

PREPARED BY AND HOLD FOR:
SANDMAN & ROSEFELDE-KELLER #169

Wake County, NC 607
Laura M Riddick, Register Of Deeds
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE SUNCREST VILLAGE SUBDIVISION**

THIS DECLARATION is made this 10 day of January, 2002, by MITCHELL MILL INVESTMENTS, LLC, a North Carolina limited liability company ("MMI"), CAPITOL HOMES, INC., a North Carolina corporation ("CHI"), and HERITAGE CUSTOM HOMES, LLC, a North Carolina limited liability company ("HCH") (MMI, CHI and HCH shall hereinafter sometimes be referred to collectively as the "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the Owner of that certain property located in Wake County, North Carolina, and as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), which, as approved by the City of Raleigh, North Carolina (the "City"), is being developed in phases as a single-family cluster unit development known as "SUNCREST VILLAGE SUBDIVISION"; and

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

WHEREAS, Declarant has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, SUNCREST VILLAGE HOMEOWNERS ASSOCIATION, INC., for purposes of exercising the functions aforesaid and more fully described hereinbelow.

NOW, THEREFORE, Declarant hereby declares that the Property, and such additions and annexations thereto as may hereafter be made pursuant to Article III hereof, is and shall be held, used, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

**ARTICLES I
DEFINITIONS**

- 1.1. "Articles" means the Association's Articles of Incorporation.
- 1.2. "Association" means SUNCREST VILLAGE HOMEOWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation.
- 1.3. "Board of Directors" means the Board of Directors for the Association.
- 1.4. "Bylaws" means the Association's Bylaws.
- 1.5. "Common Area" means all real property which is owned or leased by, or located in an easement granted to or reserved by, the Association and which has been designated by Declarant, the

record owner of newly annexed land, or the Association as "Common Area" or some other similarly descriptive term, on a recorded plat, in a Declaration of Annexation, or in a deed or other written instrument for the common use and enjoyment of the Members of the Association. Common Area shall also refer to Subdivision signage, water lines and sewer lines located within the Property which are not otherwise dedicated to a governmental entity or serving only a single Lot.

1.6. "Declarant" means MITCHELL MILL INVESTMENTS, LLC, a North Carolina limited liability company, CAPITOL HOMES, INC., a North Carolina corporation, and HERITAGE CUSTOM HOMES, LLC, a North Carolina limited liability company, and their respective successors and assigns to whom the rights of Declarant hereunder may be transferred in whole or in part, and subject to such conditions as Declarant may impose, if such successors or assigns acquire more than one undeveloped Lot. The development of a Lot shall mean and refer to the construction of Improvements thereon.

1.7. "Declaration" means this Declaration of Covenants, Conditions and Restrictions applicable to the Property, and any amendments thereto which are recorded in the Office of the Register of Deeds, Wake County, North Carolina.

1.8. "Declaration of Annexation" means a declaration filed supplemental to this Declaration which, upon its filing with the office of the Wake County Register of Deeds, subjects additional property to the scheme of this Declaration.

1.9. "Improvements" means any structure of any type or kind and all exterior modifications thereof, including, without limitation, buildings, outbuildings, parking areas, loading areas, screening walls, retaining walls, fences, hedges, mass plantings, lawns, landscaping, sidewalks, poles, signs, and utility lines and facilities.

1.10. "Living Unit" means any structure or part of a structure built for occupancy as a single-family residence, including, without limitation, single-family residences, townhomes, condominium units, villas, and any other single-family dwelling unit located on the Property, including attached or detached units, but excluding rental apartments.

1.11. "Lot" means any numbered or lettered parcel of land (excluding Common Area and any Restricted Common Area) shown on any plat, described by a metes and bounds description, recorded in the Office of the Register of Deeds, Wake County, North Carolina, which is made subject to this Declaration, as it may be amended..

1.12. "Lot in Use" means any Lot which has been conveyed by the Declarant to a subsequent purchaser. Except, in the event the Lot is a vacant lot, the Lot does not become a Lot in Use until such time as a certificate of occupancy for Improvements on the Lot is initially granted by municipal authority or twelve (12) months from the date of conveyance, whichever is earlier. In no event shall it mean a Lot owned by the Declarant on which no Improvements have been constructed.

1.13. "Member" means every Person who holds membership in the Association.

1.14. "Owner" means the record owner, whether one or more Persons, of a fee simple title to any Lot or Living Unit, except those having an interest merely as security for the performance of an obligation.

1.15. "Person" means an individual, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, an unincorporated association, or other entity.

1.16. "Project" means the residential development known as SUNCREST VILLAGE SUBDIVISION into which the Property is being developed. It shall also include and refer to all real property presently owned or hereafter acquired by Declarant located in Raleigh, North Carolina, which adjoins or is situated across a public or private street from the Property, or any other real property which has been subjected to this Declaration by a Declaration of Annexation recorded in accordance with the provisions of Article III of this Declaration.

1.17. "Property" means all of that certain real property described in Exhibit A attached hereto and incorporated herein by this reference, and any annexation thereto of the real property described in Article III.

1.18. "Restricted Common Area" shall mean and refer to those parcels of land and any

Improvements situated thereon which are designated as "Restricted Common Area" or some other similarly descriptive term in any plat of a portion of the Property which is under the control and jurisdiction of a Sub-Association and which is reserved and restricted for the use of Members of such Sub-Association.

