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WAKE COUNTY, NC 587
LAURA M RIDDICK
REGISTER OF DEEDS
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THE SANCTUARY
**DECLARATION
OF
COVENANTS, CONDITIONS
AND RESTRICTIONS**

Return To:

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Carlton, PLLC
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P. O. Box 10669
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WAKE COUNTY

NORTH CAROLINA

THIS DECLARATION FOR THE SANCTUARY made as of this 10th day of December, 2004, by ZG Partners, LLC, a North Carolina limited liability company (the "Declarant").

WHEREAS, Declarant is the owner of certain real property located in or near the City of Raleigh, Wake County, North Carolina, as more particularly described on Exhibit A attached hereto and hereby incorporated by reference (the "Property"); and

WHEREAS, Declarant desires to create a single-family community on the Property also commonly known as The Sanctuary in accordance with the terms of the North Carolina Planned Community Act codified in Chapter 47F of the North Carolina General Statutes, as amended (the "Act").

NOW, THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed, occupied, used, mortgages or transferred subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the Property in accordance with the Act, and which shall run with the real property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration or in any amendment or Supplementary Declaration thereto (unless the context otherwise shall prohibit), shall have the following meanings:

1.1 **Act**. The North Carolina Planned Community Act codified in Chapter 47F of the North Carolina General Statutes, as amended, and succession statutes in substitution and replacement thereof; specific statutory citations referenced herein are for convenience only and as such exist in the North Carolina General Statutes on the date hereof.

1.2 **Articles of Incorporation**. The articles of incorporation of the Association as on file with the North Carolina Secretary of State and all amendments hereinafter filed.

1.3 **Association**. The Sanctuary Community Association, Inc., a North Carolina nonprofit corporation, its successors and assigns; subject to the Special Declarant Rights, the Association shall have all powers set forth in section 47F-3-102 of the Act.

1.4 **Bylaws.** The bylaws of the Association as they now or hereafter exist.

1.5 **Builder.** A building contractor approved by the Declarant holding title to a Lot for the purpose of constructing a single-family home thereon for sale to the general public in the ordinary course of business.

1.6 **Common Elements.** Any real property, fixture or improvement within the Community owned or leased by the Association other than a single-family home and required open space areas, common areas, drainage easements & facilities, sidewalks, water or sewer lines serving more than 1 lot and located outside public street right-of-way or City of Raleigh utility easement as designated on any recorded plat of the Community and any other real property acquired by the Association for the benefit of the Members, together with all improvements and facilities located thereon and dedicated to the common use, benefit and/or enjoyment of the Members only.

1.7 **Common Expenses.** Expenditures made by or financial liabilities of the Association, together with any allocation to:

- A. Expenses for the administration maintenance, repair, improvement, reconstruction, and replacement of the Common Elements.
- B. Property and liability insurance premiums.
- C. Ad valorem taxes and public assessment charges lawfully levied against the Common Elements owned in fee simple by the Association.
- D. Utilities used in connection of the Common Elements
- E. Unpaid assessments following the foreclosure of a first mortgage or first deed of trust.
- F. Expenses pursuant to the terms and provisions of any encroachment agreement where the Association and the City of Raleigh are parties.
- G. Expenses declared to be Common Expenses by the provisions of this Declaration or bylaws.

1.8 **Common Expense Liability.** The liability for Common Expenses allocated to each Lot as permitted by the Declaration, the Act or otherwise by law.

1.9 **Community.** The real property hereby or hereinafter subject to this Declaration and the jurisdiction of the Association, which property will be collectively known and advertised as "The Sanctuary".

1.10 **Community Property.** Collectively, the Common Elements and any personal property, now or hereafter owned by the Association for the common use and enjoyment of the Members.

1.11 **County Registry.** The records of the Office of the Wake County Register of Deeds.

1.12 **Declarant.** ZG Partners, LLC, a North Carolina limited liability company and its successors and assigns pursuant to a written assignment of Special Declarant Rights duly recorded in the County Registry (collectively the Company), and any agent or agents appointed by the Company to act on its behalf for the purpose of administering or enforcing, in whole or in part, the rights reserved to the Declarant in this Declaration.

1.13 **Declarant Control Period.** The period commencing on the date hereof and continuing until the earlier of: (i) six (6) months following the conveyance of the last single-family lot and single-family home in the Community from Declarant or Builder to a consumer-Occupant purchaser, or (ii) the date the Declarant surrenders the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and filed by Declarant in the County Registry.

