

WAKE COUNTY, NC 643
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WEDGEWOOD SUBDIVISION**

**PREPARED BY AND HOLD FOR:
OFFICE OF MICHAEL G. SANDMAN ATTORNEY AT LAW #169**

STATE OF NORTH CAROLINA

COUNTY OF WAKE

THIS DECLARATION is made this 28th day of October, 2011, by ROCHELLE ROAD PARTNERS, LLC, a North Carolina limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of Lots 1 through 27, inclusive, Open Space and right(s) of way, within the WEDGEWOOD Subdivision, as shown on plat recorded in Book of Maps 2011, Pages 1033 and 1034, Wake County Registry (collectively, the "Properties", and as more particularly described in Section 1.1(z) hereof); and

WHEREAS, Declarant is developing the Properties as a single-family residential subdivision known as "WEDGEWOOD"; and

WHEREAS, Declarant wishes to subject the Properties 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 Properties; to preserve, so far as practicable, the natural beauty of the Properties; to guard against the construction 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 the Properties; to encourage and secure the construction of attractive structures with appropriate locations on the Lots; to secure and Maintain proper set backs from streets and

adequate free spaces between structures; to provide for the continued Maintenance (Including irrigation, if applicable) and repair of any Common Area, and the Stormwater Control Measures (hereinafter defined), the landscaped entrance to the Subdivision and any landscape easements or landscaped islands provided for herein; and in general to provide adequately for a high type and quality of all Improvements (hereinafter defined) to the Properties (as hereinafter defined) and thereby enhance the values of the 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, WEDGEWOOD HOMEOWNERS ASSOCIATION, INC., for purposes of exercising the functions aforesaid and more fully described hereinbelow.

NOW, THEREFORE, Declarant hereby declare that the Properties are and shall be held, used, mortgaged, transferred, sold, conveyed and occupied subject to these Covenants.

**ARTICLE I
TOWN OF CARY CODE REQUIREMENTS**

**PART A
DEFINITIONS AND GENERAL REQUIREMENTS**

1.1 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 1.3 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. 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) "Code" is defined as the Town of Cary Code of Ordinances and Land Development Ordinance as it exists from time to time, and Includes all duly adopted regulations, rules, directives, and policies of the Town pursuant to or in furtherance of the Code.

(g) "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 Town). 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 Town 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 Town;

(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.

(h) "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 Town pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the Town 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 Town 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.

(i) "Declarant" is defined as ROCHELLE ROAD PARTNERS, LLC, a North Carolina corporation, its successors and assigns.

(j) "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 Town, which date is 5:00 p.m. on JUNE 7, 2023 (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.

(k) "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).

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

(m) "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.

(n) "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.

(o) "Governmental Entity" is defined as the Town of Cary and the County of Wake, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Entity or entities is/are applicable.

(p) "Improvement" or "Improvements" is defined individually or collectively as all or any portion of any structure of any type or kind and all exterior modifications thereto, including, without limitation, any buildings, outbuildings, patios, parking areas, loading areas, screening walls, retaining walls, fences, hedges, landscaping, mass plantings, lawns, sidewalks, poles, signs, and utility lines and facilities.

(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 Town.

(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 1.8 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 Town 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. 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 Town. 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 Town), 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 10 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 Town, or between the Declarant and the Town, or between the Association and the Town, 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 Town 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 Town 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.

(ae) “Town” or “Town of Cary” is defined as the Town of Cary, North Carolina, a North Carolina municipal corporation.

1.2 Applicability. The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the Town, 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.

1.3 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.

1.4 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 Town approval of an amendment is required by the Code or by a provision of this Declaration (Including this Article), Town approval shall be evidenced by the signature of an individual with the authority to bind the Town in accordance with the provisions of the Code or other applicable law on the recorded original or copy of the amendment. Any amendment of this Article of this Declaration must have prior Town approval. Any amendment of this Article or any other provision of this Declaration that requires Town approval is void *ab initio* if recorded without the required Town signature.

1.5 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.

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 Town.

(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 2011, the annual assessment per Lot is \$780.00 (\$65.00 per month). 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.

1.6 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 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 with 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 (½) 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.

1.7 **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 the Code), any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse permit from the Town. Permanently Protected Undisturbed Open Space may or may not be Open Space as defined in this Declaration.

1.8 **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 Town 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 Town 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. No fences, walls, or other structures shall be constructed within any tree conservation area designated on any plat of the Properties.

1.9 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.

1.10 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.

1.11 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.

1.12 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 Town, 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.

1.13 Annexed Property. Real property which was not part of the Town-approved development, or real property that was part of the Town-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 Town;
- (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 Town Attorney or his/her deputy. Evidence of such approval shall be indicated by the signature of the Town Attorney or his/her deputy on the recorded original or copy of the Annexation Declaration. Any Annexation Declaration recorded without the required Town 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.

1.14 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.

1.15 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.