1.19 "Sub-Association" shall mean and refer to sub-classes of membership in the Association created in accordance with the provisions of Article V hereof.

1.20. "Subdivision" means SUNCREST VILLAGE SUBDIVISION, as shown on the recorded subdivision plat(s) of the Property.

ARTICLE II MERGERS AND DENSITY TRANSFERS

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

2.2 Density Transfers. The Property is part of a cluster unit development approved by the Raleigh City Council in which residential density transfers are permitted. Therefore, even though some Lots may appear to contain sufficient land area to construct additional Living Units, prior approved density transfers within the cluster unit development may in fact preclude City of Raleigh approval of additional Living Units.

ARTICLE III ANNEXATION OF ADDITIONAL PROPERTIES

3.1. Annexation by Members. Except as provided in Section 3.2, and subject to the approval of the City of Raleigh, additional properties may be added and annexed to the Property only if two-thirds (2/3) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Members comprising no less than two-thirds (2/3) of each class of Members entitled to cast votes in favor of annexation describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. For the purpose of such meeting, the presence of Members or authorizing proxies entitled to cast sixty percent (60%) of the votes of each class of Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth in Section 7.6 hereof, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which said Member is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

3.2 Annexation by Declarant. If within ten (10) years from the date the Association is incorporated Declarant develops additional land located adjacent to or across a public or private street from the Property, and any property adjacent thereto or across a public or private street therefrom which is annexed thereto in accordance with the provisions hereof, Declarant may annex such land to the Property without the consent of Members. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary.

3.3 Conveyance of Common Area. Subsequent to recordation of the Declaration of Annexation, but prior to conveyance of the first Lot or Living Unit within the newly annexed property, whichever shall first occur, Declarant or any other record Owner of newly annexed land shall deliver to the Association, in accordance with Section 6.3, one or more deeds conveying any property that will be designated as Common Area or Restricted Common Area within the annexed property as such designated property is platted.

ARTICLE IV MEMBERSHIP

Ownership of a Lot or Living Unit shall be the sole qualification for membership in the Association; and membership shall be appurtenant to and may not be separated from ownership of any Lot or Living Unit.

ARTICLE V VOTING RIGHTS

5.1 Classes of Voting Membership. The Association may have the following two (2) classes of voting membership:

(a) The Class A Members shall be all those Owners of Lots and Living Units (with the exception of Declarant). Class A Members shall be entitled to one vote for each Lot or Living Unit in which they hold the interest required for membership under Article IV. When more than one Person holds such interest in any Lot or Living Unit, all such Persons shall be Members, and the vote for such Lot or Living Unit shall be exercised as the majority of such Persons among themselves determine; however, in no event may more than one vote be cast with respect to any one Lot or Living Unit. Fractional voting shall be prohibited. At any meeting of the Members, a representation by any of such Persons that a majority of such Persons have agreed as to the vote for such Lot or Living Unit shall be conclusive unless another of such Persons contests such representation at such meeting prior to the casting of such vote.

(b) The Class B Members shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot or Living Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs first:

- (i) Declarant's written consent to termination; or
- (ii) When the total votes outstanding in Class A equal the total votes outstanding in Class B [provided, however, that Declarant shall retain its architectural review and approval rights under Article XI until the Class B membership is terminated in accordance with either Section 5.1(b) (i) or (iii)]; or
- (iii) Ten (10) years following the date of incorporation of the Association.

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

5.2 Membership Sub-Classes. Declarant shall have authority, and is hereby authorized at its discretion, to create membership sub-classes of those who are Class A Members and to designate and to delineate sub-membership areas within the Project, each such sub-membership classification and area delineation shall consist of Owners of like or similar type Living Units, such as Owners of all townhomes, or a particular group of townhomes, and so forth for each type of Living Unit. Notwithstanding anything which may be contained hereinabove to the contrary, a membership sub-class shall not be responsible for any costs or fees assessed for amenities provided for the exclusive use of another membership sub-class, and any such costs or fees shall be expressly excluded from the expenses included in determining the annual assessments referred to in Section 7.3, or the special assessments referred to in Section 7.5.

5.3 Purpose of Sub-Classes. Sub-classes of Class A membership may and/or shall be designated by Declarant in accordance with Section 5.2 above for the purpose of establishing special assessment districts among similar class Members because of a need, or obligation of any such designated membership sub-classification to pay assessments which may differ from those required of

other sub-classifications based on the obligation upon the Association to provide differing degrees of care and maintenance to the Restricted Common Area held by such Sub-Association.

ARTICLE VI PROPERTY RIGHTS IN THE COMMON AREA AND RESTRICTED COMMON AREA

6.1 Owners' Easements of Use and Enjoyment. Every Member shall, subject to the following provisions, have a right and easement of use and enjoyment in and to the Common Area, together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Common Area, all of which shall be appurtenant to and shall pass with the title to every Lot and Living Unit:

(a) Subject to the provisions of the Raleigh City Code, the right of the Association to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Common Area and Restricted Common Area.

(b) The right of the Association to suspend the voting rights and right to use the recreational or other Common Area and Restricted Common Area facilities by an Owner for any period during which any assessment against such Owner's Lot or Living Unit remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and any such suspension shall apply to any Person delegated the right to use and enjoy the Common Area, Restricted Common Area and Improvements by the suspended Owner.