1.14 **Executive Board or Board.** The body designated herein to act on behalf of the Association in

accordance with the terms of the Declaration and the Bylaws and the definition of "Executive Board" set forth in Section 47F-1-103(13) of the Act.

1.15 Improvements. For the purposes of Article XIII Improvements shall mean and refer to all (i) buildings, (ii) Single-family homes, (iii) outbuildings, (iv) storage sheds or areas, (v) roofed structures, (vi) parking areas, (vii) fences and screens, (viii) walls, (ix) signs, (x) hedges and mass plantings of trees and shrubs, (xi) decks, (xii) driveways, (xiii) changes in grade or slope, (xiv) lot preparation, and (xv) exterior construction or exterior improvements exceeding \$500.00 in cost not included in any of the foregoing, but expressly excluding garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expended in accounting practice and which does not change exterior colors or exterior appearances, but does include both original Improvements and all later changes to such Improvements. When the word improvement appears in this document without capitalization it shall have that meaning attributed to such word under state property law.

1.16 Lot. Any separately numbered lot or parcel of Community land (*regardless of size*) shown on an approved subdivision plat of the Community duly recorded in the Wake County Registry.

1.17 Maintain or Maintenance (or any substantially similar term used in this Declaration, when applied to a power or duty of the Declarant or Association). The right to improve, repair, and replace the improvement, property or other item which is the subject thereof.

1.18 Eligible Mortgagee. An institutional lender holding a first mortgage or deed of trust encumbering a Single-family lot (an "Eligible Mortgage"). When any right is to be given to an Eligible Mortgagee, such right shall also be given to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participation in purchasing or guaranteeing such mortgages.

1.19 Member. All those Owners who are members of the Association as defined in Section 3.1 hereof.

1.20 Mortgagee. The holder of a Mortgage.

1.21 Occupant. Any Person or Persons in possession for any period of time of any portion of a Lot including Owners, and their family members, lessees, guests, invitee and licensees of such person or person, and family members, guests and invitee of such lessees.

1.22 Owner. The record owner, whether one or more Persons of the fee simple title to any Lot including contract sellers, but excluding (i) any Person holding such interest merely as security for the performance or satisfaction of any obligation, and (ii) any Lessee or tenant of an Owner.

1.23 Person. A natural person, a corporation, partnership (general or limited), limited liability company, registered limited liability partnership, association trust, or other legal entity, or any combination thereof.

1.24 Reasonable Attorney Fees. Attorneys' fees reasonably incurred without regard to any limitations on attorneys' fees pursuant to subsection 47F-1-103(26) of the Act.

1.25 Rules and Regulations. Those written actions of the Board, duly adopted, and any amendments thereto consistent with this Declaration, and any Supplementary Declaration, the purpose of which is to interpret and apply the provisions of the Declaration and the Bylaws and to establish and prescribe the administration and management of the Community and the use, operation, and management of the Common Elements and the improvements and facilities located thereon.

1.26 Supplementary Declaration. An amendment or supplement to this Declaration, first approved by the City Attorney's Office of the City of Raleigh, and then duly recorded in the County Registry, which subjects additional real property to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

1.27 Special Declarant Rights. During the Declarant Control Period pursuant to subsection 47F-1-103(28) of the Act, rights reserved for the benefit of the Declarant including, without limitation, any right (i) to complete improvements indicated on plats and plans on file with the Declarant; (ii) to exercise any development rights; (iii) to maintain sales offices and construction models, management offices, and signage advertising the Community; (iv) to use easements through the Common Elements for the purpose of making Improvements within the Community; (v) to make the Community part of a larger planned community or group of planned communities; or (vi) to appoint or remove any officer or Association Board member.

1.28 Total Association Vote. All of the votes attributable to Members (including votes of Declarant) and the consent of Declarant during the Development Period.

1.29 Single-family home. An individual building hereinafter referred to as a "*Single-family home*"; each Single-family home shall be constructed on a separate lot

1.30 Single-family Lot. A Lot intended for or upon which is or will be constructed a Single-family home.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.1 Property Hereby Subjected To This Declaration. The real property described in Exhibit A attached hereto and hereby incorporated by reference shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered, subject to the covenants, restrictions, and benefits and conditions of this Declaration.