1.16 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 Town as allowed or required under the Code. Common Areas may be conveyed to the Town free of part or all of the provisions of this Declaration, as determined by the Declarant and the Town. Title to Common Areas shall be conveyed to the Association or to the Town 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.

1.17 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 Town utility easement shall be owned and Maintained by the Association as Common Area. In no case shall the Town 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 Town 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.

1.18 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.

**ARTICLE II
MERGERS AND DEVELOPMENT REQUIREMENTS**

2.1 Mergers. Upon a merger or consolidation of the Association with another organization, as provided for in its Bylaws, the Association's properties, rights and obligations may be transferred to another surviving or consolidated homeowners association or, alternatively, the properties, rights and obligations of another homeowners association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger. The surviving or consolidated homeowners association may administer these Covenants, together with the covenants and restrictions established for any other properties as one scheme. No such merger or consolidation shall, however, affect any revocations, changes or additions to these Covenants, as the same may be amended, except as hereinafter provided.

**ARTICLE III
ANNEXATION OF ADDITIONAL PROPERTIES**

3.1. Annexation by Members. Subject to Article I, Part A, Section 1.13 hereof, and except as provided in Section 3.2, additional properties may be added and annexed to the Properties only if two-thirds (2/3) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Members comprising no less than two-thirds (2/3) of each class of Members entitled to cast votes in favor of annexation describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. For the purpose of such meeting, the presence of Members or authorizing proxies entitled to cast sixty percent (60%) of the votes of each class of Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth in Section 6.4 hereof, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which said Member is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

3.2 Annexation by Declarant. Subject to the approval as may be required of any local governmental authority having jurisdiction over the Properties, if within twelve (12) years from the date the Association was incorporated (August 31, 2011) Declarant develops additional land located adjacent to or across a public or private street from the Properties, and any property adjacent thereto or across a public or private street therefrom which is annexed thereto in accordance with the provisions hereof, Declarant may annex such land to the Properties without the consent of Members. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly

executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary.

**ARTICLE IV
VOTING RIGHTS**

Subject to Article I, Part A, Section 1.6(c) hereof, the Association may have the following two (2) classes of voting membership:

(a) Class A Members shall be all Owners with the exception of the Declarant. Declarant shall, however, be a Class A member upon the termination of Class B membership. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as the majority of such Persons among themselves determine; but in no event shall more than one (1) vote be cast with respect to each Lot. Fractional voting is 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.

(b) The Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs first:

- (i) Declarant's written consent to termination; or
- (ii) When the total votes outstanding in Class A equal the total votes outstanding in Class B [provided, however, that Declarant shall retain its architectural review and approval rights under Article X until the Class B membership is terminated in accordance with either sub-paragraphs (i) or (iii)]; or
- (iii) Twelve (12) years following the date of incorporation of the Association (August 31, 2011).

Notwithstanding anything contained in sub-paragraphs (i) and (ii) above to the contrary, the Class B membership shall be reinstated if, after the events described in sub-paragraphs (i) and (ii) above, and before the time stated in sub-paragraph (iii) above, Declarant annexes additional lands to the Properties without the assent of the Class A Members, as provided for in Article I, Part A, Sections 1.13 and 3.2 of hereof.

**ARTICLE V
PROPERTY RIGHTS IN COMMON AREA**

5.1. Owners' Easements of Use and Enjoyment. Every Member shall have a perpetual right and easement of use and enjoyment in and to the Common Area (the "Owners' Easement"), together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas, if any, of the Common Area. The Owners' Easement shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Area, subject to the legal requirements of any governmental authority having jurisdiction over the Properties.

(b) The right of the Association, in accordance with its Articles and Bylaws, to impose rules and regulations for the use and enjoyment of the Common Area and the Improvements related thereto, which rules and regulations may further restrict the use thereof. The Association's Board of Directors shall have the right to suspend the voting rights and right to use any recreational or other Common Area facilities by an Owner (except an Owner's right of access and drainage rights), with notice, an opportunity to be heard and present evidence, and notice of decision, for any period during which any assessment against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and any such suspension shall apply to any Person delegated the right to use and enjoy the Common Area and Improvements by the suspended Owner.

(c) The right of the Association to dedicate, sell or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Except as otherwise provided in Article VIII hereof, no such dedication, sale or transfer shall be effective unless it has been approved by eighty percent (80%) of each class of Members and an instrument properly executed by the Association has been recorded in the Wake County Registry. On such instrument the Secretary of the Association shall certify that eighty percent (80%) of each class of Members have approved the dedication, sale or transfer and that certificate shall be conclusive as to any grantee or its assigns; provided, however, that conveyances for general utility purposes as specified herein may be made by the Board of Directors without consent of the Members. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and regress to public and private streets and walkways.

(d) After written notice to all Members and subsequent Association approval, the Association shall have the right to exchange Common Area for other properties, subject to the approval, as may be required, of any governmental authority having jurisdiction over the Properties.

