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WAKE COUNTY, NC 178
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/11/2004 AT 10:42:01

BOOK:011053 PAGE:00578 - 00595

**SUPPLEMENTAL DECLARATION OF COVENANTS, ASSESSMENTS, CONDITIONS AND
RESTRICTIONS FOR SUNCREST VILLAGE PHASES TWO AND THREE**

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

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

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

WITNESSETH:

WHEREAS, Declarant is the owner 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 (the "Property"); and

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WHEREAS, pursuant to the terms of the 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, which was recorded in Book 11053, Page 554, Wake County Registry, the Property is a part of the Suncrest Village Cluster Unit Development (the "Suncrest C.U.D.") and subject to the Declaration of Covenants, Conditions and Restrictions recorded in Book 9247, Page 47, Wake County Registry, as re-recorded in Book 10964, Page 2330, Wake County Registry (the "Master Covenants"); and

WHEREAS, Declarant is developing the Property as Phase 2 of the Suncrest C.U.D., also to be known as the "SUNCREST VILLAGE SUBDIVISION"; and

WHEREAS, in accordance with Section 13.17(vii) of the Master Covenants, Declarant wishes to subject the Property to the supplemental covenants, assessments, conditions and restrictions set forth herein (the "Stormwater Drainage Covenants") to provide for the continued maintenance and repair of the Stormwater Control Measures (hereinafter defined); and

WHEREAS, Declarant has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, SUNCREST VILLAGE UTILITY 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, mortgaged, transferred, sold, conveyed and occupied subject to these Stormwater Drainage Covenants.

**ARTICLES I
DEFINITIONS**

- 1.1. "Articles" means the Sub-Association's Articles of Incorporation.
- 1.2. "Board of Directors" means the Board of Directors for the Sub-Association.
- 1.3. "Bylaws" means the Sub-Association's Bylaws.
- 1.4. "City" means the City of Raleigh, North Carolina.
- 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 Suncrest Village Homeowners Association, Inc. (the "Master Association").
- 1.6. "Common Expenses" shall mean and include, as applicable, the costs and expenses referenced in Article VII of the Master Covenants.
- 1.7. "Declarant" means MITCHELL MILL INVESTMENTS, LLC, a North Carolina limited liability company, and its 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.
- 1.8. "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 these Stormwater Drainage Covenants.
- 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, sidewalks, poles, signs, and utility lines and facilities.
- 1.10. "Lot" means any numbered or lettered parcel of land (excluding fee simple Common Area and 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 these Stormwater Drainage Covenants, as it may be amended.
- 1.11. "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 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.

1.12. "Member" means every Person who holds membership in the Sub-Association.

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

1.14. "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.

1.15. "Property" is as defined above, but shall also include any annexations thereto of the real property described in Article III.

1.16. "Restricted Common Area" means all real property which is owned or leased by, or located in an easement granted to or reserved for, the Sub-Association and which has been designated by Declarant, the record owner of newly annexed land, or the Sub-Association as "Restricted Common Area", "Restricted Open Space", "permanently protected undisturbed open space", 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 Sub-Association. Restricted Common Area shall also mean and include the following: (a) all personal property owned or leased by the Sub-Association and designated for the common use and enjoyment of the Members of the Sub-Association; and (b) stormwater drainage pipes and related drainage improvements serving more than one (1) Lot and situated within the private drainage easements (collectively, the "Stormwater Control Measures"). All Restricted Common Area shall be subject to the terms and conditions of these Stormwater Drainage Covenants.

1.17. "Restricted Common Expenses" shall mean and include, as applicable, the costs and expenses referenced in Section 7.2 hereof, as well as the following: all sums lawfully assessed by the Sub-Association against its Members; expenses for maintaining, administering, repairing and replacing the Restricted Common Area; expenses declared to be Restricted Common Expenses by the provisions of these Stormwater Drainage Covenants or the Bylaws; casualty, liability, or such other insurance premiums as these Stormwater Drainage Covenants or the Bylaws may require that the Sub-Association purchase, or that the Sub-Association deems appropriate to purchase; ad valorem taxes and public assessment charges lawfully levied against the Restricted Common Area owned in fee simple; expenses of maintaining private drainage easements and facilities located within the boundaries of the Property, which cross Restricted Common Area, and/or serve both the Property and lands adjacent thereto; expenses of maintaining the Restricted Common Area so that it continues to effectively function for its intended use, and any dedication or conveyance of Restricted Common Area shall provide for such responsibility; and any other expenses determined by the Board of Directors or approved by the Members of the Sub-Association to be Restricted Common Expenses.