2.2 Annexation of Additional Properties.

- a. At any time prior to June 30, 2005, additional land within the property described in Exhibit B to this Declaration (hereinafter the "Exhibit B Property") may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed. Any of all of the Exhibit B Property may be annexed and subjected to this Declaration as one parcel or as several parcels at different times.

- b. Any property to be annexed pursuant to this Section 2 must be contiguous to property already subject to this Declaration and must be approved by the City of Raleigh and, if required, by the Federal Housing Administration and/or Veterans Administration. The supplementary declaration shall be approved by the Raleigh City Attorney or his/her deputy prior to recordation. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and , therefore, may alter the relative maximum voting strength of the various types of Members.
- c. Prior to the conveyance of the first Lot within any newly annexed property to an Owner, the owner of the annexed property shall convey to the Association all Limited Common Area located within the newly annexed property. Title to such Limited Common Area shall be conveyed in the same manner a set forth in Section 3 of Article IV of this Declaration.

2.3 Declarant's Conveyance of Community Property. The Declarant may transfer or convey the Association any community property, including personal property and improved or unimproved real property, leasehold, easement, or other property interest. Such conveyances shall be accepted by the Association, and the property shall thereafter be Community Property to be maintained by the Association for the benefit of all or a part of the Members. Declarant shall not be required to make any improvements whatsoever to the property conveyed and accepted pursuant to this section 2.2.

2.4 Declarant's Right to Change Development. With the approval of the City of Raleigh, and subject to such terms and conditions as the City of Raleigh may impose, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Limited Common Area, and reallocate units within, and withdraw real property from the development.

ARTICLE III

**ASSOCIATION MEMBERSHIP, VOTING RIGHTS
ASSOCIATION MANAGEMENT AND DECLARANT CONTROL**

3.1 Membership. Every Person who is a record fee simple owner of a Lot subject hereby to assessments of the Association shall be a member of the Association. Ownership of a Lot shall be the sole qualification for membership.

3.2 Voting. The Association shall have two (2) classes of voting membership. Members are thus divided into classes for the sole purpose of computing voting rights and, except as otherwise specifically set forth in this Declaration, shall not vote as a class.

3.2.1 Class A Membership. Class "A" Membership shall be composed of all Owners, with the exception of the Declarant; each such owner shall be entitled to one (1) vote for each Lot owned.

3.2.2 Class B Membership. Class "B" Membership shall be composed solely of the Declarant whose voting rights shall be equal to the total of three (3) votes for each vote held by all Class "A" Owners. The Class "B" membership shall cease upon the end of the Declarant Control Period.

3.2.3 Voting for Multiple Owners. Pursuant to section 47F-3-110 of the Act, if only one of the multiple Owners of any Lot is present at an Association meeting, the Owner present is entitled to cast all the votes allocated to his Lot. If more than one of the multiple owners is present, the votes allocated to such Lot may be cast only in accordance with the agreement of the majority of such multiple owners; such majority agreement shall be conclusively presumed if any one of the multiple owners casts the allocated votes without protest being made promptly to the person presiding over the meeting by any of the other multiple owners.

3.2.4 Majority Vote. Except as otherwise provided in the Declaration, the Articles of Incorporation, the Bylaws, or the Act and provided all applicable quorum requirements are complied with, any Association action requiring the approval of the Members shall require the vote or written assent of a majority of the Total Association Vote.

3.2.5 Proxies. Proxy votes shall be permitted at any regular or special meeting of the Association in accordance with the provision of section 47F-3-110 of the Act.

3.2.6 Quorum Reductions. Pursuant to subsection 47F-3-109 (c) of the Act in the event any business cannot be conducted at any Association meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or the Bylaws, the quorum requirement at the next meeting shall be fifty percent (50%) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

3.2.7 Suspension of Voting Rights. The right of any Member to vote may be suspended by the Executive Board pursuant to section 4.2.4 hereof.

3.3 Declarant Control. Pursuant to its Special Declarant Rights as defined in the Act, the

Declarant hereby retains the right to appoint and remove any member or members of the Executive Board and any officer or officers of the Association until the end of the Declarant Control Period.

