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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS  
FOR THE  
APPLEWOOD COLLECTION AT TWELVE OAKS**

**THIS DOCUMENT PROHIBITS OR REGULATES  
THE DISPLAY OF POLITICAL SIGNS**

CONTENTS

	<u>Page</u>
<b>PREAMBLE</b> .....	1
<b>ARTICLE I - DEFINITIONS</b> .....	1
Section 1 - Act .....	2
Section 2 - Association	
Section 3 - Board of Directors; Board	
Section 4 - Bylaws	
Section 5 - Declarant	
Section 6 - Declarant Control Period	
Section 7 - Declaration	
Section 8 - Developer	
Section 9 - Dwelling; Dwelling Unit; Unit	
Section 10 - Lot .....	3
Section 11 - Master Association	
Section 12 - Master Declaration	
Section 13 - Member	
Section 14 - Owner	
Section 15 - Properties	

	<u>Page</u>
Section 16 - Registry .....	3
Section 17 - Sub-Association Common Area	
Section 18 - Sub-Association Common Area Easement .....	4
Section 19 - Town	
 <b>ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION AND .....</b>	 4
<b>WITHIN THE JURISDICTION OF THE APPLEWOOD COLLECTION AT TWELVE OAKS OWNERS ASSOCIATION, INC.</b>	
Section 1 - Existing Property	
Section 2 - Additions to Existing Property	
Section 3 - Conveyance of Sub-Association Common Area in Annexed Property .....	5
 <b>ARTICLE III - MEMBERSHIP AND VOTING RIGHTS .....</b>	 5
Section 1 - Membership	
Section 2 - Voting Rights	
Section 3 - Declarant's Right to Appoint Directors and Officers of the Association .....	6
Section 4 - Vacant/Leased Dwellings	
 <b>ARTICLE IV - PROPERTY RIGHTS .....</b>	 6
Section 1 - Owners' Easements of Enjoyment and Access	
Section 2 - Delegation of Use .....	7
Section 3 - Conveyance of Title to the Association .....	8
Section 4 - Regulation and Maintenance of Sub-Association Common Area and Sub-Association Common Area Easements	
Section 5 - Services to Lots Served by Private Streets or Alleys (UDO §7.07.B.22) .....	9
Section 6 - Association's Right to Establish and Enforce Speed Control and Parking Regulations	
 <b>ARTICLE V - COVENANT FOR MAINTENANCE ASSESSMENTS .....</b>	 9
Section 1 - Creation of the Lien and Personal Obligation of Assessments	
Section 2 - Purposes of Assessments .....	10
Section 3 - Maximum Annual Assessment	
Section 4 - Date of Commencement of Annual Assessments; Ratification of Budgets; Amount of Assessments	
Section 5 - Special Assessments; Limited Special Assessments .....	11
Section 6 - Effect of Nonpayment of Assessments; Remedies .....	12
Section 7 - Subordination of the Lien to Mortgages	
Section 8 - Exempt Property .....	13
Section 9 - Working Capital Fund	
Section 10 - Declarant's Obligation to Fund Operating Deficits	
Section 11 - Reserve Funds	
 <b>ARTICLE VI - MAINTENANCE OF LOTS AND UNITS .....</b>	 14
Section 1 - Association's Responsibility	
Section 2 - Owner's Responsibility; Remedy for Owner's Failure to Maintain	

	<u>Page</u>
Section 3 - Assessment of Cost .....	15
Section 4 - Stormwater Management	
<b>ARTICLE VII - RIGHTS OF LENDERS .....</b>	<b>15</b>
Section 1 - Books and Record	
Section 2 - Notice to Lenders	
Section 3 - Approval of Holders of First Deeds of Trust	
Section 4 - Payment of Taxes and Insurance Premiums .....	16
Section 5 - Collection of Assessments	
<b>ARTICLE VIII - EASEMENTS .....</b>	<b>16</b>
Section 1 - Access and Utility Easements	
Section 2 - Easement for Support .....	17
Section 3 - Easement for Encroachments	
Section 4 - Easement over Sub-Association Common Area	
Section 5 - Association’s Easements Upon Lots	
Section 6 - Easements for Governmental Access	
Section 7 - Easements for Development	
<b>ARTICLE IX - ARCHITECTURAL CONTROL .....</b>	<b>17</b>
<b>ARTICLE X - USE RESTRICTIONS .....</b>	<b>18</b>
Section 1 - Master Declaration	
Section 2 - Right to Assign Parking Spaces	
Section 3 - Additional Parking Rules	
Section 4 - Fines	
<b>ARTICLE XI – PARTY WALLS .....</b>	<b>18</b>
Section 1 - Rules of Law	
Section 2 - Sharing of Repair and Maintenance	
Section 3 - Destruction by Fire or Other Casualty .....	19
Section 4 - Easement and Right of Entry for Repair, Maintenance and Construction	
Section 5 - Weatherproofing	
Section 6 - Right to Contribution Runs with the Land	
Section 7 - Certification by Adjoining Property Owner	
<b>ARTICLE XII - GENERAL PROVISIONS .....</b>	<b>19</b>
Section 1 - Enforcement	
Section 2 - Term; Amendment .....	20
Section 3 - Non-Liability of Governmental Entities	
Section 4 - Subdivision of Lots	
Section 5 - Rules and Regulations .....	21
Section 6 - Condemnation/Casualty	
Section 7 - Association Contracts and Leases During Declarant Control Period	
Section 8 - Evidence of Member Approval .....	22

	<u>Page</u>
Section 9 - Number and Gender .....	22
Section 10 - Captions	
Section 11 - Severability	
Section 12 - Conflicts	
Section 13 - Rule Against Perpetuities .....	23
Section 14 - Declarant; Developer	
Section 15 - Non-Discrimination	
Section 16 - Security Measures	
<b>ARTICLE XIII - RIGHTS OF DEVELOPER .....</b>	<b>23</b>
Section 1 - Agreement to Subject Lots to the Declaration .....	24
Section 2 - Agreement to Convey Sub-Association Common Area	
Section 3 - Developer's Assessments; Developer as Declarant	
Section 4 - Developer's Right to Exchange Sub-Association Common Area	
Section 5 - Developer's Easements	
Section 6 - Amendments of this Article XIII .....	25
Section 7 - Compliance with Laws	

**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS FOR THE  
APPLEWOOD COLLECTION AT TWELVE OAKS**

THIS DECLARATION is made on the date hereinafter set forth by 1<sup>ST</sup> AB, INC., a North Carolina corporation (hereinafter "Declarant"), and TWELVE OAKS, L.L.C., a Virginia limited liability company (hereinafter "Developer").