1.18. "Sub-Association" means SUNCREST VILLAGE UTILITY ASSOCIATION, INC., a North Carolina nonprofit corporation.

1.19. "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 Sub-Association with another organization, as provided for in its Bylaws, the Sub-Association's properties, rights and obligations may be transferred to another surviving or consolidated homeowners Sub-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 Sub-Association as a surviving corporation pursuant to a merger. The surviving or consolidated homeowners association may administer these Stormwater Drainage Covenants, 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 these Stormwater Drainage Covenants, as the same may be amended, 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 dwelling units or create additional Lots, prior approved density transfers within the cluster unit development may, in fact, preclude City of approval of additional dwelling units or further subdividing of Lots.

**ARTICLE III
ANNEXATION OF ADDITIONAL PROPERTIES**

3.1. Annexation by Members. Except as provided in Section 3.2, and subject to the approval, as may be required, of any governmental authority having jurisdiction over the Property, 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 these Stormwater Drainage Covenants. 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. Subject to the approval as may be required of any local governmental authority having jurisdiction over the Property, if within ten (10) years from the date the

Sub-Association was incorporated (August 16, 2004) 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 these Stormwater Drainage Covenants. No other action or consent shall be necessary.

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

ARTICLE IV MEMBERSHIP

Ownership of a Lot shall be the sole qualification for membership in the Sub-Association. The Sub-Association's Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

ARTICLE V VOTING RIGHTS

The Sub-Association may have the following two (2) classes of voting membership:

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

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

- (i) Declarant's written consent to termination; or
- (ii) When the total votes outstanding in Class A equal the total votes outstanding in Class B [provided, however, that Declarant shall retain its architectural review and approval rights under Article 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 Sub-Association (August 16, 2004).

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 these Stormwater Drainage Covenants.

ARTICLE VI PROPERTY RIGHTS IN RESTRICTED COMMON AREA

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

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

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

(c) The right of the Sub-Association to dedicate, sell or transfer all or any part of the 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. Except as otherwise provided in Article IX hereof, no such dedication, sale or transfer shall be effective unless it has been approved by four-fifths (4/5) of each class of Members and an instrument properly executed by the Sub-Association has been recorded in the Wake County Registry. On such instrument the Secretary of the Sub-Association shall certify that four-fifths (4/5) of each class of Members have approved the dedication, sale or transfer and that certificate shall be conclusive as to any grantee or its assigns; provided, however, that conveyances for general utility purposes as specified herein may be made by the Board of Directors without consent of the Members. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and regress to public and private streets and walkways.

(d) The Sub-Association shall have the right to exchange Restricted Common Area for other properties, subject to the approval, as may be required, of any governmental authority having jurisdiction over the Property. Section 10-3073(a)(2) of the Raleigh City Code requires, in part, that all exchanges be approved by its Planning Director.

(e) The right of the Sub-Association, with the approval of four-fifths (4/5) of each class of Members, to borrow money for the purpose of improving the Restricted Common Area, and the Improvements related thereto and, in aid thereof, to mortgage such properties; provided the rights of the mortgagees in such properties shall be subordinate to the Owners' Easement and the rights of the Sub-Association hereunder.

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

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

6.3. Title to the Restricted Common Area. Prior to the conveyance of the first Lot within the Property, Declarant shall dedicate and convey to the Sub-Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Restricted Common Area to the Sub-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 these Stormwater Drainage Covenants, including any amendments thereto and any applicable supplemental Declaration of Annexation.