(e) The right of the Association, with the approval of eighty percent (80%) of each class of Members, to borrow money for the purpose of improving the Common Area, and the Improvements related thereto and, in aid thereof, to mortgage such properties; provided the rights of the Mortgagees in such properties shall be subordinate to the Owners' Easement and the rights of the Association hereunder.

(f) The right of the Association to grant and/or establish upon, over, under and across the Common Area further easements (Including, without limitation, those provided herein) as may be necessary for the convenient use and enjoyment of the Properties, subject to the approval of four-fifths (4/5) of each class of Members.

5.2. Delegation of Use. Except as may be specifically limited hereinbelow, any Owner of a Lot may delegate, in accordance with the Bylaws, its right of use and enjoyment to the Common Area and Improvements related thereto to the members of its family, its guests, its tenants, or contract purchasers who reside on such Owner's Lot.

The foregoing provisions shall be subject to Article I, Part A, Section 1.6(b) hereof, the provisions of which shall control over this Article V in the event of a conflict.

**ARTICLE VI
COVENANT FOR MAINTENANCE ASSESSMENTS**

6.1 General Provisions. All Association assessments and other charges shall be established and collected in accordance with the general provisions set forth in Article I, Part A, Section 1.5.

6.2 Working Capital. In addition to, and not as advance payment of, the regular annual assessments to be charged and paid hereunder, each purchaser of a Lot upon which a residence has been constructed or is under contract to be constructed shall, at the time of the purchase of such Lot, pay to the Association a sum equal to two (2) months annual assessment on that Lot as additional working capital of the Association. These amounts need not be segregated, but may be commingled with regular assessment funds. This working capital assessment shall be paid by the purchaser notwithstanding the fact that Declarant or a builder may have made prior regular assessment payments to the Association on the Lot being sold in accordance with the provisions hereof. Notwithstanding anything to the contrary herein provided, a builder purchasing a Lot for purposes of constructing a residence or other Improvements thereon and selling such Lot to an end-buyer shall not be obligated to pay a working capital contribution upon the purchase of the Lot from Declarant; provided, however, that this exclusion shall not exempt any builder from any other obligations such builder may have as an Owner of a Lot as set forth in this Declaration.

6.3 Special Assessments for Capital Improvements. In addition to the regular annual assessments authorized under Article I, Part A, Section 1.5, and the Stormwater Assessments, if any, authorized under Article I, Part B, Section 1.3, the Association may levy, in any annual assessment period, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital Improvement upon the Common Area, or any other unexpected expense for which the Association is responsible, provided that, any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

6.4 Notice and Quorum for Any Action Authorized Under Article VI. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be delivered to all Members entitled to vote not less than ten (10) days nor more than sixty (60) days in advance of the meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Association, with postage thereon prepaid. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may by a majority vote of those present in person or by proxy be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. The foregoing provisions shall be subject to Article I, Part A, Sections 1.6 (d) and (e) hereof.

6.5 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for any Lot or all Lots, as may be applicable.

6.6 Date of Commencement of Annual Assessments/Due Dates/Estoppel Certification. The annual assessments shall commence as to a Lot on the date of closing. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of

each annual assessment period. The due date of the annual assessment shall be established by the Board of Directors.

6.7 Priority of Stormwater Assessments. Notwithstanding the above, the provisions of this Section shall not impair the rights of the Association or the Town of Cary under Article I to utilize all remedies under this Declaration or at law to collect Stormwater Assessments and any restrictions expressed in this Section shall not apply to the collection of Stormwater Assessments, if any.

ARTICLE VII USE RESTRICTIONS

7.1 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 lay of each Lot as shown on the recorded plat shall be substantially adhered to; provided, however, that the size and shape of any Lot may be altered with the prior written approval of the Declarant (as long as Class B membership exists), the Board of Directors or the Association's architectural committee (the "Architectural Committee") and the appropriate governmental authority. More than one Lot may be used as one Building Site. In no event, however, shall any Lot be re-subdivided 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.

7.2 Setbacks. Building setbacks of the Improvements on any Lot shall be as set forth in the zoning ordinances of the Town of Cary, North Carolina, or any other governmental authority having jurisdiction over the Properties. For the purposes of this covenant, eaves, steps, carports, decks and open porches shall not be considered 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. Declarant (so long as Class B membership exists), the Board of Directors or the Architectural Committee may approve a violation of these requirements by written waiver, provided such violation otherwise complies with the applicable zoning ordinances and setback requirements.

7.3 Improvements. Except as may otherwise be authorized herein, Improvements on any Lot shall be limited to a single-family, residential structure, and the accessory uses thereto. All Improvements constructed upon the Lots shall be of new construction. No residential structure shall be constructed or placed on any Lot which has a minimum area of less than 1,900 square feet of heated area for a one (1) story residence or 2,000 square feet for a one and one-half (1 ½) story or 2,300 square feet for a two (2) story residence. No residential structure shall be constructed or placed on any Lot which is more than three (3) stories in height. 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 Properties 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 Properties without the prior written approval of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee.