3.4 Professional Management of the Association. The management and obligations of the Association may be delegated to a professional management organization in the discretion of the Declarant during the Declarant Control Period, and thereafter by the Executive Board by majority vote. Any professional management contract shall be reasonable as to term, compensation and termination. During the Declarant Control Period all contracts with any professional management organization shall include a right of termination without cause or penalty upon ninety (90) days advance notice and without penalty at any time after the end of the Declarant Control Period pursuant to section 47F-3-105 of the Act.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

4.1 Members' Easements of Enjoyment in Common Element. Every Member shall have a perpetual right and easement of ingress and egress, use and enjoyment in and to the Common Elements and facilities located thereon which shall be appurtenant to and shall pass with title to the Lot. Subject to the terms of this Declaration, any Member may delegate such right of use and enjoyment (in and to the Common Elements and facilities thereof) to his Occupants or to the members of his family, his tenants, guests and invitees and shall be deemed to have made a delegation of all such rights to all the Occupants of such Owner's Lot if leased.

4.2 Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following rights and restrictions.

4.2.1 Security Interest. The right of the Association, in accordance with the Bylaws and section 47F-3-112 of the Act, to subject all or any portion of the Common Elements to a security interest; provided, however in the case of any Common Elements no such interest shall be effective unless such encumbrance has been approved by at least eighty percent (80%) of the Total Association Vote. Any security interest given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of (i) Declarant, (ii) any Member, or (iii) any Eligible Mortgagee. Any provision in any Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the Mortgagee thereof shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of (i) Declarant, (ii) any Member, or (iii) any Eligible Mortgagee. Proceeds of the financing secured in accordance with this section 4.2.1 shall be an asset of the Association.

4.2.2 Protection from Foreclosure. The right of the Association to take such steps as are reasonably necessary to protect the properties encumbered pursuant to section 4.2.1 against foreclosure.

4.2.3 Suspension of Member Rights. The right of the Executive Board (or an adjudicatory panel appointed thereby) pursuant to the mandatory provisions and procedures of section 47F-3-107.1 of the Act to fine any Member or to suspend any Member's voting rights and/or a Member's right to use Community facilities, if any, (i) for any period during which any assessment levied against such Member's Lot remains unpaid, and (ii) for a reasonable period of time in the case of an infraction of the Declaration, Bylaws, or the Rules and Regulations. Such suspension, however, shall not constitute a waiver or discharge of the Member's continuing obligation to pay any assessments; provided, however, that the Association shall not suspend a

Member's right to use any Community roads, parking, sidewalks, drainage facilities or rights of way for ingress, egress and regress.

4.2.4 Transfer to Utility. The right of Declarant or the Association to dedicate or transfer to any public or private utility, any drainage or utility, or access easements, on any part of the Common Elements.

4.2.5 Rights of Conveyance and Transfer. None of the required open space common areas may be subdivided. Required open space common areas may be mortgaged and exchanged under certain conditions.

4.2.6 Exchange of Common Elements. The rights of the Association, as provided by and consistent with the provisions of Section 10-3073(a)(2) of the Raleigh City Code as same may be amended from time to time, to exchange all or part of the Limited Common Elements for other property and consideration of like value and utility, which exchange shall be approved by the City of Raleigh Planning Director. In any instance in which approval of the Members is required for an exchange, such approval may be given by the affirmative vote of a majority of the Members present and voting at a meeting of the Members called, at least in part, for the purpose of approving such exchange.

ARTICLE V

ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation for Assessments.

5.1.1 Covenant of Payment. Declarant covenants and each Owner of a Lot subject to this Declaration (whether or not it shall be so expressed in such Owner's deed or other instrument of conveyance), is deemed to covenant and agrees to pay to the Association (in an amount sufficient to maintain and operate Common Elements required by law) (i) annual assessments or charges, and (ii) special assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

5.1.2 Creation of Lien. Pursuant and subject to section 47F-3-116 of the Act, any annual or special assessments levied against a Lot (or undivided interest therein) and remaining unpaid for thirty (30) days or longer from the time such sum is due and payable, shall be a lien on that Lot and shall be deemed a continuing lien thereon when a claim of lien is filed of record in the Office of the Wake County Clerk of Superior Court. Each such assessment, together with interest, late charges, and costs, and Reasonable Attorneys' Fees incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or person who was the Lot Owner at the time such assessments became due; provided, however, that the personal obligation of an Owner for delinquent assessments shall not pass to his successors in title.