(c) The right of the Association to dedicate, sell or transfer all or any part of the Common Area and Restricted Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class or applicable sub-class of Members and an instrument properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class or applicable sub-class of Members have approved the dedication, sale or transfer and that certificate shall be conclusive as to any grantee or its assigns; provided, however, that conveyances for general utility purposes as specified herein may be made without consent of the Members.

(d) The Association shall have the right to exchange Common Area and Restricted Common Area for other properties, subject to the approval of the Raleigh City Planning Director and the laws of the City of Raleigh.

(e) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area, Restricted Common Area and the Improvements related thereto and, in aid thereof, to mortgage said properties, and the rights of such mortgagees in said properties shall be subordinate to the rights of the Association and the Members hereunder.

(f) The right of the Association, in accordance with its Articles and Bylaws, to impose rules and regulations for the use and enjoyment of the Common Area, Restricted Common Area and the Improvements related thereto, which rules and regulations may further restrict the use thereof.

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

6.3 Title to the Common Area and Restricted Common Area Properties. Prior to the conveyance of the first Lot or Living Unit within the Property, whichever shall first occur, Declarant shall dedicate and convey to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Common Area and Restricted Common Area to the Association, free and clear of all encumbrances and liens, other than the lien of: (i) current taxes and assessments not in default; (ii) utility, drainage and greenway easements, and other easements and encumbrances not constituting a lien to secure the payment of money; and (iii) the terms and conditions of this Declaration, including any amendments thereto, a sub-association declaration, and any applicable supplemental Declaration of Annexation.

ARTICLE VII COVENANT FOR MAINTENANCE ASSESSMENTS

7.1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot and Living Unit owned within the Property, hereby covenants, and each Owner of any Lot or Living Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for extraordinary maintenance, repairs and capital Improvements, all as hereinafter provided. The annual and special assessments, together with interest, late fees, and costs, and reasonable attorneys' fees for collection, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to said Owner's successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors, to establish, fix and levy a special assessment on any Lot or Living Unit to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration.

Each Owner covenants for itself, its heirs, successors and assigns, to pay each assessment levied by the Association on each Lot or Living Unit conveyed to said Owner within ten (10) days of receipt of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid, in the United States mail, in an envelope addressed to such Owner at its address as it appears on the books of the Association or to such other address as the Owner shall have designated in writing, the amount of such charge shall become a lien upon such Lot or Living Unit and shall continue to be such a lien until fully paid.

7.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the beautification of the Property, the health, safety and welfare of the Owners, and the improvement, maintenance and repair of the Common Area, the Restricted Common Area and the Improvements related thereto. Expenses to be funded with the assessments shall include, without limitation, taxes and assessments levied against the Common Area and Restricted Common Area; all insurance premiums required hereunder (including, without limitation, casualty, liability and fidelity bond premiums); Association operational costs; management fees, if any; the employment of counsel, accountants and other professionals for the Association when necessary; and such other needs as may arise. The Association may maintain a reserve fund for periodic maintenance, repair, and replacement of Improvements to the Common Area and Restricted Common Area.

7.3 Maximum Annual Assessment and Annual Assessment. Through and including January 1 of the year immediately following the conveyance of the first Lot or Living Unit to an Owner, the maximum annual assessment shall be Three Hundred and No/100 Dollars (\$300.00) per developed Lot or Living Unit.

(a) The maximum annual assessment for the calendar year beginning January 1, 2002, and for successive calendar years thereafter, shall be established by the Board of Directors, and may be increased by the Board of Directors, without approval by the Members, by an amount per year not to exceed ten (10%) of the amount of the maximum annual assessment of the immediately preceding calendar year.

(b) The maximum annual assessment for the calendar year beginning January 1, 2002, and for each successive calendar year thereafter, may be increased without limit by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws.

(c) Subject to the provisions of this Article VII, the Board of Directors may fix the annual assessment at any amount not in excess of the maximum annual assessment allowed for the applicable calendar year.

7.4 RESERVED.

7.5 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital Improvement upon the Common Area or Restricted Common Area, or any other unexpected expense for which the Association is responsible,

provided that, any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

7.6 Notice and Quorum for Any Action Authorized Under Sections 7.3 and 7.5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 7.3 and 7.5 shall be delivered to all Members entitled to vote not less than ten (10) days nor more than sixty (60) days in advance of the meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Association, with postage thereon prepaid. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.7 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and Living Units and may be collected on a monthly basis. However, if sub-classes of membership are created by Declarant, assessments may differ between sub-classes; but shall be fixed at uniform rates for all Lots and Living Units within a sub-class. Assessments with respect to a sub-class of membership shall be determined by the cost to the Association, experienced or reasonably anticipated, of carrying out the purposes of assessments, as applied to the sub-classes of memberships. Notwithstanding anything to the contrary contained hereinabove, the assessment for Lots and Living Units for which dwelling construction has been initiated and a certificate of occupancy for Improvements located thereon has not yet been issued shall be one-third (1/3) of the regular assessment for developed Lots and Living Units.

7.8 Date of Commencement of Annual Assessments: Due Dates.

(a) Except as may otherwise be provided herein, the above annual assessments shall commence as to each Lot and Living Unit as of the day on which a certificate of occupancy is issued for Improvements to such Lot or Living Unit.

(b) The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot and Living Unit at least fifteen (15) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

The Association shall, upon demand, furnish a certificate signed by an officer of the Association stating whether or not the assessments on a specified Lot or Living Unit have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any assessment as to third parties acting in reliance on the statement.