PREAMBLE:

WHEREAS, Developer is developing approximately 674 acres of land in the Town of Holly Springs, Holly Springs Township, Wake County, North Carolina, into community known as TWELVE OAKS PUD (the "Community"); and

WHEREAS, as part of the development of the Community, Developer is developing a portion of the property into a neighborhood of attached single-family townhomes known as Applewood Collection At Twelve Oaks (herein sometimes referred to as the "Subdivision"); and

WHEREAS, Declarant is the Owner of certain Lots within the Subdivision and is the contract purchaser of the remaining Lots to be developed by Developer and included in the Subdivision; and

WHEREAS, Declarant and Developer desire to provide for the maintenance and upkeep of the Sub-Association Common Area (hereinafter defined) within the Subdivision and the exterior of the Units (hereinafter defined), and to provide for enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desire to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of such property and each Owner thereof, and Declarant has incorporated under North Carolina law as a nonprofit corporation, the APPLEWOOD COLLECTION AT TWELVE OAKS OWNERS ASSOCIATION, INC., for the purpose of exercising the aforesaid functions.

NOW, THEREFORE, Declarant and Developer declare that the real property described in **EXHIBIT A** to this Declaration, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, each and all of which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

**ARTICLE I  
DEFINITIONS**

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration, or, as appropriate, the Master Declaration.

Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act.

Section 2. "Association" shall mean and refer to the **APPLEWOOD COLLECTION AT TWELVE OAKS OWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns, which is a Sub-Association (as defined in the Master Declaration).

Section 3. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 5. "Declarant" shall mean and refer to **1ST AB, INC.**, a North Carolina corporation. It shall also mean and refer to any person or entity to whom or which Declarant may assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Wake County Registry. The term "Declarant" shall also include the Developer to the extent that the Developer becomes the Declarant with respect to any Lots as allowed herein.

Section 6. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint and remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2012; or
- (b) Not later than four (4) months after the point at which the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however*, that Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus giving Declarant, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, and by its right to vote as to Lots owned by the Developer, a sufficient number of votes (at the 9-to-1 ratio provided in Section 2(b) of Article III hereof) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of the Declarant Control Period shall occur automatically as often as the foregoing shall occur); or
- (c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

Section 7. "Declaration" shall mean and refer to this "Declaration of Covenants, Conditions, Restrictions, Easements, Charges and Liens for the Applewood Collection at Twelve Oaks", and all amendments thereto and supplements thereof.

Section 8. "Developer" shall mean and refer to **TWELVE OAKS, L.L.C.**, a Virginia limited liability company, its successors and assigns.

Section 9. " Dwelling", " Dwelling Unit" and " Unit" shall have the meaning set forth in Section 20 of Article I of the Master Declaration.

Section 10. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of any portion of the Subdivision (regardless of whether the Lot has been subjected to this Declaration as provided in Article II hereof), with the exception of any Sub-Association Common Area owned in fee by the Association, Common Area owned by the Master Association or another Sub-Association of the Master Association, and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or re-subdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 11. "Master Association" shall mean and refer to the TWELVE OAKS MASTER ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns.

Section 12. "Master Declaration" shall mean and refer to the "Master Declaration of Covenants, Conditions, Restrictions, Easements, Charges And Liens For Twelve Oaks", recorded in Book 12650, Page 1607, Wake County Registry, and including all amendments thereto and supplements thereof.

Section 13. "Member" shall mean and refer to every person or entity who or which holds membership in the Association.

Section 14. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 15. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant to said Article II.

Section 16. "Registry" shall mean and refer to the Office of the Register of Deeds for Wake County, North Carolina.

Section 17. "Sub-Association Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or by easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically including, without limitation, all private streets within the Subdivision, the area within any storm water easements and the facilities constructed therein which serve more than one Lot and are not maintained by any governmental authority, the Master Association, or another sub-association, and water and sewer lines (and the easements associated therewith) which serve more than one Lot and are not located within a public utility easement or a public street right-of-way, and are not owned or maintained by the Master Association or another Sub-Association. The Sub-Association Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility, the Master Association, or another Sub-Association as set forth herein.

All real property, private streets, private utility lines, and other improvements within the Subdivision owned by, or under the jurisdiction of, the Master Association are Common Area and Common Property as defined in the Article I of the Master Declaration and are not Sub-Association Common Area.

Section 18. "Sub-Association Common Area Easement" shall mean and refer to Sub-Association Common Area as to which the Association has only an easement interest, and not a fee simple interest.

Section 19. "Town" shall mean and refer to the Town of Holly Springs, North Carolina.

**ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION  
AND WITHIN THE JURISDICTION OF THE  
APPLEWOOD COLLECTION AT TWELVE OAKS OWNERS ASSOCIATION, INC.**

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

Section 2. Additions to Existing Property.

(a) By Declarant or Developer. At any time that either Declarant or Developer owns any Lot within the Properties, additional lands within the area described on **Exhibit B** attached hereto may be annexed by the Declarant and/or Developer without the consent of the Members and therefore become subject to this Declaration by the recording in the Registry of a plat showing such property to be annexed and a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed; provided, however, that such property must be contiguous to property already subjected to this Declaration (or separated from such property only by the right-of-way of a street or road) and further provided that such annexation must be approved by the Town of Holly Springs and, if required, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

(b) By the Members. If a person or entity other than the Declarant or Developer desires at any time to subject additional land to the Declaration, such land may be annexed only by the affirmative vote of at least sixty-seven percent (67%) of the votes cast by the Members present at a duly-called meeting of the Association for which the notice of meeting includes notice of the proposal to annex such land and the recording in the Registry of a supplemental declaration signed by the owner of such additional land and by the appropriate officer(s) of the Association certifying the required meeting and vote. In addition to the foregoing, during the Declarant Control Period, such annexation may be valid only with the consent of Declarant, as evidenced by Declarant's execution of the Supplemental Declaration.