7.4 Declarant Facilities. Notwithstanding any provision in this Article VII to the contrary, for twelve (12) years following the date of incorporation of the Association, Declarant may, subject to all applicable laws of any governmental authority having jurisdiction over the Properties, Maintain such facilities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots. These facilities may Include, without limitation, a mobile or modular business/sales office, storage area, construction yards and signs.

7.5 Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or Maintained on the Properties or in any Improvements thereto, except that a reasonable number of domesticated household pets may be kept on any Lot, provided that such pet(s): (a) are not kept for breeding or commercial purposes, (b) do not pose an unreasonable disturbance to adjacent neighbors, do not unreasonably interfere with a Lot Owner's peaceful enjoyment of their Lot or of the Common Properties, and do not constitute a nuisance or annoyance to the neighborhood; (c) do not pose an unreasonable risk to the safety, health or wellbeing of adjacent neighbors or to the neighborhood; (d) can be, and are, restrained by a fence of not more than five feet in height, which has been approved in writing by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee; (e) are reasonably restrained while outside of the residence; and (f) are not permitted access to an outside shelter which is (i) not approved by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee, or (ii) visible from the street. The term "domesticated household pet," as used herein, means, among other things, that the pet regularly resides within the home on the Lot or is a pet of a kind or nature that is capable of regularly residing within the home on the Lot. Notwithstanding the foregoing, the following dog breeds are specifically prohibited from being kept or Maintained on the Properties or on a Lot: Rottweilers, Presa Canarios, Dobermans, Chow-Chows, Pit Bull Breeds (Including but not limited to American Pit Bull Terrier, American Staffordshire Terrier, and Staffordshire Terrier) and Wolf Hybrids. Notwithstanding the foregoing, any animal with a bite history as evidenced by documentation from a state or local animal control agency or other reliable medical or veterinary records are specifically prohibited from being kept or Maintained on the Properties or on a Lot. No pet shall be permitted upon the Common Area unless attended and carried or leashed by a Person who can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (Including but not limited to loud or excessive barking) on the Properties. All Owners and their respective tenants and invitees who own pets (collectively, the "Pet Owners") shall immediately clean up any waste on the Properties from his/her pet. All Pet Owners shall indemnify and hold the Declarant (during the Declarant Control Period) and the Association harmless from any claim, action or demand against the Declarant or Association that arises out of or results from any act of their pet. All Pet Owners shall promptly repair, at his/her own cost, any damage to the Common Area caused by their pet. If any Pet Owner violates this Section 7.5, the Declarant (during the Declarant Control Period) and the Association shall have the right, but not the obligation, to require the Pet Owner to permanently remove the pet from the Properties upon no less than ten (10) days prior written notice, in addition to any other remedy. In addition, the Declarant (during the Declarant Control Period) and the Association shall specifically have the power and authority to designate by rule from time to time, based upon temperament, size, nature or tendencies, a list of animal breeds or types which shall be additionally prohibited on the Properties or on any Improvements thereto.

7.6 Screening. All clothes line, equipment (including play equipment), satellite dishes, garbage cans, service yards, wood piles or storage piles shall be kept screened by adequate Improvements so as to screen them from view of the street and adjoining Lots. All garbage, trash or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate.

7.7 Leasing. No Lot or any portion of the Improvements situated thereon shall be leased for transient or hotel purposes, or for purposes of operating a group home; and no Lot or any portion of the Improvements situated thereon may be leased to an individual with prior felony convictions. Notwithstanding the foregoing, an Owner may lease not less than the entire residential structure on its Lot, provided that the lease must be in writing, must be for a period of not less than three hundred sixty five (365) 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 documents shall be a default under the lease. Failure to include this provision in the lease shall not relieve the tenant from complying with the Declaration and the Bylaws.

7.8 Utility Devices. Without the prior written approval of Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee, no exterior television or radio antennas, satellite dishes, solar panels or other utility devices of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Improvements situated on the Properties; provided, however, that a television satellite dish antennae less than 24" in diameter which will be located only in the rear of the house and not visible from the street may be approved, subject to the provisions of this Article VII.

7.9 Business/Obnoxious Activity. No business activity of any kind or any obnoxious or offensive activity shall be conducted on the Properties or the Improvements located thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall the Properties 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" or "For Rent" signs (exceeding four (4) square feet in dimension), advertising signs, billboards, 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 and signs, or the construction and Maintenance of buildings, if any, of Declarant, its agent and assigns, for twelve (12) years following the date of incorporation of the Association. Further notwithstanding the foregoing, signage may be installed and Maintained within an easement or buffer area shown on any recorded plat of the Properties if permitted by all applicable laws, rules, regulations and ordinances, and if approved in writing by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee.