5.1.3 Taxes. The HOA is required to pay local taxes on common elements and to pay for public and private capital improvements made to or for the benefit of the Common Elements.

5.2 Purpose of Annual Assessments. The annual assessments levied by the Association in accordance with the terms of this Article shall be used exclusively for (i) the improvement, maintenance, enhancement, enlargement, administration and operation of the Common Elements and Community Property including without limitation private roads, streets and rights of way; (ii) the provision of services which the Association is authorized to provide; (iii) for payment of the permissible or required expenses of the Association, including without limitation, the procurement and maintenance of liability and hazard insurance in accordance

with Article VI of this Declaration and section 47F-3-113 of the Act; (iv) expenses to be declared Common expenses by the provision of the Declaration, the Bylaws or the Act.

5.3 Adoption and Ratification of Annual Budget.

5.3.1 The Proposed Budget. By majority vote, the Executive Board shall adopt an annual budget for the subsequent operational year which shall provide for the allocation of expenses and assessment rates in such manner that the obligations imposed by this Declaration and any and all Supplementary Declarations will be met (the "Annual Budget").

5.3.2 Ratification of Proposed Budget. Pursuant to subsection 47-3-103(c) of the Act within thirty (30) days after adoption of the Annual Budget, the Executive Board shall provide all Members with a summary of such budget, and a notice of a meeting to consider its ratification, including a statement that the Annual Budget may be ratified without the presence of a quorum. The Board shall set a date for such meeting to be held not less than ten (10) days but not more than sixty (60) days after mailing of such summary and notice. There shall be no requirement that a quorum be present at the meeting. The Annual Budget shall be ratified unless a majority of the votes of all of the unit owners cast at such meeting rejects the Annual Budget. If the proposed Annual Budget is rejected, the Annual Budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent Annual Budget proposed by the Board.

5.4 Special Meeting to Increase Current Annual Assessment. If the Executive Board, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any year pursuant to the duly ratified current Annual Budget, the Board may call a special meeting of the Members in accordance with the Bylaws requesting approval of a specified increase in annual assessments. The proposed increased assessment shall be levied upon the affirmative vote of sixty-seven percent (67%) of the Total Association Vote. An increase in annual assessments in any year pursuant to this section 5.4 shall in no way affect annual assessments for subsequent years.

5.5 Initial Annual Assessments. The initial assessments for the calendar year in which this Declaration is filed in the Wake County Registry are estimated to be \$73.00 per month and represent that sum covering the projected cost to the Association of Common Expenses as set forth in the initial budget prepared by the Declarant ("Initial Assessments"); provided, however, that the Executive Board in its discretion may charge a lesser or greater amount based on actual costs.

5.6 Billing of Annual Assessments. The annual assessments may, in the sole discretion of the Executive Board, be billed monthly, quarterly, semiannually or annually, and each such installment billed shall be due and payable thirty (30) days from the date bills are mailed.

5.7 Date of Commencement of Annual Assessments; Assessment Obligation of Declarant. Annual assessments shall commence as to any Lot on the first day of the month following the issuance by the governmental authority having jurisdiction thereof of a Certificate of Occupancy for a Lot with a Single-family home situated thereon.

5.8 Common Elements. All Common Elements shall be exempt from all assessments created pursuant to this Article.

5.9 Special Assessments.

5.9.1 Purpose and Payment of Special Assessments. In addition to the annual assessments authorized hereby, the Association may levy a special assessment for such purposes as the Association deems necessary and proper pursuant to the approval process of Section 5.9.2 including without limitation (i) construction or reconstruction, repair or replacement of capital improvements upon the Common Elements including the necessary fixtures and personal property related thereto and sanitary sewer and water lines; (ii) repayment of any loan made to the Association to enable it to perform the duties and functions authorized herein; (iii) defense of any and all legal claims brought against the Association; and (iv) to provide adequate insurance coverage for the Association.