(c) Approval by Governmental Entities. Annexations of Additional Property to the Declaration must be approved (i) by the Town, if required by Legal Requirements, and (ii) by FHA and/or VA, if at the time of such annexation FHA and/or VA regulations require such approval, provided, however, that the real property described on **Exhibit B** is part of the property approved by the Town as of the date of execution of this Declaration, and the property described on **Exhibit B** may be annexed by Declarant and/or without further approval of any person or entity, except for any additional approval required by the Town.



(d) Supplemental Declaration. Each supplemental declaration shall be effective to annex additional land only upon obtaining all required approvals and upon its recording in the Registry, and the effective date of such annexation shall be the later of the date specified therein, if any, or the date of recording. Each supplemental declaration shall describe the property annexed and indicate that such property is being subjected or annexed to the Declaration. A supplemental declaration need not be in any specific form and need not be titled supplemental declaration (for example, the required subjecting language may be contained in a deed from the Declarant conveying the additional property being annexed), but it shall indicate clearly the intention to subject or annex such additional property. Any supplemental declaration may contain such use restrictions and such other terms, covenants, restrictions, easements, affirmative obligations, assessments, charges and liens applicable to such additional property, not in conflict with this Declaration, as the person or entity annexing such additional property to the Declaration may determine, but this Declaration shall control over any provision of any supplemental declaration that conflicts or is inconsistent with this Declaration. Each supplemental declaration shall have been approved in writing by the Developer prior to recordation.

(e) Votes Allocated to Additional Property. The votes of the Members in any additional property subjected to this Declaration as provided herein shall be allocated in the same manner that votes are allocated in portions of the Properties already subject to the Declaration. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Sub-Association Common Area in Annexed Property. The owner of the annexed property shall convey to the Association all Sub-Association Common Area located within the newly annexed property. Title to such Sub-Association Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Declarant and every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two (2) classes of membership with respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Declarant or the Developer. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting is not allowed, and in no event shall more than one vote be cast with respect to any Lot. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots".

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to nine (9) votes for each Lot that it owns (each such Lot being a "Class B Lot"). Declarant shall also be entitled to nine (9) votes for each Lot owned by the Developer; provided however, that Developer shall be entitled to cast the votes appurtenant to the Lots it owns if Declarant no longer owns any Lots within the Properties or if Developer becomes a Declarant under this Declaration as provided in Section 3 of Article XIII hereof. Assessment of Lots owned by the Developer is governed by Article XIII of this Declaration. Upon expiration of the Declarant Control Period, Declarant shall have one vote for each Lot that it owns (and one vote for each Lot owned by the Developer); however, Declarant-owned Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Declarant's Right to Appoint Directors and Officers of the Association. Notwithstanding any other provision of this Declaration or the Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the directors and officers of the Association. Declarant's intent to exercise or continue to exercise that right may be set forth in the notice of each annual meeting of the Members or stated at the meeting. See §47F-3-103(d) of the Act.

Section 4. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his personal living quarters or if any Dwelling is leased or rented to tenants, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association. This Section applies only to Lots and Dwellings owned by a Class A Member and specifically excludes Lots and Dwellings owned by the Declarant or the Developer.

#### **ARTICLE IV PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by rules and regulations adopted by the Members and/or the Board of Directors, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Sub-Association Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facilities situated or constructed on the Sub-Association Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Sub-Association Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however that the Association may not suspend an Owner's right to use of any Sub-Association Common Area providing access or utilities to his Lot.

(c) the right of the Association to dedicate or transfer all or any part of the Sub-Association Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association agree to such dedication, sale or transfer, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Sub-Association Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Sub-Association Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Holly Springs or other governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(d) the right of the Association, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Common Property for other property and consideration provided that:

- (i) written notice of the exchange is given to each Member of the Association, except in cases where the exchange is done to eliminate an encroachment;
- (ii) after the notice is given, if required, the Association approves the exchange, except when the purpose of the exchange is to eliminate an encroachment, in which case the Board may approve the exchange without vote of the Member;
- (iii) the exchanged properties and other considerations are of like value and utility;
- (iv) the acreage and configuration of the remaining open space (including real property to be received by the association in such exchange) equals or exceeds the requirements of the Code; and
- (v) the exchange is approved by the Town, if required.

Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy such Owner's Unit, or a portion thereof, as their principal residence in Wake County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association. Developer covenants, for itself, its successors and assigns, that it will convey to the Association title to those portions of the Sub-Association Common Area to be owned in fee by the Association. Developer hereby reserves and grants (regardless of whether or not such reservation and grant is specifically set forth in such deed), for itself, and assigns, an easement over, under, across and through the Sub-Association Common Area so long as Developer owns any portion of the Community, for the purpose of constructing any improvements on the Sub-Association Common Area and/or the Lots as it or they deem necessary or advisable, and/or making repairs to any improvements placed therein or thereon by the Developer. Except as otherwise stated herein, all conveyances by Developer to the Association shall be free and clear of all encumbrances and liens (including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes) except this Declaration, the Master Declaration, restrictive covenants applicable to the Subdivision, utility, drainage, greenway and other easements of record or shown on the recorded plats of the Subdivision, and the lien of *ad valorem* taxes not yet due and payable. Any improvements placed on the Sub-Association Common Area by Developer or Declarant shall become the property of the Association upon completion of such improvements, except utilities owned and maintained by the Master Association, the Town of Holly Springs or other governmental entity, or a public or private utility company.