ARTICLE VII COVENANT FOR MAINTENANCE ASSESSMENTS

7.1. Lien of Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Sub-Association: (a) annual assessments or charges (the "Annual Assessments"), and (b) special assessments for extraordinary maintenance and capital improvements (the "Special Assessments"), all as hereinafter provided (collectively, the "Assessments"; and each an "Assessment"). The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Board of Directors and may be collected on a monthly, quarterly, semiannual or yearly basis, as determined by the Board of Directors. The Assessments shall be charged to each Owner of a Lot in Use. The Assessments, together with interest, late fees, and costs of collection (including reasonable attorneys' fees), shall be a lien upon the applicable Lot from the due date for therefore, as set by the Board of Directors, continuing until paid in full. Each such Assessment, together with interest, late fees and costs of collection (including reasonable attorneys' fees), shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for the delinquent Assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Sub-Association shall also have the authority, through the Board of Directors, to establish, fix and levy a Special Assessment on any Lot to secure the liability of the Owner thereof to the Sub-Association arising from breach by such Owner of any of the provisions of these Stormwater Drainage Covenants.

Each Owner covenants for itself, its heirs, successors and assigns, to pay each Assessment levied by the Sub-Association on each Lot conveyed to such Owner within ten (10) days of receipt of an invoice

for the same; and if such charge shall remain unpaid for thirty (30) days or longer from the date that the 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 Sub-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 when a claim of lien is filed of record in the office of the Clerk of Superior Court of Wake County, in accordance with N.C.G.S. Section 47F-3-117, and shall continue to be such a lien until fully paid.

7.2 Purpose of Assessments. The Assessments levied by the Sub-Association shall be used exclusively to promote the beautification of the Property, the recreation, health, safety and welfare of the Owners, and to maintain, landscape and repair the Restricted Common Area and the Improvements related thereto, including, without limitation, the Stormwater Control Measures, which facilities shall be operated and maintained by the Sub-Association in strict compliance with the operations and maintenance manual attached as Exhibit "A" to the Stormwater Lump Sum Escrow Protection Easement and Access Maintenance Agreement recorded contemporaneously with these Stormwater Drainage Covenants in the Wake County Registry and incorporated herein by this reference, as required by the City Code. If the Sub-Association neglects or fails to maintain, repair, replace or reconstruct the Stormwater Control Measures, each Owner shall be jointly and severally responsible for such tasks, as required by the City, and pay the Common Expenses which shall include, without limitation, taxes and assessments levied against the Restricted Common Area owned by the Sub-Association in fee simple, all insurance premiums required hereunder (including, without limitation, casualty, liability and fidelity bond premiums), Sub-Association operational costs, management fees, if any, the enforcement of these Covenants and the rules of the Sub-Association, the employment of counsel, engineers, accountants and other professionals for the Sub-Association when necessary, the cost of landscaping, maintaining and repairing the Restricted Common Area, the bidding at foreclosure sales as set forth in Section 7.9, and the cost of such other needs as may arise. Common Expenses shall also include replacement payments to the City, pursuant to the terms of the Stormwater Lump Sum Escrow Protection Easement and Access Maintenance Agreement by and among the Declarant, the Sub-Association and the City, recorded contemporaneously with these Stormwater Drainage Covenants in the Wake County Registry, for the continued maintenance of the Stormwater Control Measures (the "Stormwater Agreement"). The Sub-Association may maintain a reserve fund for periodic maintenance, repair, and replacement of the Restricted Common Area and the Improvements thereto.

7.3 Annual Assessments.

(a) On or before December 1st of each year, the Board of Director's shall adopt a proposed budget for the Sub-Association and set the amount of the regular annual assessment against the Lots for the upcoming Annual Assessment Period. The annual proposed budget for the Sub-Association shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period - the "Anticipated Annual Assessments") and anticipated costs for the Sub-Association for the upcoming Annual Assessment Period. The Anticipated Annual Assessments for the proposed budget which is approved by the Owners in accordance with the terms hereof (the "Budget") shall be the basis for calculating the Annual Assessment to be charged each Owner for the upcoming Annual Assessment Period. Within thirty (30) days after adoption of the proposed budget, the Board of Directors will provide to all Owners a summary of the proposed budget and a written notice (the "Budget Meeting Notice") of the meeting to consider the ratification of the proposed budget (the "Budget Meeting"). The Budget Meeting Notice shall include a statement that the proposed budget may be ratified without a quorum, unless otherwise provided by law. The Budget Meeting Notice shall also be delivered at least ten (10) days, and not more than sixty (60) days, in advance of the Budget Meeting.

(b) Notwithstanding the above to the contrary:

(i) Through and including January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment per Lot shall be Fifty and No/100 Dollars (\$50.00) per Lot in Use.