5.9.2 Approval of and Payment of Special Assessments. A special assessment shall be approved by sixty-seven percent (67%) of the Total Association Vote. The notice of the meeting to consider such assessment shall include one statement (not to exceed five (5) pages in length) from the members of the Board favoring the special assessment, and one statement from those members of the Board opposing the special assessment, if any. Approved special assessments shall be paid in installments as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

5.10 Subordination of the Lien to Eligible Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any Eligible Mortgage and the lien of ad valorem taxes assessed by any governmental authority having jurisdiction thereof. Sale or transfer of any Lot shall not affect the assessment lien; provided, however, that the sale or transfer of any Lot pursuant to a decree of foreclosure of an Eligible Mortgage (or any proceeding in lieu of foreclosure thereof), shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Pursuant to section 47F-3-116 of the Act, such unpaid assessment, however, shall be deemed Common Expenses collectible pro rata from all the Owners including such purchaser, his heirs, successors and assigns. No sale or transfer pursuant to this section 5.10 shall relieve such Lot from liability or liens arising from assessments thereafter becoming due.

5.11 Remedies for Non-Payment of Assessments. Any assessments (as billed on a per installment basis or otherwise) not paid when due shall be delinquent. Such delinquent assessment not paid within thirty (30) days after the date due shall bear interest from the date of delinquency at a rate equal to eighteen percent (18%) per annum, and the Association may levy a late charge not to exceed five percent (5%) of the delinquent assessment. The Association may bring an action at law against the delinquent Owner and/or proceed to foreclose the lien created herein pursuant to provisions and procedures set forth in section 47F-3-116 of the Act; provided, however, that this section does not prohibit other actions to recover the sums created by such lien or to prevent the Association from taking a deed in lieu of foreclosure pursuant to section 47F-3-116(d) of the Act. Costs, late charges, fines, interest and fees (including Reasonable Attorney's Fees) of any such action shall be added to the amount of the delinquent assessment and shall be part of the lien assessed against such Lot.

5.12 General Reserve Account. The Association shall establish a general reserve fund from its annual assessments to be held in an interest bearing account as a reserve for (a) major rehabilitation or major repairs; (b) emergency and other repairs required as result of storm, fire, natural disaster or other casualty loss for which insurance proceeds are inadequate, and (c) the initial costs of any new service to be performed by the Association (the General Reserve Account). Any surplus funds remaining with the Association as referenced in section 47F-3-114 of the Act shall be allocated to such reserve account.

5.13 Working Capital Fund. At the time of closing of the initial sale of each Single-family Lot and the Single-family home located thereon by the Declarant or Builder to a consumer-Occupant Lot Owner, a sum equal to two (2) months of the annual assessment in effect at the time of such sale shall be collected from the

purchaser of such lot and transferred to the Association to be deposited in the General Reserve Account. Payments of such working capital shall not be considered as an advance payment of any regular or special assessment.

5.14 Omission of Assessments. The omission by the Executive Board, before the expiration of any fiscal year, to fix the assessments hereunder for that or the next fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments (or any installment thereof) for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

5.15 Abandonment and Non-Use. No Owner may waive or otherwise escape liability for any assessments created by this Article V by the non-use of the Common Elements or abandonment of his Lot.

5.16 Request for Statement. Pursuant to section 47F-3-118 of the Act, upon written request, the Association shall furnish any Owner or any Owner's authorized agents a statement setting forth the amount of any unpaid assessment and other charges against such Owner's Lot. The statement shall be furnished within ten (10) business days after receipt of such request and shall be binding on the Association, the Executive Board, and any other Owner. In connection therewith the Association may charge the requesting party a reasonable fee of not less than \$75.00 per statement issued.

ARTICLE VI

INSURANCE AND PROPERTY CASUALTY LOSSES AND DAMAGES

6.1 Mandatory Insurance. In accordance with the provisions of section 47F-3-113 of the Act and commencing not later than the time of the first conveyance of a Lot to any Person other than the Declarant, the Association shall maintain the following insurance coverage to the extent reasonably available:

6.1.1 Property Insurance on the Community Property. Community Property insurance policies shall insure against all risk of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance (after application of any deductibles) shall be not less than eighty per (80%) of the replacement cost of the insured property at the time such insurance is purchased and at each renewal date thereafter, exclusive of land, excavations, foundations, and other items customarily excluded from such coverage.

6.1.2 Liability Insurance on Association-Owned Property. Association liability insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00).