Section 4. Regulation and Maintenance of Sub-Association Common Area and Sub-Association Common Area Easements. It is the intent of Declarant that the Sub-Association Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, the Declarant, by recording any plat or map of any phase or section of the Subdivision, grants to the Association an easement over and across that portion of any Lot within such phase or section on which a Sub-Association Common Area Easement lies for the purpose of enabling the Association to take action permitted by subsections (b) and (c) of this Section 4.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Sub-Association Common Area Easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Sub-Association Common Area Easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation from Sub-Association Common Area; (2) erect gates, fences, buildings or other structures on any Sub-Association Common Area; (3) place any garbage receptacles on or in any Sub-Association Common Area; (4) fill or excavate any Sub-Association Common Area or any part thereof; or (5) plant vegetation on or otherwise restrict or interfere with the use, maintenance, and preservation of any Sub-Association Common Area.

It is the intent of the Declarant that a Sub-Association Common Area Easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to an Owner (other than the Declarant), except for changes permitted by Article XIII hereof and changes authorized or approved in writing by the Declarant and the Developer, or the Association. If an Owner of a Lot on which a Sub-Association Common Area Easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 6 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Sub-Association Common Area (including Sub-Association Common Area Easements) is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Sub-Association Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners, subject, however, to easements of record and any limitations on such use provided in this Declaration or rules and regulations adopted by the Association as provided herein or in the Bylaws; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Sub-Association Common Area Easement lies, resulting from use of the Sub-Association Common Area; and (iii) pay all property taxes and other assessments levied against all Sub-Association Common Area owned in fee by the Association.

(c) Association's Right of Entry for Maintenance. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Sub-Association Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Sub-Association Common Area Easement, and no such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

Section 5. Services to Lots Served by Private Streets or Alleys (UDO §7.07.B.22). The Association or the applicable Sub-Association shall provide, or cause to be provided, the following services to any Lot served by a private street or alley, all according to procedures and policies established by the Association or, if applicable, the Sub-Association: regular trash pick-up, leaf pick-up, snow removal, daily mail delivery according to the schedules and policies of the U.S. Postal Service, maintenance and repair of the private streets and/or alleys providing access to the Lot including, but not limited to, to the extent required by the Town of Holly Springs to be installed, driving surface, street or alley subgrade, surface and subsurface drainage, curbs, sidewalks, street lights, street name signs, traffic control signs, and traffic control signals. As provided in Section 12 of Article V hereof, the Association or applicable Sub-Association shall establish a separate reserve fund for maintenance and repair of the foregoing.

Section 6. Association's Right to Establish and Enforce Speed Control and Parking Regulations. Unless the Master Association elects to exercise the rights set forth herein, the Association shall have the right to establish and amend from time to time speed limits for travel on private streets and alleys and rules for parking on and use of private streets and alleys. The Association shall have the right to enforce all such speed limits and rules in the same manner as any other violation of this Declaration and any other rules and regulations of the Association including, without limitation, imposition of monetary fines as provided in this Declaration and the Bylaws.

## ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of 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 or entity 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) special assessments and limited special assessments; (4) fines for violations of the provisions of this Declaration, any other covenants applicable to the Properties, and the rules and regulations adopted by the Association; (5) limited special assessments levied against an Owner for misuse and damage to the Common Areas by the Owner or his family members, tenants, agents, contractors and guests; (6) limited special assessments for any expense 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 attorneys' 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.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Subdivision and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Sub-Association Common Area; (ii) maintenance, repair and reconstruction of the Sub-Association Common Area and improvements thereon, including, without limitation, storm water drainage facilities, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) maintenance of Lots and the exterior of Units as provided in Article VI hereof; (iv) payment of taxes and public assessments levied against Sub-Association Common Area owned by the Association in fee; (v) procurement of insurance; (vi) employment of attorneys, accountants and other persons or firms for Association business; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2007, the Maximum Annual Assessment shall be \$900.00 for each Class A Lot. The Maximum Annual shall increase by ten percent (10%) on January 1, 2008, and on January 1 of each year thereafter.

Section 4. Date of Commencement of Annual Assessments; Ratification of Budgets; Amount of Assessments. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to a Lot on the first day of the month after the Lot is subjected to this Declaration.

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.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. The annual assessment for Class B Lots shall be zero, provided, however, that any Lot which contains a Dwelling occupied by any person as a residence shall be assessed at the Class A rate. Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the Maximum Annual Assessment set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Annual assessments shall be fixed at a uniform rate for all Lots in each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors. Any monies paid at any time by the Declarant for common expenses or otherwise for or on behalf of the Association shall be credited against past or future assessments due from the Declarant, if any.

The Association shall, upon demand and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or the management company employed by the Association, setting forth whether the assessments for a specific Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

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.

Section 5. Special Assessments; Limited Special Assessments.

(a) Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Sub-Association Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other non-recurring expenses, *provided that* any such assessment shall have been approved by the Declarant (during the Declarant Control Period) and by not less than two-thirds (2/3) of the votes of the Class A Members present and voting (in person or by proxy) at a meeting of the Members, one of the purposes of which is to vote on the special assessment, and further provided that the special assessment for a Class B Lots shall always be zero. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Written notice of any meeting called for the purpose of voting on a special assessment shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the same notice requirement, and if the meeting is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

(b) Limited Special Assessments. The Board of Directors, without vote of the Members, may levy a limited special assessment against any Lot, applicable only to that Lot, for expenses incurred by the Association with regard to such Lot including, without limitation, expenses incurred under Article VI hereof. Any fine imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall also constitute a limited special assessment against such Owner's Lot.

(c) Lien. Special assessments and limited special assessments shall constitute a lien to the same extent as other assessments against the Lot.

Section 6. Effect of Nonpayment of Assessments; 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 remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorneys' fees, shall be charge on the Owner's Lot as provided in §47F-3-116 of the Act and, upon filing of a claim of lien in the office of the Clerk of Superior Court for Wake County in the manner provided in §47F-3-116(g) of the Act, 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 attorneys' fees, shall also be the personal obligation or corporate obligation of each person or entity who or which 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 or entity held an ownership interest in the Lot at the time the assessment or other charge first became due, then each 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.

Section 7. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of conveyance pursuant to such foreclosure. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.



Section 8. Exempt Property. All Sub-Association Common Area owned in fee by the Association, all property dedicated to and accepted by a public authority, and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no Lot devoted to residential use shall be exempt from assessments.