7.9 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof becomes delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late charge of \$25.00 and bear interest from the date of delinquency at the rate of twelve percent (12.0%) per annum or the highest rate allowed by law, whichever is less, and the Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable property. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of the delinquent assessment. Each Owner, by the acceptance of a deed to a Lot or Living Unit, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property. Each Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article VII shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed property. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Area or Restricted Common Area, or by abandonment of such Owner's property.

7.10 Subordination of the Lien of Assessments to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (or deed

of trust) and ad valorem taxes. Sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Living Unit pursuant to such mortgage or tax foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve the Owner of any such Lot or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

7.11 Exempt Property. All properties dedicated to and accepted by, a local public authority, the Common Area, the Restricted Common Area and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or Improvements devoted to dwelling use shall be exempt from such assessments.

ARTICLE VIII ARCHITECTURAL CONTROL AND USE RESTRICTIONS

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

8.2 Setbacks. Building setbacks of the Improvements on any Lot shall be as set forth in the Raleigh City Code. For the purposes of this covenant, eaves, steps, carports, decks and open porches shall not be considered a part of a building; provided, however, that this shall not be construed to permit any portion of a building on a Building Site to encroach upon another Lot. Declarant (so long as Class B membership exists), the Board of Directors or the Architectural Committee may approve a violation of these requirements by written waiver, provided such violation otherwise complies with the applicable zoning ordinances and setback requirements.

8.3 Structures. Except as may otherwise be authorized herein, Improvements on any Lot shall be limited to a single-family, residential structure, and the accessory uses thereto. All buildings and structures erected upon Lots shall be of new construction. No residential structure shall be erected or placed on any Lot which has a minimum area of less than 1,200 square feet of heated area for a one (1) story residence or 650 square feet for the first floor of a one and one-half (1 ½) or two (2) story residence. No structures of a temporary character, manufactured home, modular home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Property at any time as a residence, either temporarily or permanently. No storage shed, garage or other out-building shall be constructed, used or permitted on any portion of the Property without the prior written approval of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee.

8.4 Declarant Facilities. Notwithstanding any provision in this Article VIII to the contrary, for ten (10) years following the date of incorporation of the Association, Declarant may, subject to all applicable laws of the City of Raleigh, maintain such facilities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots and Living Units. These facilities shall include, without limitation, a business/sales office, storage area, construction yards and signs.

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

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

8.7 Leasing. No Lot or any portion of the Improvements situated thereon or Living Unit

shall be leased for transient or hotel purposes. Notwithstanding the foregoing, an Owner may lease not less than the entire residential structure on its Lot, provided that each lease must be in writing, must be for a period of not less than ninety (90) days, and must provide that it is subject to this Declaration and the Bylaws, and that any failure by a tenant to comply with such shall be a default under the lease. Failure to include this provision in the lease shall not relieve the tenant from complying with the Declaration and the Bylaws.

8.8 Utility Devices. Without the prior written approval of Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee, no exterior television or radio antennas, satellite dishes, solar panels or other utility devices of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Improvements situated on the Property; provided, however, that television satellite dish antennae less than 24" in diameter may be approved subject to the provisions of this Article VIII.

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

8.10 Vehicles. No boats, recreation vehicles, or trailers of any Owner or member of its family, tenants, or contract purchasers shall be parked within the Common Area, Restricted Common Area, or within the right-of-way of any street in or adjacent to the Property. All boats, recreation vehicles, or trailers shall be stored either within the Owner's garage or other facilities not located on the Property or screened from public view from the street and adjoining properties. No boat, recreation vehicle or trailer may be located closer to the street than the front foundation of the house, the exact location to be approved by the Board of Directors or Architectural Committee. No Owner or its tenant(s) shall park or store an inoperative or abandoned boat, recreation vehicle, trailer or automobile on any Lot or on the streets in the Property.

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

8.12 Lawn Ornaments. Decorative lawn ornaments shall be approved in writing by the Architectural Committee prior to installation or placement thereof on any Lot.

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

8.14 Fences.

(a) Fences in general. No fences or walls shall be erected or maintained in side yards and rear yards that are subject to the maintenance easement specified in Section 9.5. All fences require the prior written approval of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee.

(b) Reserved.

8.15 Parking Right. Adequate off-street parking shall be provided by the Owner of each Lot and Living Unit for the parking of automobiles owned by that Owner. Owners and their tenants shall not be permitted to park their automobiles on the streets in the Subdivision.

8.16 Maintenance. Each Owner shall keep its property free of grass taller than eight (8) inches, undergrowth, dead trees, trash and rubbish, and shall otherwise properly maintain its property and the Improvements located thereon so as to present a pleasing appearance. If an Owner does not, in the reasonable opinion of the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee, properly maintain the same, Declarant and/or the Association may have the

required work done and the costs incurred for such work, plus a service charge of fifteen percent (15%) of such costs, shall be assessed against the Owner.

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

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

8.19 Anti-Discrimination. No action shall at any time be taken by the Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee in the enforcement or interpretation of these Covenants and Restrictions which in any manner would unfairly discriminate against any Owner in favor of any of the other Owners.

8.20 Waiver. Notwithstanding anything above to the contrary, Declarant (as long as Class B membership exists), the Board of Directors or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article VIII. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot or Living Unit in question or any other Property subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon or the Living Unit to be in non-conformance with any applicable governmental ordinances.