(ii) If the proposed budget does not recommend increasing the annual assessment by more than ten percent (10%) above the annual assessment in the last Budget, the proposed budget will be ratified unless at the Budget Meeting the Owners of eighty percent (80%) of the Lots reject the proposed budget. If the proposed budget is rejected, the last Budget shall continue until a new proposed budget is ratified. The due dates for the assessments will be established by the Board of Directors.

(iii) An annual increase in the Annual Assessments of more than ten percent (10%) shall require the approval of at least two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting call for this purpose. 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 Sub-Association is authorized to participate under these Stormwater Drainage Covenants or its Articles or Bylaws.

7.4 Working Capital. In addition to the regular Assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of each Lot by Declarant to that Lot Owner, pay to the Sub-Association a sum equal to two (2) months Assessment on that Lot as additional working capital of the Sub-Association. These amounts need not be segregated, but may be commingled with regular Assessment funds. This working capital Assessment shall be paid by the Lot Owner notwithstanding the fact that Declarant may have made prior regular Assessment payments to the Sub-Association on the Lot being sold in accordance with the provisions hereof.

7.5 Special Assessments for Capital Improvements. In addition to the Annual Assessments authorized above, the Sub-Association may levy, in any Annual Assessment Period, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital Improvement upon the Restricted Common Area, or any other unexpected expense for which the Sub-Association is responsible, provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

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

7.7 Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots in Use or Lots, as may be applicable.

7.8 Date of Commencement of Annual Assessments/Due Dates/Estoppel Certification. The Annual Assessments shall commence as to a Lot on the first day of the month following the date it becomes a Lot in Use. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of each Annual Assessment Period. The due date of the Annual Assessment shall be established by the Board of Directors. Within ten (10) days after receipt of a written request, the Sub-Association shall furnish a certificate in writing signed by an officer of the Sub-Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board 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 Sub-Association. Any Assessments which are not paid when due shall be delinquent. The Sub-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 remains unpaid for thirty (30) days or longer 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 Sub-Association may bring an action at law against the responsible Owner and/or file a claim of lien in the Office of the Clerk of Superior Court of Wake County, as set forth in N.C.G.S. Section 47F-3-116, and foreclose the lien against the applicable Lot. 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, expressly vests in the Sub-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 Sub-Association in a like manner as a mortgage or a deed of trust lien on real property under Article 2A of Chapter 45 of the North Carolina General Statutes. Each Owner also expressly grants to the Sub-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 Sub-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 Lot. No Owner may waive or otherwise escape liability for assessments by non-use of the Restricted Common Area or by abandonment of its Owner's Lot.

7.10 Subordination of the Lien of Assessments to Mortgages and Ad Valorem Taxes. The lien of the Assessments shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes on a Lot. Except as may otherwise be provided hereinbelow, the sale or transfer of any Lot shall not affect the Assessment lien. Provided the Sub-Association is given prior written notice thereof, the sale or transfer of a Lot pursuant to the foreclosure of such mortgage or tax lien, 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. In no event, however, shall a sale or transfer relieve the Owner of any such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

7.11 Exempt Property. All Lots dedicated to and accepted by a local public authority, 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.

7.12 City Assessments for Stormwater Agreement. The City shall have the right to impose assessments to pay any sums owed by the Sub-Association to the City pursuant to the Stormwater Agreement. The payment of such assessment will be secured by a lien against the Property upon the filing of a claim of lien by the Sub-Association or the City, as the assignee of the Sub-Association's lien

rights. The granted lien rights shall be foreclosed in like manner as a mortgage on real property pursuant to the power of sale under Article 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the Office of the Clerk of Superior Court of Wake County, which claim shall state the description of the Property or Lot encumbered thereby, the name and address of the Sub-Association, the record owners of the encumbered Property at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be recordable at any time after default, and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is recorded, plus interest at the rate of eight percent (8%), collection costs, and reasonable attorneys' fees. City lien claims shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