6.2 Form and Content of Insurance Policies. Insurance policies carried pursuant to section 6.1 above shall be written by companies authorized to do business in North Carolina and shall include the provisions listed below:

6.2.1 Mandatory Provisions.

- (i) Exclusive authority to adjust losses under policies obtained by the Association shall

be vested in the Association's Executive Board; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;

(ii) Each Owner and any mortgagee holding a security interest in such Owner's Lot or shall be an insured under the policy to the extent of such Owner's and mortgagee's interest therein;

(iii) The insurer shall waive its right to subrogation under the policy against any Owner or Owner's household;

(iv) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, shall preclude recovery under the policy;

(v) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by such policy, the Association's policy shall be deemed the primary insurance; and

(vi) All casualty insurance policies shall have an "inflation guard endorsement" and an Aagreed amount endorsement, if reasonably available.

6.3 Optional Insurance. If available at reasonable cost, as determined in the sole discretion of the Board, the Board may obtain:

6.3.1 Public liability insurance policy applicable to all Community Property insuring the Association and its Members for all damage or injury caused by the negligence of the Association or any of its employees, managers, Members or agents.

6.3.2 Directors' and officers' liability insurance.

6.3.3 Workers' Compensation Insurance, if and to the extent necessary to satisfy the requirements of applicable law.

6.3.4 A fidelity bond or employees' dishonesty coverage covering directors, officers, employees, and other persons handling or responsible for Association funds. The amount of fidelity or employees' dishonesty coverage, if obtained, shall be determined in the Board's reasonable business judgment. Such coverage if obtained, shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall not be subject to cancellation, non-renewal or substantial modification without at least ten (10) days' prior written notice to the Association.

6.4 Certificates of Insurance. An insurer issuing an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and upon written request, to any Owner or Mortgagee. Pursuant to subsection 47F-3-113(f) of the Act, such insurer may not cancel or refuse to renew the referenced policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner and Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

6.5 Individual Owner Coverage. An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for such owner's own benefit.

6.6 **Annual Review.** All insurance policies shall be reviewed annually.

6.7 **Damage and Destruction-Common Elements.**

6.7.1 **In General.** Immediately after damage or destruction by fire or other casualty to all or any portion of any Common Element, the Executive Board or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this article means repairing or restoring the damaged property to substantially the same condition and location that existed prior to the fire or other casualty together with any changes or improvements necessary to comply with the then current Raleigh City Codes.

6.7.2 **Repair and Reconstruction.** Any damage or destruction to the Common Elements required to be covered by insurance written in the name of the Association, shall be repaired or reconstructed promptly unless (i) repair or replacement would be illegal under any state or local statute or ordinance; or (ii) within sixty (60) days after the casualty, at least eighty percent of (80%) of the Total Association Vote otherwise agree that such elements shall not to be rebuilt, or (iii) the Community is terminated in accordance with the terms and provisions of the Act and Article XIV. No Mortgagee shall have the right to participate in the determination of whether damage or destruction to such Common Elements shall be repaired or reconstructed. The cost of repair or replacement in excess of insurance proceeds and the Reserve Account shall be a Common Expense.

6.7.3 **Restoration to Natural State.** In the event that the Association shall determine in the manner described above that the damage or destruction to the Common Element shall not be repaired or reconstructed and no alternative improvements are authorized, such property shall be restored to its natural state and maintained as an undeveloped portion of the Community Property by the Association in a neat and attractive condition.

6.7.4 **Distribution of Excess Proceeds and Insufficient Proceeds.** Pursuant to subsection 47F-3-113(g) of the Act, if any improvement on the Common Elements is not repaired or replaced, the insurance proceeds attributable to the damaged improvements shall be used to restore the damaged area to a condition compatible with the remainder of the Community and the remainder of the proceeds shall be distributed to all Owners or Mortgagees as their interest may appear in proportion to the Common Expense Liability of all the Lots.

6.7.5 **Disturbing Natural Areas.** Within permanently preserved undisturbed open space areas, there must not be any land disturbing activity, any placement of impervious surfaces, any tree removal, any new development or expansion thereof, or new use, construction or encroachment without first obtaining the prior approval from the City of Raleigh.