ARTICLE IX EASEMENTS

9.1 Blanket Utility Easement. A blanket easement upon, across, over and under all of the Property, including Lots, Living Units, Common Area and Restricted Common Area, is reserved for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, without limitation, cable, water, sewer, gas, telephones, and electricity. Notwithstanding the foregoing, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated (i) in the Common Area or Restricted Common Area, except as approved by Declarant or the Association (after the termination of Class B membership); (ii) under any Living Unit; or (iii) on the Property in a manner which would have a material negative impact on the value of the Property or any portion thereof and the Improvements located thereon. If any utility furnishing a service covered by this general easement requests a specific easement by separate recordable documents, Declarant or the Association (after the termination of Class B membership) will have the right and authority to grant such easement. The easement provided for in this Article IX shall in no way affect other recorded easements on the Property.

9.2 Association Easement. An easement is granted to the Association, its officers, agents, employees, independent contractors, and to any management company retained by the Association to enter in or to cross over the Common Area and the Restricted Common Area. Every Lot and Living Unit shall be subject to an easement for entry by the Declarant (as long as Class B membership exists) or the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or Living Unit and that endangers any Improvement to or portion of the Common Area or Restricted Common Area. The Declarant (as long as Class B membership exists) and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area and the Restricted Common Area such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the Members as provided herein.

9.3 Unintentional Encroachment. If any Lot or Living Unit shall encroach upon any Common Area, Restricted Common Area or upon any other Lot or Living Unit for any reason not caused by the purposeful or negligent act of the Owner, then an easement appurtenant to such Lot or Living Unit shall exist for the continuance and maintenance of such encroachment upon the Common Area, Restricted Common Area or other Lot or Living Unit for so long as such encroachment shall naturally exist; and, if any portion of the Common Area or Restricted Common Area shall encroach upon any Lot or Living Unit, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Area or Restricted Common Area onto any such Lot or Living Unit for so long as such encroachment shall naturally exist.

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

9.5 Maintenance Easement. An easement over, through and to adjacent Lot(s) is reserved and established in favor of all Owners of any dwelling unit located closer than five (5) feet from a Lot line. This easement shall be used only as and when necessary to facilitate maintenance of the dwelling at any time on a Lot by an Owner. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities, and shall restore the land to substantially the same condition as existed prior to such maintenance work. If such Person fails to restore the disturbed land as required, the Owner(s) of the adjacent Lot(s) may restore the land to the required condition and that Person shall indemnify the Owner(s) of the adjacent Lot(s) for the reasonable expense incurred in performing that restoration.

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

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

9.8 Governmental Easements.

(a) Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Area and Restricted Common Area and over an area five (5) feet behind any right-of-way in the Property existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water and sewage facilities, and the collection of garbage.

(b). An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar Persons to enter upon the private streets of the Subdivision, the Common Area and the Restricted Common Area in the performance of their duties.

9.9 Sign or Landscape Easement. An easement is granted to the Association, its officers, agents, employees, independent contractors, and to any management company retained by the Association to enter in or to cross over any portion of a Lot denoted as "Sign Easement" or "Landscape Easement" on any recorded plat of the Property. The Association shall be solely obligated and responsible to maintain such easement area, including, without limitation, planting, watering, pruning, weeding, spraying, maintaining and replacing any shrubbery, trees, fences, signage, and other landscape material which shall be placed thereon. The Owner of any Lot encumbered by a sign or landscape easement area agrees not to remove, injure or otherwise destroy the signage or landscape material placed within such easement area; but such Owner shall in all respects remain the fee owner of such Lot and may use the Lot for all purposes not inconsistent with the terms and conditions hereof.

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

ARTICLE X INSURANCE

10.1 Coverage. The Association shall obtain a broad-form public liability policy covering all Common Area, Restricted Common Area and all damage or injury caused by the negligence of the Association or any of its agents. This coverage shall be in the amount of at least One Million and No/100 Dollars (\$1,000,000.00). This insurance may include coverage against vandalism. All Persons responsible for or authorized to expend funds or otherwise deal in the Association's assets shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties. The Association shall also obtain such other insurance coverage as it deems desirable and necessary.

10.2 Ownership/Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association, as insurance trustee, shall be to receive any proceeds as are paid and to hold them in trust for the purposes stated in these Covenants and Restrictions. The proceeds received by the insurance trustee shall be distributed to, or for the benefit of, the appropriate beneficiary(ies).

10.3 Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

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

ARTICLE XI ARCHITECTURAL CONTROL AND INSPECTION

11.1 Members. The Architectural Committee shall initially consist of one (1) or more Persons designated by Declarant. Upon the termination of Class B membership in accordance with Sections 5.1(b)(i) and (iii), Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Committee. Upon this assignment, the Board of Directors shall appoint three (3) or more persons as the members of the Architectural Committee.

11.2 Powers. The Architectural Committee shall have the right to refuse approval of any plans and specifications for Improvements proposed to be constructed or installed on a Lot (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider, among other things, the suitability of the proposed Improvements, color, and materials to be used in those Improvements, the site upon which they are proposed to be erected or installed, and the effect of the Improvements on adjacent or neighboring property. There is specifically reserved unto the Architectural Committee the right to enter and inspect any Lot for the purpose of determining whether there exists thereon any Improvements which violate the terms of any approval by the Architectural Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. The Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any Improvements, or to remove any unauthorized Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorneys' fees).