7.10 Vehicles. No boats, recreation vehicles, or trailers of any Owner or member of its family, tenants, or contract purchasers shall be parked within the Common Area, or within the right-of-way of any street in or adjacent to the Properties. Such vehicles shall only be parked within the Owner's garage or other areas of the Properties which may be designated by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee. No boat, recreation vehicle or trailer of any Owner or member of its family, tenants, or contract purchasers may be located closer to the street than the front foundation of the house, the exact location to be approved by the Declarant (as long as Class B membership exists), the Board of Directors or Architectural Committee. No Owner or member of its family or its tenant(s) shall park or store an inoperative or abandoned boat, recreation vehicle, trailer or automobile on any Lot or on the streets in the Properties.

7.11 Above-Ground Tanks. No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance.

7.12 Lawn Ornaments. Decorative lawn ornaments shall be subject to the prior written approval of the Architectural Committee prior to installation or placement thereof on any Lot or portion thereof.

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

7.14 Fences. No fences or walls shall be erected or Maintained in front yards. In addition, no fences or walls shall be erected or Maintained in side yards and rear yards that are subject to the Maintenance easement specified in Section 8.5. Notwithstanding the foregoing, side or rear yard fences may be erected and Maintained within an easement or buffer area shown on any recorded plat of the Properties if permitted by all applicable laws, rules, regulations and ordinances, and if approved in writing by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural

Committee in accordance with this Section 7.14. Permitted fencing on a Lot shall be no greater than five (5) feet in height. All side and rear yard fences require the prior written approval of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee.

7.15 Parking Right. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles owned by that Owner. Subject to Article I, Part A, Section 1.11 hereof, Owners and their tenants shall not be permitted to park their automobiles on the streets in the Subdivision.

7.16 Maintenance. Each Owner shall Maintain his/her lawn up to the street right of way, and keep its property free of grass taller than six inches (6"), undergrowth, dead trees, trash and rubbish, and shall otherwise properly Maintain its Lot and the Improvements located thereon so as to present a pleasing appearance. If an Owner does not, in the reasonable opinion of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee, properly Maintain the same, Declarant and/or the Association may have the required work done and the costs incurred for such work, plus a service charge of fifteen percent (15%) of such costs, shall be assessed against the Owner.

7.17 Storage Units. No storage unit may be located on any Lot for more than one (1) week without the prior written consent of Declarant (during the Declarant Control Period) or the Association.

7.18 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. 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.

7.19 Additional Restrictions. The Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Properties.

7.20 Anti-Discrimination. No action shall at any time be taken by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee 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.

7.21 Waiver. Notwithstanding anything above to the contrary, Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article VII. 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 other Properties subject to this Declaration, nor imply that future waivers must be granted. No waiver shall be effective if it shall cause the Lot or structures thereon to be in non-conformance with any applicable governmental ordinances, laws, or regulations.

ARTICLE VIII EASEMENTS

8.1 Blanket Utility Easement. A blanket easement upon, across, over and under all of the Properties, Including Lots and Common Area, is reserved for ingress and egress, installation, replacing, repairing and Maintaining all utilities, Including, without limitation, cable, water, sewer, gas, telephones, and electricity. Notwithstanding the foregoing, no sewers, electrical lines, water lines, or other utility

equipment or facilities may be installed or relocated (i) in the Common Area, except as approved by Declarant or the Association (after the termination of Class B membership); (ii) under any residence; or (iii) on the Properties in a manner which would have a material negative impact on the value of the Properties or any portion thereof and the Improvements located thereon. If any utility furnishing a service covered by this general easement requests a specific easement by separate recordable documents, Declarant or the Association (after the termination of Class B membership) will have the right and authority to grant such easement. The easement provided for in this Article VIII shall in no way affect other recorded easements on the Properties.

8.2 Association Easements. An easement is granted to the Declarant (as long as Class B membership exists) or the Association, its officers, agents, employees, independent contractors, and to any management company retained by the Association to enter in or to cross over the Common Area. In addition, every Lot shall be subject to an easement for entry by the Declarant (as long as Class B membership exists) or the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any Improvement to or portion of the Common Area. The Declarant (as long as Class B membership exists) or the Association, its officers, agents, employees, or independent contractors shall have a right and easement over, across, under and upon those portions of the Properties on which the Stormwater Control Measures are located for purposes of constructing, Maintaining, repairing, replacing and reconstructing such facilities, if any. The Declarant (as long as Class B membership exists) and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area such further easements as are requisite for the convenient use and enjoyment of the Properties without approval of the Members as provided herein.

8.3 Encroachment. All Lots and the Common Area shall be subject to easements for the encroachment of initial Improvements constructed on adjacent Lots and Common Area by Declarant, as well as for the Maintenance thereof. If an encroachment shall occur after the construction of the initial Improvements due to settling or shifting of such Improvements or due to any authorized construction, alteration or repair, an easement shall exist for the continuance and Maintenance of such encroachment upon the Common Area or subject Lot for so long as such encroachment shall naturally exist.