Section 9. Working Capital Fund. At the time of closing of the initial sale of each Dwelling constructed on a Lot, a sum equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its initial operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 10. Declarant's Obligation to Fund Operating Deficits. During the Declarant Control Period, Declarant shall be obligated to fund any deficit between the normal operating expenses of the Association and the monies received by the Association from the Owners from assessments the annual expenses of the Association (the "Operating Deficit"). Declarant may fund 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.

Section 11. Reserve Funds. From the annual assessments and working capital assessments the Board, in the exercise of its reasonable discretion, shall establish and maintain reserve funds for working capital, contingencies, and acquisition and replacements of Common Property, including, without limitation, to the extent not maintained by a the Master Association, another Sub-Association, or an Owner, a separate reserve fund for maintenance and repair of private streets, private alleys, and interior access drives and driveways. Reserve funds are subject to the following:

(a) Extraordinary expenditures not originally included in the annual operating budget, including (i) major rehabilitation or repair of the Common Property, (ii) emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss, or (iii) the initial costs

of any new service to be performed by the Association, first shall be charged against the appropriate reserves. Except for expenses of normal and routine maintenance included in the annual operating budget, all expenses for repair or replacement of the Common Property first shall be charged against appropriate reserves.

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

## **ARTICLE VI MAINTENANCE OF LOTS AND UNITS**

Section 1. Association's Responsibility. In addition to maintenance of the Sub-Association Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed by the Declarant, or the Association, and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping).

The Association shall also be responsible for certain exterior maintenance of the Units, including the painting, repair, replacement and care of exterior building surfaces (including exterior doors installed as part of the initial construction of the Unit), roofs, gutters and down spouts, sidewalks, stoops, and parking areas. The Association shall not be responsible for maintenance or repair of glass surfaces or screens or for any improvements not part of the original construction unless the architectural approval granted by the Association for such subsequent improvements specifically provides that the Association will maintain such improvements. Furthermore: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements or the exterior of any Unit when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity; and (iv) the Association shall not be responsible for repairing any damage caused by the negligent or willful act or omission of the Owner of such Unit or such Owner's tenants, subtenants, or family members, or the guests or invitees of any of them.

Section 2. Owner's Responsibility; Remedy for Owner's Failure to Maintain. Any maintenance on a Lot that is not the responsibility of the Association, whether by the terms of this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Each Owner shall keep his Lot and Unit in an orderly condition and shall keep the improvements thereon in a suitable state of repair, except for those improvements that the Association is responsible for maintaining as provided in this Declaration. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of a majority of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Unit erected thereon, and the cost of such exterior maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective

action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VI.

Section 3. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 2 of this Article VI, the cost of any such maintenance, replacement or repairs (including the administration fee) shall be a limited special assessment against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

Section 4. Stormwater Management. The provisions of Section 4 of Article VI of the Master Declaration shall govern as to any Stormwater Control Measures within the Properties.

## **ARTICLE VII RIGHTS OF LENDERS**

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, the Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year, except that the Association shall not be required to provide the financial statement for the preceding fiscal year if said fiscal year expired less than 75 days prior to the date of the request. (*See* §47-3-118 of the Act).

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.
- (b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.
- (d) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes as provided in Section 1(c) of Article IV hereof, nor the exchange of real property as provided in Section 1(d) of said Article IV shall be deemed a transfer within the meaning of this subsection (a). Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Holly Springs or another governmental entity or to a nonprofit entity organized for purposes similar to those of the Association.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Sub-Association Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Sub-Association Common Area for other than the repair, replacement, or reconstruction of the damaged improvements or, as provided in §47F-3-113 of the Act, for distribution to the Owners, provided, however, that, except as provided in §47F-2-118 of the Act, any distribution to Owners shall be in the form of a credit toward current or future assessments due from the Owners to the Association.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Sub-Association Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

Section 5. Collection of Assessments. No mortgagee shall have any obligation to collect any assessment under the Declaration.

## **ARTICLE VIII EASEMENTS**

In addition to all other easements granted or reserved elsewhere in this Declaration, Declarant hereby grants and/or reserves the following easements.

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, sewer lines, natural gas lines, telephone, cable television, electric power transmission lines, storm water drainage facilities, and other public or quasi-public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Sub-Association Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of ten (10) years from the date hereof, Declarant grants to and reserves for itself, the Developer, the Association, and their respective successors and assigns, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, the person or entity taking such action shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. The person or entity taking such action shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easement for Support. Every Lot and Unit which contributes to the lateral and/or vertical support of any adjoining Unit(s) shall be burdened with an easement of support for the benefit of such adjoining Unit(s).

Section 3. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Sub-Association Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Sub-Association Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Sub-Association Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment, except such encroachment as was in existence as of the date of conveyance of the Lot to an Owner other than the Declarant.

Section 4. Easement Over Sub-Association Common Area. A perpetual, non-exclusive easement over, under and through the Sub-Association Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing reasonable access, ingress and egress to, from and over and the use of the Sub-Association Common Area and for utilities serving such Lot. Any conveyance or encumbrance of such Sub-Association Common Area is subject to the easements granted herein.

Section 5. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Sub-Association Common Area or improvements thereon.

Section 6. Easements for Governmental Access. An easement is hereby established over the Common Property and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 7. Easements for Development. For so long as Developer owns any land within the Properties, Developer reserves an easement over the Properties for the purpose of allowing Developer, its successors and assigns, to develop the Properties and construct improvements thereon.

## ARTICLE IX ARCHITECTURAL CONTROL

Architectural review and approval of any improvement to be constructed or installed on any Lot or the Sub-Association Common Area and any change or modification of any such improvement shall be done in accordance with Article IX of the Master Declaration.

**ARTICLE X  
USE RESTRICTIONS**

Section 1. Master Declaration. The Use Restrictions set forth in Article X of the Master Declaration shall apply to each of Lots within the Properties. In the event of an inconsistency between any provision of this Declaration and the Master Declaration, the more restrictive provision shall control.