11.3 Approval of Plans & Specifications. No Improvement shall be constructed or installed upon the Property, nor shall any Improvement be repaired or rebuilt after casualty damage until completed Plans & Specifications showing the nature, kind, space, height, materials, and location of the Improvement shall have been submitted to and approved in writing by the Architectural Committee. A failure to approve or disapprove completed Plans & Specifications within thirty (30) days after they have been submitted shall be deemed to be an approval of those Plans & Specifications. Neither the Association, the Association's Board of Directors, Declarant, the Architectural Committee or any officer, employee, director or members thereof shall be liable for damages to any Persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications. Every Person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages.

ARTICLE XII

EXTERIOR MAINTENANCE

12.1 Duty to Maintain. Except as may otherwise be provided in any sub-association declaration, it shall be the duty of each Owner to properly maintain its Lot or Living Unit and all Improvements constructed thereon.

12.2 Remedies of Association. If, in the opinion of the Association, an Owner shall fail to maintain its Lot or Living Unit in a manner which is reasonably neat and orderly, or shall fail to keep the Improvements constructed thereon in a state of repair so as not to be unsightly, the Association, in its discretion, by the affirmative vote of two-thirds of the members of the Board of Directors, and following ten (10) days written notice to such Owner, may enter upon the Owner's Lot or Living Unit and make, or cause to be made, repairs to the Improvements situated on the property and perform maintenance on such property, including, without limitation, the removal of trash, cutting of grass, pruning of shrubbery, seeding and correction of items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. All costs incurred by the Association in rendering such services, plus a service charge of fifteen percent (15%) of such costs, shall be added to and become a part of the assessment to which such Lot or Living Unit is subject.

ARTICLE XIII GENERAL PROVISIONS

13.1 Enforcement. Declarant (as long as Class B membership exists), the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant (as long as Class B membership exists), the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

13.3 Duration and Amendments.

(a) The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, Declarant (so long as Class B membership exists), and the Owner of any property subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall automatically extended for successive periods of ten (10) years each unless the Association approves a change in the Covenants and Restrictions. Prior to the sale of the first Lot or Living Unit, this Declaration may be amended by Declarant without the consent of the Members. At any time, the Covenants and Restrictions of this Declaration may be amended if sixty-seven percent (67%) of the vote of each class of Members at a duly called meeting of the Association at which a quorum is present approves the amendment. Any amendment must be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

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

(c) No amendment which would change or delete any provision herein required by any governmental authority shall become effective until submitted to and approved by that authority; provided, however, that if such authority fails to approve or disapprove the amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and the Person submitting the amendment shall be deemed to have fully complied with this covenant.

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

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

13.5 Casualty. Whenever all or any part of the Improvements to the Common Area and Restricted Common Area, if any, shall be damaged or destroyed by fire or other casualty, the insurance proceeds therefrom shall be payable to the Association. If at least sixty-seven percent (67%) of the Members shall decide within sixty (60) days after such damage or destruction to repair or restore any such damaged or destroyed Improvements, or any part thereof, then the Board of Directors of the Association shall arrange for such repairs or restorations, and the Association shall disburse the insurance proceeds accordingly; subject, however, to the right hereby reserved to the Association, which may be exercised by a majority of the votes of the Members thereof, to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such repairs or restorations) to the Members, or any one or more of them, in amounts disproportionate to their voting rights, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Members, or any one or more of them, as the Association may determine. If at least sixty-seven percent (67%) of the Members shall decide within sixty (60) days after such damage or destruction to not replace such Improvements, or if the damage or destruction is confined to Common Area and/or Restricted Common Area on which no Improvements have been constructed, then the Association shall disburse the casualty insurance proceeds in the manner hereinabove provided for the disbursement of any insurance proceeds remaining after payment of all costs incident to the repair or restoration of Improvements.

13.6 Condemnation. Whenever all or any part of the Common Area or Restricted Common Area shall be taken by an entity having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association. Unless otherwise required by law at the time of such taking, any award made therefore shall be disbursed by the Association as hereinafter provided. If at least sixty-seven percent (67%) of the Members shall decide within sixty (60) days after such taking to replace any condemned Improvements, or any part thereof, on the remaining lands which are part of the Common Area, then the Board of Directors of the Association shall arrange for such replacements, and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the property is to be repaired or reconstructed; subject, however to the right hereby reserved to the Association, which may be exercised by a majority of the votes of the Members thereof, to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Members, or any one or more of them, in amounts disproportionate to their voting rights, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Members, or any one or more of them, as the Association may determine. If at least sixty-seven percent (67%) of the Members shall decide within sixty (60) days after such taking to not replace such Improvements, or if the taking is confined to Common Area or Restricted Common Area on which no Improvements have been constructed, then the Association shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of Improvements.

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

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

13.9 Member Addresses. Each Member agrees to keep the Association informed of its

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

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

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

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

13.13 No Exemption. No Owner or other party may exempt itself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Owner's Lot or Living Unit, or the Common Area or Restricted Common Area.

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

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

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

13.17 Reserved Declarant Rights. Declarant reserves the following development rights: (a) to add real estate to the Property in accordance with Section 3.2; (ii) to add Common Areas and Restricted Common Areas; (iii) to recombine Lots within the Property; (iv) prior to a conveyance of real estate to an Owner, to withdraw such real estate from the Property, subject to the approval of the Raleigh City Attorney or his or her deputy; (v) to create Lots and Living Units; (vi) to impose supplemental conditions, restrictions and changes upon newly annexed Property, including, without limitation, changes in Lot and building size restrictions for additional property annexed hereto in accordance with Section 3.2, subject to City of Raleigh approval; and (vii) to reallocate Lots and Living Units within the Property.