8.4 Temporary Construction Access and Disturbance Easement. A temporary easement over, through and to the Common Area is reserved and established in favor of Declarant and all Owners for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of Improvements at any time on a Lot by Declarant or an Owner, as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth, in harmony with surrounding areas and, if applicable, landscaped in a manner substantially similar to any previous landscaping. If that Person fails to restore the disturbed land as required, the Declarant (as long as Class B membership exists) or the Association may restore the land to the required condition and that Person shall indemnify the Association for the reasonable expense incurred in performing that restoration. This easement shall be restricted to that Common Area which shall be reasonably servient and proximate to the property upon which the construction is taking place.

8.5 Maintenance Easement. An easement over, through and to adjacent Lot(s) is reserved and established in favor of all Owners of any dwelling unit or other Improvements located closer than five (5) feet from a Lot line. This easement shall be used only as and when necessary to facilitate

Maintenance of the dwelling at any time on a Lot by an Owner. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities, and shall restore the land to substantially the same condition as existed prior to such Maintenance work. If such Person fails to restore the disturbed land as required, the Owner(s) of the adjacent Lot(s) may restore the land to the required condition and that Person shall indemnify the Owner(s) of the adjacent Lot(s) for the reasonable expense incurred in performing that restoration.

8.6 Drainage Easement. For a period of thirty-six (36) months following the initial conveyance of a Lot to an Owner by Declarant, that Lot shall be subject to an easement for entry and encroachment by Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

8.7 Easement for Underground Utilities and Street Lighting. Declarant reserves the right to subject the Properties to a contract with Carolina Power & Light Company or Wake Electric Membership Corporation for the installation of underground electric cables and the installation of street lighting, either or both of which may require a continuous monthly charge to the Owner of each Lot.

8.8 Sign Easement. An easement is granted to the Association, its officers, agents, employees, independent contractors, and to any management company retained by the Association to enter in or to cross over any portion of a Lot denoted as "Sign Easement" on any recorded plat of the Properties. The Association shall be solely obligated and responsible to Maintain such easement area, Including, without limitation, Maintaining and replacing any signage which shall be placed thereon. The Owner of any Lot encumbered by a sign easement area agrees not to remove, injure or otherwise destroy the signage placed within such easement area; but such Owner shall in all respects remain the fee owner of such Lot and may use the Lot for all purposes not inconsistent with the terms and conditions hereof.

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

ARTICLE IX INSURANCE

9.1 Coverage. In addition to the provisions of Article I, Part A, Section 1.9 hereof, the insurance to be Maintained by the Association shall be written in the name of the Association. This insurance may Include coverage against vandalism. All Persons responsible for or authorized to expend funds or otherwise deal in the Association's assets shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties. The Association shall also obtain such other insurance coverage as it deems desirable and necessary.

9.2 Ownership/Proceeds. All contracts of insurance purchased by the Association shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association, as insurance trustee, shall be to receive any proceeds as are paid and to hold them in trust for the Owners and first Mortgagees, as their interests may appear. Except as may otherwise be specified herein or in N.C.G.S. Section 47F-3-113, the proceeds received by the insurance trustee shall be disbursed first for the repair or restoration of the damaged portion of the Properties, and Owners and first Mortgagees will not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Properties has been completely repaired or restored, or the Subdivision is terminated.

9.3 Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be Included in Common Expenses.

9.4 Prohibited Acts. No Owner shall do or keep anything on the Properties which shall cause an increase in the premiums for, or the cancellation of, any insurance Maintained by the Association.

9.5 Other Insurance Provisions. The provisions of this Article IX are intended to supplement, not supersede the insurance requirements established in Article I, which shall control over the provisions of Article IX in the event of a conflict.

ARTICLE X ARCHITECTURAL CONTROL AND INSPECTION

10.1 Members. The Architectural Committee shall initially consist of one (1) or more Persons designated by Declarant. Upon the termination of Class B membership in accordance with Article IV, sub-sections (i) and (iii), Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Committee. Such assignment may, however, be made subject to a reservation by Declarant of its right hereunder to review and approve all plans for new homes and other Improvements to be constructed on any Lot. Upon the assignment of Declarant's architectural review rights in accordance with the terms of this Section 10.1, the Board of Directors shall appoint three (3) or more persons as the members of the Architectural Committee.