ARTICLE VIII EASEMENTS

8.1 Sub-Association Easements. An easement is granted to the Declarant (as long as Class B membership exists) or the Sub-Association, its officers, agents, employees, independent contractors, and to any management company retained by the Sub-Association to enter in or to cross over the Restricted Common Area. In addition, every Lot shall be subject to an easement for entry by the Declarant (as long as Class B membership exists) or the Sub-Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any Improvement to or portion of the Restricted Common Area, including the Stormwater Control Measures. The Declarant (as long as Class B membership exists) or the Sub-Association, its officers, agents, employees, or independent contractors shall have a right and easement over, across, under and upon those portions of the Property on which the Stormwater Control Measures are located for purposes of constructing, maintaining, repairing, replacing and reconstructing such facilities. The Declarant (as long as Class B membership exists) and the Sub-Association shall have the power and authority to grant and establish upon, over, under and across 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.

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

8.4 Temporary Construction Access and Disturbance Easement. A temporary easement over, through and to the 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 Sub-Association may restore the land to the required condition and that Person shall indemnify the Sub-Association for the reasonable expense incurred in performing that restoration. This easement shall be restricted to that Restricted Common Area which shall be reasonably servient and proximate to the property upon which the construction is taking place.

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

8.6 Governmental Easements.

(a) Declarant reserves an easement for the benefit of the appropriate governmental entity over all 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, animal control, garbage, mail delivery, ambulance, and all similar Persons to enter the Restricted Common Area in the performance of their duties.

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

**ARTICLE IX
INSURANCE**

9.1 Coverage. The Sub-Association shall obtain a broad-form public liability policy covering all Restricted Common Area and all damage or injury caused by the negligence of the Sub-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). All such insurance shall be written in the name of the Sub-Association. This insurance may include coverage against vandalism. All Persons responsible for or authorized to expend funds or otherwise deal in the Sub-Association's assets shall first be bonded by a fidelity insurer to indemnify the Sub-Association for any loss or default in the performance of their duties. The Sub-Association shall also obtain such other insurance coverage as it deems desirable and necessary.

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

terminated.

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

9.4 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 Sub-Association.

ARTICLE X GENERAL PROVISIONS

10.1 Enforcement and Remedies. Declarant (as long as Class B membership exists), the Sub-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 these Stormwater Drainage Covenants. Failure by the Declarant (as long as Class B membership exists), the Sub-Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event of any default in and/or breach of any of the terms, conditions and provisions of these Stormwater Drainage Covenants (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The rights and remedies provided by these Stormwater Drainage Covenants are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.2 Failure to Maintain Stormwater Control Measures. Failure to maintain, repair, replace or reconstruct the Stormwater Control Measures as herein required are a violation of the City Code potentially subjecting each Owner to daily civil penalties and other enforcement actions.

10.3 Severability of Provisions. If any paragraph, section, sentence, clause or phrase of these Stormwater Drainage Covenants 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 these Stormwater Drainage Covenants 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.

10.4 Duration and Amendments.

(a) These Covenants shall run with the land for a term of thirty (30) years from the date of their recording and shall inure to the benefit of the Sub-Association, Declarant (so long as Class B membership exists), and any Owner, and their respective legal representatives, heirs, successors and assigns. These Covenants shall thereafter automatically be extended for successive periods of ten (10) years each unless terminated or amended by an instrument signed by Owners of not less than seventy-five percent (75%) of the Lots.

(b) Notwithstanding the foregoing, Declarant shall have the right, as long as Class B membership exists, to amend these Stormwater Drainage Covenants 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 and Improvements thereto for

mortgage or improvement loans made, insured or guaranteed by a government agency; or (iii) to comply with the requirements of laws or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina regarding purchase or sale of such Lots and Improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, a governmental authority having jurisdiction over the Property, 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 to these Stormwater Drainage Covenants shall become effective until submitted to and approved in writing by the Raleigh City Attorney or his/her deputy.

(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 Restricted Common Area, and amendment of these Stormwater Drainage Covenants.

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

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

(ii) attach the following certification:

CERTIFICATION

By authority of its Board of Directors, SUNCREST VILLAGE UTILITY ASSOCIATION, INC., certifies that the foregoing instrument has been duly executed by the Owners of seventy-five percent (75%) of the Lots subject to these Stormwater Drainage Covenants and is therefore a valid amendment to the Covenants recorded at Book _____ Page _____, Wake County Registry.

SUNCREST VILLAGE UTILITY ASSOCIATION, INC.