Section 2. Right to Assign Parking Spaces. Furthermore, the Developer, the Declarant, or the Board of Directors of the Association shall have the right and authority (but shall not be obligated) to assign parking spaces to Owners on an equal, non-discriminatory basis. In such event, the Owner of each Lot shall provide the Association with the make, model, color and license plate number of each vehicle owned or normally driven by the Owner and his family, any person regularly residing with the Owner, and/or any lessee or sublessee of such Owner.

Section 3. Additional Parking Rules. The Board of Directors shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, and the cost of towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered or the Owner of the vehicle, as appropriate.

Section 4. Fines. The Board of Directors of the Association shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration including, without limitation, violation of the provisions of Article X of the Master Declaration (provided, however, that no Owner shall be fined by both the Association and the Master Association for the same violation) and/or the rules and regulations hereafter promulgated by the Board pursuant thereto. Any monetary fine or penalty shall be deemed a limited special assessment against the Lot of the Owner against whom such fine or penalty is assessed.

**ARTICLE XI  
PARTY WALLS**

Section 1. Rules of Law. All common party walls between individual Units shall conform to the requirements of the North Carolina State Building Code. The general rules of law regarding party walls, lateral support, and liability for property damage due to negligence or willful acts or omissions shall apply to each wall which is built as part of the original construction of the Dwellings within the Properties and which is placed on the dividing line between Lots, and to all reconstruction or extensions of such walls, to the extent not inconsistent with the provisions of this Article.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who or which uses the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner and the Sub-Association Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Sub-Association Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Sub-Association Common Area to as nearly the same condition as that which existed prior to commencement of the work as is reasonably practicable. Except in an emergency situation, an Owner entering upon another Owner's Lot as provided herein shall give reasonable oral or written notice to the Owner of the Lot on which such entry is to be made.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act or omission, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements and of repairing any damages resulting from such Owner's failure to timely and adequately provided such protection.

Section 6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner. If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to certify as to whether or not a right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to promptly make such certification, without charge, and, if the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. If an adjoining Owner fails to give a certification within ten (10) days of actual receipt of such request, such failure shall be conclusively deemed a certification that no such contribution is due.

## ARTICLE XII · GENERAL PROVISIONS

Section 1. Enforcement. The Association and each Owner (including the Declarant) shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Section 2. Term; Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or amended by a vote of eighty percent of the Members.

This Declaration may be amended only in strict compliance with this Section and the Act, including, without limitation, §47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant. This Declaration may also be amended by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots and, during the Declarant Control Period by the Declarant; provided, however, that in no event may Declarant's or Developer's rights hereunder may be amended or altered without Declarant's or Developer's (as appropriate) prior written consent. For the purpose of this section, additions to existing property as provided in Section 2 of Article II hereof shall not constitute an "amendment". No amendment shall be effective until it is recorded in Registry.

Notwithstanding the foregoing, Declarant and the Developer, without the consent or joinder of the Owners or other person or entity, may amend this Declaration during the Declarant Control Period, provided such amendment is not expressly prohibited by the Act, and further provided that such amendment does not adversely affect the title to any Lot nor materially alter or change any Owner's right to the use and enjoyment of his Lot or the Common Property.

Section 3. Non-Liability of Governmental Entitles. Neither the Town nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

The Town shall not be responsible for maintaining any private streets within the Properties, since such streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance. The Association is responsible for maintaining all private streets that are Common Property of the Association.

Section 4. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant during the Declarant Control Period, and thereafter by the Association, and, if required, by the Town of Holly Springs. Subdivision or recombination of any Lot(s) may, as appropriate, increase or decrease the number of votes in the Association.



Section 5. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Sub-Association Common Area and the Lots and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted by the Association, or the restrictive covenants and other use restrictions applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall be deemed a limited special assessment and a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Sub-Association Common Area; provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any Sub-Association Common Area if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association, provided, however, that the Association may not suspend such Owner's right of access to or any utilities servicing his Lot.

The Association and the Master Association shall each have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 6. Condemnation/Casualty. If all or any part of the Sub-Association Common Area and improvements thereon is taken by power of eminent domain or is damaged or destroyed by fire or other casualty, the proceeds of the condemnation award or any insurance policies covering such improvements shall be payable to the Association. The Board of Directors shall propose to the Members, at an annual or special meeting held within sixty (60) days after the date of the condemnation or casualty, whether or not to reconstruct the improvements. The insurance proceeds shall be used to reconstruct the improvements except as provided in §47F-3-113(g) of the Act, in which event the proceeds shall be retained by the Association for operation expenses or reserves, as determined by the Board or the Members. Nothing in this Section shall prevent the Board from proposing and the Members from approving the use of such proceeds for construction of different improvements, e.g., playground on Sub-Association Common Area in lieu of a destroyed club house.

Section 7. Association Contracts and Leases During Declarant Control Period. All Association contracts and leases made during the Declarant Control Period which extend beyond the Declarant Control Period must: (i) be for a term of two years or less; (ii) be terminable without penalty by the Association upon no more than ninety (90) days written notice; and (iii) be commercially reasonable and made with an entity not affiliated with the Declarant.

Section 8. Evidence of Member Approval. In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

-----  
CERTIFICATE OF APPLEWOOD COLLECTION AT TWELVE OAKS  
OWNERS ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the APPLEWOOD COLLECTION AT TWELVE OAKS OWNERS, INC., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of \_\_\_\_ votes were cast: \_\_\_\_ votes were cast in favor of such action, and \_\_\_\_ votes were cast against such action. Accordingly, the motion to approve [described the action approved] was approved by at least \_\_\_\_% of the Members as required by the Declaration and Bylaws of the Association.

\_\_\_\_\_  
[President/Secretary]

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Section 9. Number and Gender. Whenever the context requires, the singular shall include the plural, and *vice versa*, and one gender shall include all.

Section 10. Captions. Captions are for the purpose of reference only and shall not be deemed to be in any manner interpretive of any provision of this Declaration.

