26 seconds East 297.05 feet to a point; thence North 14 degrees 42 minutes 32 seconds East 10.70 feet to an existing iron pipe; thence South 85 degrees 57 minutes 12 seconds East 115.60 feet to an existing iron pipe; thence South 85 degrees 57 minutes 12 seconds East 50.38 feet to an existing iron pipe; thence South 85 degrees 57 minutes 12 seconds East 4.89 feet to a point; thence South 04 degrees 02' 48" West 13.49 feet to a point; thence South 05 degrees 29 minutes 51 seconds West 193.00 feet to a point; thence South 86 degrees 02 minutes 25 seconds East 105.00 feet to a point; thence North 05 degrees 34 minutes 59 seconds East 193.01 feet to a point; thence North 04 degrees 02 minutes 48 seconds East 13.93 feet to a point; thence South 85 degrees 57 minutes 12 seconds East 84.34 feet to a point; thence South 05 degrees 34 minutes 59 seconds West 14.29 feet to the point and place of **BEGINNING**, containing approximately 6.685 acres, more or less as shown on a survey entitled "Survey for SP Partners, LLC" dated August 7, 2012 and prepared by John A. Edwards & Company Consulting Engineers.



BOOK:015437 PAGE:00150 - 00176

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



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

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_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages 5