By: _____ (SEAL)
_____ President

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

10.5 Availability of Documents. The Sub-Association will have current copies of the Stormwater Drainage Covenants, Bylaws, and other rules concerning the Subdivision, as well as the Sub-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.

10.6 Casualty. Any portion of the Restricted Common Area Improvements, if any, which is damaged or destroyed by casualty shall be repaired or replaced promptly by the Sub-Association, unless (a) the Subdivision is terminated, (b) repair or replacement would be illegal under any applicable health or safety statute or ordinance, or (c) the Stormwater Control Measures are no longer required by the City of Raleigh. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Restricted Common Area Improvements is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Restricted Common Area Improvements will be used to restore the damaged area to a condition compatible with the remainder of the Subdivision, and (ii) the remainder of the proceeds will be distributed to all Owners or first mortgagees, as their interests may appear, in proportion to the Common Expense liabilities of all the Lots.

10.7 Condemnation. Whenever all or any part of the 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 Sub-Association. Unless required by law to maintain the Stormwater Control Measures at the time of such taking, any award made therefore shall be disbursed by the Sub-Association as hereinafter provided. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such taking to replace any condemned Improvements, or any part thereof, on the remaining lands which are part of the Restricted Common Area, then the Board of Directors of the Sub-Association shall arrange for such replacements, and the Sub-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 Sub-Association, which may be exercised by a majority of the votes of the Members thereof, to provide for the disbursement by the Sub-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 Sub-Association may determine. If Members entitled to cast sixty-seven percent (67%) of the votes of each class of Members shall decide within sixty (60) days after such taking to not replace such Improvements, or if the taking is confined to Restricted Common Area on which no Improvements have been constructed, then the Sub-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.

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

10.9 Voting. Voting by Members of the Sub-Association shall be in accordance with the applicable provisions set forth in the Stormwater Drainage Covenants and the Sub-Association's Bylaws.

10.10 Member Addresses. Each Member agrees to keep the Sub-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 Sub-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.

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

10.12 Captions. The captions and headings which have been used throughout these Stormwater Drainage Covenants are for convenience only and are not to be used in construing these Stormwater Drainage Covenants or any part thereof.

10.13. Number and Gender. Whenever the context of these Stormwater Drainage Covenants requires, the singular shall include the plural and one gender shall include all.

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

10.15 Conflict Between Stormwater Drainage Covenants and Articles of Incorporation. Whenever there exists a conflict between the provisions of these Stormwater Drainage Covenants and the Articles or Bylaws, the provisions of these Stormwater Drainage Covenants shall control, and whenever there is a conflict between the provisions of the Articles and Bylaws, the Articles shall control.

10.16 Governing Law. These Stormwater Drainage Covenants 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.

10.17 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 these Stormwater Drainage Covenants or under any amendment thereto.

10.18 Reserved Declarant Rights. Declarant reserves the following development rights: (a) to add real estate to the Property in accordance with Section 3.2; (b) to add Restricted Common Areas; (c) to recombine Lots within the Property; (d) prior to a conveyance of a Lot to an Owner, to withdraw such Lot from the Property, subject to the approval of any governmental authority having jurisdiction over the Property; (e) to create Lots; (f) 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 the approval of any governmental authority having jurisdiction over the Property; and (g) to reallocate Lots within the Property.

10.19. Permanently Protected Undisturbed Open Space Areas. Within permanently protected undisturbed open space areas, no land disturbing activity, placement of impervious surface, removal of vegetation, encroachment, construction of any structure shall occur, except in accordance with a watercourse buffer permit first being issued by the City.

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

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed under seal as of the _____ day of September, 2004.

DECLARANT:

MITCHELL MILL INVESTMENTS, LLC

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

STATE OF NORTH CAROLINA

COUNTY OF WAKE

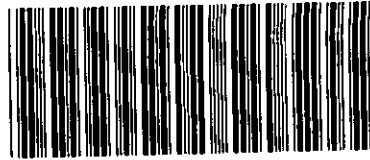
I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that A. ALLEN DUNCIL, Manager of MITCHELL MILL INVESTMENTS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

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



M. W. Murphy
Notary Public

My Commission Expires: 5-23-2009



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



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

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 Pevon
Assistant/Deputy Register of Deeds

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