Section 11. Severability. If any provision of this Declaration is held by a court of competent jurisdiction to be invalid or void, such provision shall be deemed severable from the remaining provisions of the Declaration and shall not be deemed to nullify or affect and other provision hereof. If any such provision is deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

If any item, term or provision contained in this Declaration is in conflict with any applicable federal, state or local laws, this Declaration shall be affected only as to its application to such item, term or provision, and shall in all other respects remain in full force and effect.

Section 12. Conflicts. In the event of a conflict between any provision of this Declaration and the Master Declaration, the more restrictive provision shall control. In the event of a conflict between this Declaration and the Article of Incorporation of the Association, the Articles of Incorporation shall control. In the event of a conflict between this Declaration and the Bylaws, this Declaration shall control.

Specific provisions shall control general provisions. Notwithstanding the foregoing, a construction consistent with the Act, the North Carolina Nonprofit Corporation Act (N.C.G.S. Chapter 55A) shall in all cases control over any construction inconsistent therewith.

Section 13. Rule Against Perpetuities. As provided in §47F-2-103(b) of the Act, the rule against perpetuities may not be applied to defeat any provision of the Declaration, Bylaws, or rules and regulations adopted pursuant to thereto and §47F-3-102(1) of the Act. In the absence of the protection provided in §47F-2-103(b) of the Act, if any provision of this Declaration violates any applicable rule against perpetuities, such provision shall be deemed amended to be and remain in effect for the maximum period of time that such provision could be in effect without violating the applicable rule against perpetuities.

Section 14. Declarant; Developer. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Developer and construction of homes by Declarant so long as said development and construction follow the general plan of development previously approved by the Town. The restrictions contained herein shall not be deemed to apply to any sales office, signs, landscaping construction trailer, model home, or other temporary or permanent improvement installed by or with the approval of Declarant.

Section 15. Non-Discrimination. Neither the Association, the Board, committee of the Board, officer of the Association, nor any member of the Board or committee, in exercising its/his/her rights and obligations under this Declaration or the Articles of Incorporation or Bylaws or Articles of Incorporation, shall discriminate against any person on the basis of the race, color, religion, national origin or handicap of such person.

Section 16. Security Measures. Neither the Association nor the Board shall have any responsibility for establishing or maintaining any security measures within the Property, such measures being the sole responsibility of each Owner, as to his Lot and property, and to the appropriate public officials including, without limitation, the Sheriff of the County.

### **ARTICLE XIII RIGHTS OF DEVELOPER**

Declarant has contracted to purchase Lots within the Subdivision from Developer. Declarant and Developer also acknowledge the following: (i) the Town of Holly Springs may require subjecting Lots owned by Developer to the Declaration prior to their conveyance to Declarant; (ii) if, for any reason, Declarant does not purchase all of the Lots in the Subdivision, Developer may need the ability to deal with those Lots as if it were the Declarant under the Declaration; (iii) Developer, in developing the Properties into Lots to sell to Declarant, and in developing other portions of Twelve Oaks, may need certain rights to access and work in portions of the Properties conveyed to the Association and may need to reserve easements over, under and through Sub-Association Common Area; and (iv) certain portions of Twelve Oaks will be developed by Developer as single-family residential lots that are not part of the Properties, and easements may need to be reserved for such lots over, under and through Sub-Association Common Area for utilities and vehicular access to and from the Subdivision and the Community. Accordingly, Developer agrees to comply with the following obligations, and the following rights and easements hereby are granted to, or reserved by, Developer, its successors and assigns, and, as specified herein, the future owners of any such single-family residential lots, and are in addition to all other rights granted to or reserved by Developer in this Declaration. Nothing in this Article shall provide the Developer, or any party, to violate the provisions of the Holly Springs Unified Development Ordinance (“UDO”).

Section 1. Agreement to Subject Lots to the Declaration. Developer agrees to subject the property which is intended to be part of the Properties to the Declaration to the extent necessary to satisfy the requirements of the Town of Holly Springs.

Section 2. Agreement to Convey Sub-Association Common Area. Until such time as all portions of the Properties owned by Developer and intended to be Sub-Association Common Area have been conveyed to the Association, Developer agrees to convey to the Association such portions of the Sub-Association Common Area in a manner that will comply with the requirements of the Holly Springs for development of the Properties. All such conveyances may be made by Special Warranty Deed and shall be conveyed in compliance with the provisions of Section 3 of Article IV hereof.

Section 3. Developer's Assessments; Developer as Declarant. Until such time, if ever, that Developer becomes a Declarant under the Declaration, Developer, and all Lots owned by Developer, are exempt from all assessments under the Declaration, and Developer shall have no votes in the Association, except with respect to any Lots owned by Developer on which a Dwelling has been constructed. Developer may become a Declarant under the Declaration with respect to the Lots it owns by recording in the Registry one or more supplemental declarations declaring itself to be a Declarant with respect to the Lots described in the supplemental declaration. In such event, Developer shall be deemed to be a Class B Member and Lots that it owns shall be assessed at the Class A rate (if containing a Dwelling occupied as a residence) or Class B rate, as appropriate.

Section 4. Developer's Right to Exchange Sub-Association Common Area. In connection with its development of the Properties, Developer shall have the right to exchange real property with the Association as provided in Section 1(e) of Article IV hereof.

Section 5. Developer's Easements. Developer, its agents and contractors, shall have all of the rights and easements of Declarant under this Declaration with respect to easements over, under and through the Sub-Association Common Area. Developer shall have the following additional non-exclusive rights and easements over, under and through the Sub-Association Common Area.

(a) The right to grant perpetual utility easements on, over, under, across and through the Sub-Association Common Area as may be reasonably necessary for development of the Properties and/or other portions of Twelve Oaks, and the Association shall, upon request, execute any such easement to permit recording of same. For purposes of this Article, "utility" or "utilities" include, without limitation, water, sanitary sewer, storm water management, electricity, telephone, natural gas, cable television, greenway easements, and buffers required by Town of Holly Springs ordinances or other governmental laws, ordinances and regulations. Such easements may be granted by written instrument or plat, and may be publicly-dedicated or private easements. Insofar as reasonably practicable, and except for any portions thereof that by necessity must be at or above the surface of the ground, all utilities installed, used and maintained pursuant to such easements shall be underground. Unless specifically excluded therefrom, the grants of all such easements by Developer are deemed to include a right of ingress, egress and regress over and upon all portions of Sub-Association Common Area as reasonably required to facilitate the exercise of such easements.