13.18 Density Limitation. The maximum number of Living Units that can be contained in this cluster unit development shall comply with applicable City of Raleigh zoning regulations.

13.19 Street Landscaped Islands. Street landscaped island(s) within the right(s)-of-way of public street(s) shall be the sole responsibility of the Association. Such street landscaped islands shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants shall be removed by the Association. Neither the City of Raleigh nor the State will be liable for any accidents or damage caused by such encroachment within the right(s)-of-way and the Association shall hold harmless the public and indemnify the City of Raleigh and State from such liability.

13.20 Maximum Land Area. The maximum land area which can be contained in this cluster unit development shall not exceed four hundred (400) acres.

{SIGNATURE PAGE ATTACHED}

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed under seal as of the _____ day of January, 2002.

MITCHELL MILL INVESTMENTS, LLC
~~SUNCREST VILLAGE LAND COMPANY~~

By:

A. Allen Duncil (SEAL)
A. Allen Duncil, Manager

CAPITOL HOMES, INC.

By:

Name: GLENN HARTMAN
Title: V.P.



HERITAGE CUSTOM HOMES, LLC

By:

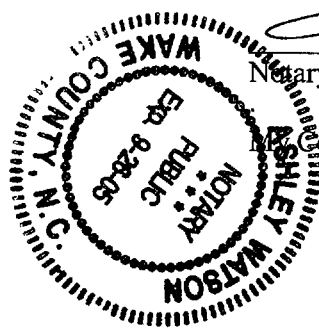
Name: STEPHEN YOUNG (SEAL)
Title: MANAGER

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that A. ALLEN DUNCIL, Manager of MITCHELL MILL INVESTMENTS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 10 day of JAN., 2002.



[Signature]
Notary Public

Commission Expires: _____

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned Notary Public of the aforesaid County and State, hereby certify that
Glenn Hartman personally came before me this day and acknowledged that (s)he is
Vice President of CAPITOL HOMES, INC., a North Carolina corporation, and that by authority
duly given and as the act of the corporation the foregoing instrument was signed in its name by its
Vice President.

Witness my hand and official stamp or seal, this the 2nd day of JANUARY, 2002.

Open S. Murdoch
Notary Public

My Commission Expires: 4/21/2006



STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that
STEPHEN H. YOUNG, Manager of HERITAGE CUSTOM HOMES, LLC, a North Carolina
limited liability company, personally appeared before me this day and acknowledged the due execution
of the foregoing instrument.

Witness my hand and official stamp or seal, this the 2ND day of JANUARY, 2002.

Charles A. Antonsen
Notary Public

My Commission Expires: JULY 31, 2005

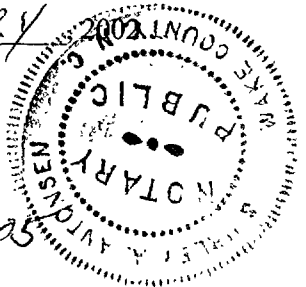


EXHIBIT A

DESCRIPTION OF PROPERTY

BEING all of Lots 1 through 39 and Lots 134 through 147, inclusive, Suncrest Village Subdivision, Phase One, containing 11.83 acres in the aggregate, as shown on plats recorded in Book of Maps 2001, Page 1059, Wake County Registry, and Book of Maps 2001, Pages 1067 and 1068, Wake County Registry.

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 009247 Page : 00047 - 00065

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



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

North Carolina - Wake County

The foregoing certificate S of _____

Lynn G Murdock
Shirley A Antonson

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

Laura M. Riddick, Register of Deeds

By: Dan Stewart
DEPUTY
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
19 New Time Stamp
of Pages

WAKE COUNTY, NC 176
 LAURA M RIDDICK
 REGISTER OF DEEDS
 PRESENTED & RECORDED ON
 10/11/2004 AT 10:42:01

BOOK:011053 PAGE:00554 - 00556

**DECLARATION SUBJECTING ADDITIONAL LAND IN SUNCREST VILLAGE
 TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
 RECORDED IN BOOK 9247, PAGE 47, AND RE-RECORDED IN BOOK 10964,
 PAGE 2330, WAKE COUNTY REGISTRY**

**PREPARED BY AND HOLD FOR:
 SANDMAN & ROSEFELDE-KELLER #169**

**STATE OF NORTH CAROLINA
 COUNTY OF WAKE**

THIS DECLARATION is made as of the 28 day of September, 2004, by MITCHELL MILL INVESTMENTS, LLC, a North Carolina limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property located in Wake County, North Carolina, and more particularly described as follows ("Phase Two"):

BEING all of Lots 40 through 54, Lots 56 through 83, Lots 105 through 119, and Lots 150 and 151, inclusive, and rights-of-way, Phase Two Suncrest Village Cluster Development, containing approximately 16.61 acres in the aggregate, as shown on plat recorded in Book of Maps 2004, Page 1886, Wake County Registry; and 1888

WHEREAS, Declarant wishes to subject Phase Two to that certain Declaration of Covenants, Restrictions and Easements recorded in Book 9247, Page 47, Wake County Registry, and re-recorded in Book 10964, Page 2330, Wake County Registry (the "Master Covenants"); and

WHEREAS, pursuant to Section 3.2 of the Master Covenants, Declarant is authorized to annex Phase Two to the Master Covenants, without the consent of the Members, since Phase Two is located adjacent to or across a public or private street from the Property (unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Master Covenants), and Declarant has developed Phase Two within ten (10) years after the date the Association is incorporated (January 15, 2002).