10.2 Powers. The Architectural Committee shall have the right to refuse approval of any plans and specifications for Improvements proposed to be constructed on a Lot or proposed to be altered or added to in any way after having been approved previously by the Architectural Committee (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider the suitability of the proposed Improvements, color, and materials to be used in those Improvements, the site upon which they are proposed to be erected, and the effect of the Improvements on adjacent or neighboring property. There is specifically reserved unto the Architectural Committee the right to enter and inspect any Lot for the purpose of determining whether there exists thereon any Improvements which violate the terms of any approval by the Architectural Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. If an Owner fails to construct Improvements on its Lot(s) in accordance with the Plans & Specifications approved therefore, or if an Owner constructs Improvements without obtaining approval of the Plans & Specifications therefore, as required by this Article XI, the Declarant (as long as Class B membership exists), the Association, or the Architectural Committee may, but shall not be required to, remedy the non-compliance or remove the unauthorized Improvements, and the Owner of such Improvements shall indemnify the Declarant, the Association or the Architectural Committee, as applicable, for the reasonable expense incurred in performing such remedial work or removal. If an Owner fails to commence construction of initial Improvements on its Lot within ninety (90) days after the Lot is conveyed by Declarant to the Owner, the Declarant (as long as Class B membership exists) shall have the right, but not the obligation, to re-purchase the Lot from the Owner at the same price paid to Declarant by the Owner. The Board of Directors is 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 Improvements, or to remove any unauthorized Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorneys' fees).

10.3 Approval of Plans & Specifications. No Improvement shall be constructed upon the Properties, nor shall any Improvement be added to or altered in any way or repaired and/or rebuilt after casualty damage 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 Architectural Committee. An Owner's proposed contractor(s) and/or architect for any Improvement shall be subject to the reasonable prior written approval of the Architectural Committee. A failure to approve or disapprove completed Plans & Specifications within sixty (60) days after they have been submitted shall be deemed to be a disapproval of those Plans & Specifications. The Association, the Association's Board of Directors, Declarant, the Architectural Committee and any officer, employee, director or members thereof shall not 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 XI GENERAL PROVISIONS

11.1 Enforcement and Remedies. 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 by the provisions of this Declaration. Failure by the Declarant (as long as Class B membership exists), the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of any default in and/or breach of any of the terms, conditions and provisions of this Declaration (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The rights and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Notwithstanding anything to the contrary which may be contained herein, if any claim is made or litigation instituted against Declarant, then the Association shall assess all Members, other than Declarant, for the costs thereof, including, without limitation, attorneys' fees; and funds from regular assessments shall not be used for any such claim or litigation.

11.2 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 such remaining paragraphs, sections, sentences, clauses or phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

11.3 Duration and Amendments.

(a) These Covenants shall run with the land for a term of thirty (30) years from the date of their recording and shall inure to the benefit of the Association, Declarant (so long as Class B membership exists), and any Owner, and their respective legal representatives, heirs, successors and assigns. These Covenants shall thereafter automatically be extended for successive periods of ten (10)

years each unless terminated or amended by an instrument signed by Owners of not less than seventy-five percent (75%) of the Lots.

(b) Notwithstanding the foregoing, Declarant shall have the right, as long as Class B membership exists, to amend this Declaration without the consent of the Members, for the following purposes: (i) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Properties; (ii) to qualify the Properties or any Lots and Improvements thereto for mortgage or improvement loans made, insured or guaranteed by a government agency; or (iii) to comply with the requirements of laws 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 of 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, a governmental authority having jurisdiction over the Properties, 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 thereof, 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. Evidence of such approval shall be indicated by the signature of the governmental authority on the recorded amendment. Any amendment to this Declaration which is not approved in accordance with this Section 11.4(c) shall be void ab initio.

(d) As long as Class B membership exists, and if Declarant decides to qualify the Properties for Federal Housing Administration or Veterans Administration approval, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional property, dedication of Common Area, and amendment of this Declaration.

(e) Notwithstanding the above, no amendment relating to or conflicting with the provisions of Article I hereof shall be permitted without prior written consent of the Town Attorney or his/her Deputy in accordance with Article I hereof.

(f) Except as otherwise specifically set forth in this Declaration, these Covenants may only be amended by an instrument signed by Owners of not less than seventy-five percent (75%) of the Lots.

(g) If an amendment is executed as provided hereinabove, each such amendment shall be delivered to the Board of Director which shall, within thirty (30) days:

(i) reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots, if necessary (for this purpose, the Board of Directors may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined); and

(ii) attach the following certification:

CERTIFICATION

By authority of its Board of Directors, WEDGEWOOD Homeowners Association, Inc. certifies that the foregoing instrument has been duly executed by the Owners of seventy-five percent (75%) of the Lots in the Properties and is therefore a valid amendment to the Covenants recorded at Book _____ Page _____, Wake County Registry.

WEDGEWOOD HOMEOWNERS ASSOCIATION, INC.

By: _____ (SEAL)
_____ President

Within the thirty (30) day period, the Board of Directors shall cause the amendment to be recorded with the appropriate Register of Deeds. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association.

11.4 Availability of Documents. The Association will have current copies of the Declaration, Bylaws, and other rules concerning the Subdivision, as well as the Association’s own books, records and financial statements, available during normal business hours for inspection by Owners and holders, insurers and guarantors of first mortgages that are secured by Improvements in the Subdivision.