(b) The right to install, use and maintain in Sub-Association Common Area such utilities as may reasonably be required for development of the Subdivision and/or other portions of Twelve Oaks.

(c) The right to install, use and maintain in Sub-Association Common Area signs, landscaping (including, without limitation, grass, plants, lighting, and irrigation), fencing and other decorative features in connection with development of the Properties.

(d) The right to construct, improve, repair, replace and maintain any and all private streets, driveways and alleys that constitute any part of the Sub-Association Common Area, in accordance with any requirements of the Town of Holly Springs and/or in accordance with any contractual obligations of Developer to any person or legal entity.

(e) A non-exclusive right of pedestrian and vehicular ingress, egress and regress over and upon all Sub-Association Common Area for the purposes of exercising the rights and easements reserved by or granted to Developer under this Declaration, provided, however, that, with respect to vehicular ingress, egress and regress, to the extent reasonably practicable, Developer shall use only those portions of the Sub-Association Common Area designed or designated for use by vehicles, such as private streets, driveways and alleys.

(f) A nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Sub-Association Common Area Easement, and any other portion of the Lot to the extent necessary to gain access and maintain improvements and facilities within the Sub-Association Common Area Easement and/or to exercise its rights as Declarant under the Master Declaration or this Declaration, and no such entry shall be deemed a trespass. To the extent practicable, the Developer shall give reasonable oral notice to the Owner or occupant of such Lot.

(g) The easements reserved in this Section shall exist and continue so long as Developer owns any land within the Community.

Section 6. Amendments of this Article XIII. The provisions of this Article may not be amended or terminated without the written consent of Developer.

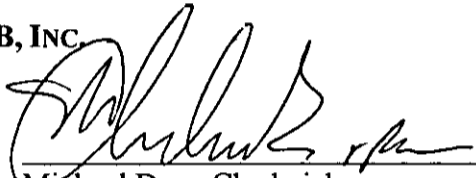
Section 7. Compliance with Laws. Developer's exercise of all rights and easements under this Article shall comply with all applicable governmental laws, ordinances and regulations.

[Signatures on Following Pages]

IN WITNESS WHEREOF, Declarant and Developer has each caused this Declaration to be executed by its duly authorized officer or manager, as of the latest date set forth in the notary acknowledgments below.

**DECLARANT**

1<sup>ST</sup> AB, INC

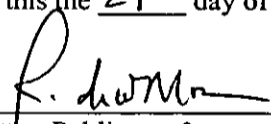
By:   
Michael Dean Chadwick  
Vice President

STATE OF NORTH CAROLINA – COUNTY OF WAKE:

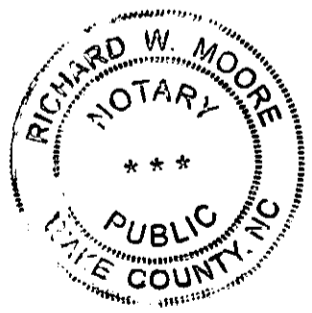
I, the undersigned, a Notary Public in and for Wake County, North Carolina, certify that MICHAEL DEAN CHADWICK personally came before me this day and acknowledged that he is Vice President of 1<sup>ST</sup> AB, INC., a North Carolina corporation, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation for the purposes stated therein.

Witness my hand and official stamp or seal, this the 29<sup>TH</sup> day of October, 2007.

(Stamp or Seal)

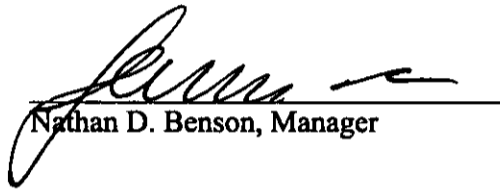
  
Notary Public  
Printed Name: Richard W. Moore

My commission expires: 06/17/09



**DEVELOPER:**

**TWELVE OAKS, L.L.C.**, a Virginia limited liability company

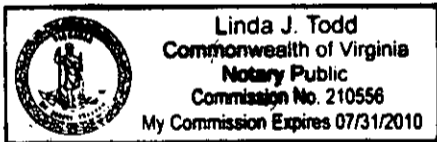
By:   
Nathan D. Benson, Manager

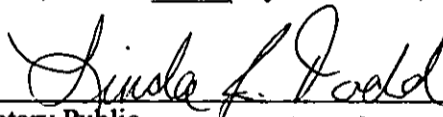
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**COMMONWEALTH OF VIRGINIA -- CITY OF VIRGINIA BEACH**

I, the undersigned, a Notary Public for the Commonwealth of Virginia, certify that NATHAN D. BENSON personally appeared before me this day and acknowledged that he is a Manager of TWELVE OAKS, L.L.C., a Virginia limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the limited liability company for the purposes stated therein.

Witness my hand and official stamp or seal, this the 8th day of October, 2007.



  
Notary Public  
(Print Name) Linda J. Todd  
My commission expires: 07-31-10

BK012814PG01871

**EXHIBIT A**

being in the Town of Holly Springs, Holly Springs Township, Wake County, North Carolina, and being more particularly described as follows:

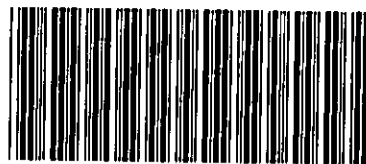
of Lots 49-80, inclusive, as shown on the maps entitled "TWELVE OAKS PUD, Phase 1C", recorded in Book of Maps 2007, Pages 1589 and 1590, Wake County Registry, to which maps reference is hereby made for a more particular description.



BK012814PG01872

**Exhibit B**

property located within Twelve Oaks PUD, as approved by the Town of Holly Springs, and by the Developer to be included within the Applewood Collection at Twelve Oaks.



BOOK:012814 PAGE:01840 - 01873

**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**  
\_\_\_\_\_ **34** \_\_\_\_\_ New Time Stamp  
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