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be annexed to and held, transferred, occupied, used, sold and conveyed subject to all of the terms, requirements and conditions of the Master Covenants, the provisions of which are incorporated herein by this reference.

{SIGNATURE PAGE ATTACHED}

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed under seal as of the day and year first above written.

MITCHELL MILL INVESTMENTS, LLC

By: *A. Allen Duncil* (SEAL)
A. Allen Duncil, Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned Notary Public of the aforesaid County and State, hereby certify that A. ALLEN DUNCIL, Manager of MITCHELL MILL INVESTMENTS, LLC, a North Carolina limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal or stamp, this the 28th day of September, 2004.



Margaret W. Murphy
Notary Public

My Commission Expires: 5-23-09



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

North Carolina – Wake County

The foregoing certificate___ of Margaret W Murphy

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

Laura M. Riddick, Register of Deeds

By: George W. Paxon
DEPUTY
Assistant/Deputy Register of Deeds

This Customer Group

_____ # of Time Stamps Needed

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_____ New Time Stamp
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WAKE COUNTY, NC 400
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
02/05/2008 AT 15:36:10

BOOK:012941 PAGE:00115 - 00117

**DECLARATION SUBJECTING ADDITIONAL LAND IN
SUNCREST VILLAGE SUBDIVISION
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS RECORDED IN
BOOK 9247, PAGE 47, RE-RECORDED IN BOOK 10964, PAGE 2330, AND SUPPLEMENTAL
DECLARATION OF COVENANTS, ASSESSMENTS, CONDITIONS AND RESTRICTIONS
RECORDED IN BOOK 12941, PAGE 87, WAKE COUNTY REGISTRY**

**PREPARED BY AND HOLD FOR:
SANDMAN & ROSEFIELDE-KELLER #169**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

THIS DECLARATION is made this 4th day of January, 2008, by MITCHELL MILL INVESTMENTS, LLC, a North Carolina limited liability company ("Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain real property located in Wake County, North Carolina, and more particularly described as follows ("Phase Three"):

BEING all of Lots 84 through 103, Lots 120 through 133, Lots 148 and 149, inclusive, and rights-of-way, Suncrest Village Cluster Unit Development, Phase Three, containing approximately 7.82 acres in the aggregate, as shown on plat recorded in Book of Maps 2008, Page 217, Wake County Registry; and

WHEREAS, Declarant wishes to subject Phase Three to that certain Declaration of Covenants, Restrictions and Easements recorded in Book 9247, Page 47, Wake County Registry, and re-recorded in Book 10964, Page 2330, Wake County Registry (the "Master Covenants"); and

WHEREAS, Declarant also wishes to subject Phase Three to that certain Supplemental Declaration of Covenants, Assessments, Conditions and Restrictions recorded in Book 12941, Page 87, Wake County Registry (the "Phase 3 Utility Covenants") (the Master Covenants and the Phase 3 Utility Covenants shall hereinafter sometimes be referred to collectively as the "Covenants"); and

WHEREAS, pursuant to Section 3.2 of the Master Covenants, Declarant is authorized to annex Phase Three to the Master Covenants, without the consent of the Members, since Phase Three is located adjacent to or across a public or private street from the Property (unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Master Covenants), and Declarant has developed Phase Three within ten (10) years after the date the Association is incorporated (January 15, 2002).

NOW, THEREFORE, the Declarant hereby declares that the Property is and shall be annexed to and held, transferred, occupied, used, sold and conveyed subject to all of the terms, requirements and conditions of the Covenants, the provisions of which are incorporated herein by this reference.

{SIGNATURE PAGE ATTACHED}

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed under seal as of the day and year first above written.

MITCHELL MILL INVESTMENTS, LLC

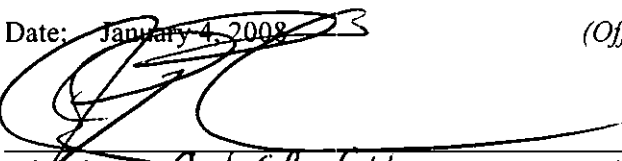
By:  (SEAL)
A. Allen Duncil, Manager

STATE OF NORTH CAROLINA

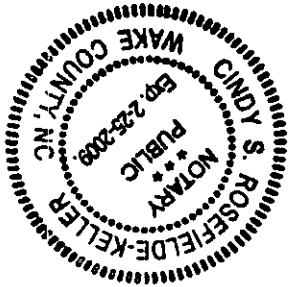
COUNTY OF WAKE

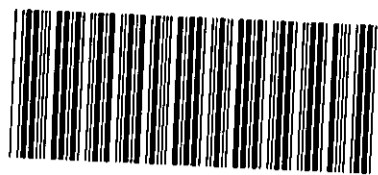
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: A. Allen Duncil, Manager of MITCHELL MILL INVESTMENTS, LLC, a North Carolina limited liability company.

Date: January 4, 2008 (Official Seal)


Printed name: Cindy S. Rosefelde Notary Public

My Commission Expires: _____





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

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