11.5 Casualty. Any portion of the Common Area Improvements, if any, which is damaged or destroyed by casualty shall be repaired or replaced promptly by the Association, unless (a) the Subdivision is terminated, (b) repair or replacement would be illegal under any applicable health or safety statute or ordinance, or (c) the Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Common Area Improvements is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Area Improvements will be used to restore the damaged area to a condition compatible with the remainder of the Subdivision, and (ii) the remainder of the proceeds will be distributed to all Owners or first Mortgagees, as their interests may appear, in proportion to the Common Expense liabilities of all the Lots.

11.6 Condemnation. Whenever all or any part of the Common Area 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 Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall 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 Directors of the Association shall arrange for such replacements, and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the Properties is to be repaired or reconstructed; subject, however to the right hereby reserved to the Association, which may be exercised by a majority of the votes of the Members thereof, to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Members, or any one or more of them, in amounts disproportionate to their voting rights, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Members, or any one or more of them, as the Association may determine. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such taking to not replace such Improvements, or if the taking is confined to Common Area on which no Improvements have been constructed, then the Association shall disburse the proceeds of the award in the

manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of Improvements.

11.7 Disputes. If any dispute arises 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.

11.8 Voting. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Declaration and the Association's Bylaws.

11.9 Member Addresses. Each Member agrees to keep the Association informed of its address at any time 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.

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

11.11 Captions. The captions and headings 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.

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

11.13 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 Area.

11.14 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.

11.15 Governing Law. 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.

11.16 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.

11.17 Reserved Declarant Rights. Declarant reserves the following development rights: (a) to add real estate to the Properties in accordance with Sections 1.13 and 3.2; (ii) to add Common Areas; (iii) to recombine Lots within the Properties; (iv) prior to a conveyance of a Lot to an Owner, to withdraw such Lot from the Properties, subject to the approval of any governmental authority having jurisdiction over the Properties; (v) to create Lots; (vi) to impose supplemental conditions, restrictions and changes upon newly annexed Properties, including, without limitation, changes in Lot and building size restrictions for additional property annexed hereto in accordance with Sections 1.13 and 3.2, subject to the

approval of any governmental authority having jurisdiction over the Properties; and (vii) to reallocate Lots within the Properties.

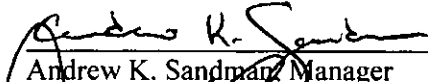
11.18. Termination of Declarant Contracts. If entered into before the Board of Directors elected by the Owners pursuant to N.C.G.S. Section 47F-3-103(e) takes office, any contract or lease affecting or relating to the Subdivision that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board of Directors elected by the Owners pursuant to N.C.G.S. Section 47F-3-103(e) takes office upon not less than ninety (90) days notice to the other party.

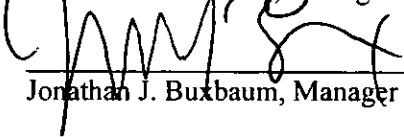
11.19. Responsibility and Liability For Private Streets. The Association shall be responsible for the Maintenance of all private streets and driveways shown on the recorded plat(s) of the Subdivision. In no case shall Wake County or the State of North Carolina be responsible for Maintaining any private street. Such responsibility rests with the Association, since such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed under seal as of the 28th day of October, 2011.

DECLARANT:

ROCHELLE ROAD PARTNERS, LLC

By:  (SEAL)
Andrew K. Sandman, Manager

By:  (SEAL)
Jonathan J. Buxbaum, Manager

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 signed the foregoing document: ANDREW K. SANDMAN, Manager of ROCHELLE ROAD PARTNERS, LLC, a North Carolina limited liability company.

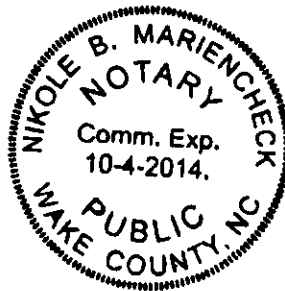
Date: October 27, 2011

(Official Seal)



Printed name: Nikole B. Marienchek Notary Public

My Commission Expires: 10-4-2014



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 signed the foregoing document: JONATHAN J. BUXBAUM, Manager of ROCHELLE ROAD PARTNERS, LLC, a North Carolina limited liability company.

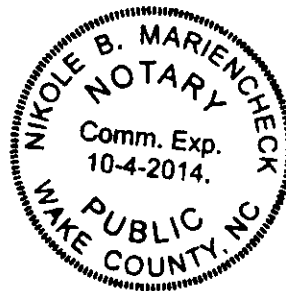
Date: October 28, 2011

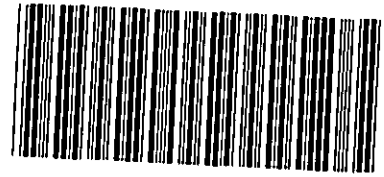
(Official Seal)



Printed name: Nikole B. Marienchek Notary Public

My Commission Expires: 10-4-2014





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**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**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages *AL*