6.8. **Inadequate Insurance Proceeds.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are insufficient to defray the cost thereof, the Executive Board shall, without the necessity of a vote of the Association's Members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

6.9 **Damage and Destruction to Specified Lots.** The damage or destruction by fire or other casualty to all or any portion of any improvement on a Single-Family Lot, shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be

so completed with the exercise of reasonable diligence and good faith efforts, repairs shall be commenced within such seventy-five (75) day period, and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on such Lot and remove all debris therefrom within seventy-five (75) days following such casualty. In the event of noncompliance with this provision, the Executive Board shall have all enforcement powers specified in section 15.3

6.10 Liability for Negligent or Willful Damage.

6.10.1 Owner-Inflicted Damage to Common Area. Pursuant to subsection 47F-3-107(b) of the Act, a Lot Owner is legally responsible for damage inflicted on any Common Element, and the Association may direct such owner to repair such damage at his expense or, the Association may itself accomplish the repairs and recover damages from the responsible Owner; pursuant to the Act, liability of such owner established pursuant to section 6.10.3 below shall be an assessment secured by a lien upon such owner's Lot or Lots.

6.10.2 Association Inflicted Damage to Lots. Pursuant to subsection 47F-3-107(c) of the Act, if an agent of the Association acting within the scope of Association work or activities, inflicts damage on any Lot, the Association shall be responsible for repairing such damage, or in the alternative may reimburse the subject Lot Owner for the cost of repairing such damages and any other losses arising in connection therewith. In the event the liability of the Association is established pursuant to section 6.10.3 below the affected Lot Owner may offset such liability against sums owing to the Association thereby reducing the amount of any Association lien against the subject Lot.

6.10.3 Determination of Liability and Hearing. When any claim arising under this section 6.10 is less than or equal to the jurisdictional amount established for "small claims" as defined in NCGS 7A-210, the aggrieved party may request a hearing before an adjudicatory panel appointed by the Executive Board (or in the absence of appointment of such a panel before the Board itself) to determine responsibility for the alleged damage. Such hearing shall accord to the party charged with causing damages notice of such charge, the opportunity to be heard and to present evidence, and notice of the decision; provided, however, that such panel (or the Board as appropriate) may not assess liability for each damage incident against the party charged, be it a Lot Owner or the Association, in excess of the foregoing jurisdictional amount. When such claim exceeds the aforesaid jurisdictional amount, liability of any Lot owner or the Association shall be determined as otherwise provided by law.

ARTICLE VII

MAINTENANCE BY ASSOCIATION

7.1 Common Elements. The Association shall maintain and keep in good repair all plant material, landscaping, irrigation, outdoor lighting, entrance monuments, grass, site furnishings and rights of ways and any other improvements and facilities located on the Common Elements.

7.2 Yard Improvements. In addition to maintenance of the Common Areas and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the Yard Improvements) installed by the Declarant or Association who constructed the initial improvements necessitate by work done by or at the request of any Owner or any utility company or governmental entity

ARTICLE VIII

ARCHITECTURAL CONTROL AND STANDARDS.

8.1 Purpose. Of paramount importance in the promulgation of this Declaration is the creation of a community, which is aesthetically pleasing and functionally convenient.

8.2 Architectural Review Board.

8.2.1 Composition. During the Declarant Control Period, the Declarant shall establish an Architectural Review Board (the Architectural Board). The regular term of office for each Architectural Board member shall be one (1) year. During the Declarant Control Period, the Declarant may remove, with or without cause, any Architectural Board member, at any time by written notice to such appointee, and the successor appointed to fill such vacancy shall serve the remaining term of such former member. The Architectural Board shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Board is authorized to retain the services of additional consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Board in performing its functions set forth herein with reasonable compensation paid thereto.

8.2.2 Meetings and Action. The Architectural Board shall meet at least quarterly in any calendar year, as well as upon call of the chairman at such places as may be designated by the chairman. A majority of the members shall constitute a quorum for the transaction of business, and an affirmative majority vote of those present in person or by proxy at such meeting shall constitute the action of the Architectural Board on any matter before it.

8.3 Declarant's Right to Assign Architectural Board Functions to the Association. During the Declarant Control Period, the Declarant, at its sole discretion, reserves the right to assign to the Association all or any portion of its rights reserved herein which are exercisable by the Architectural Board. The Association hereby agrees to accept the assignment of such rights, together with any outlined guidelines and restrictions, without the necessity of any further Board action.

8.4 Review of Proposed Improvements.

8.4.1 Review Requirement. No Improvement (as defined in section 1.16) shall be erected, placed, changed, modified or altered, nor shall any building permit be applied for, until the proposed plans and specifications showing the nature, kind, shape, height, materials, exterior color, location and siting of such improvements have been submitted to the Architectural Board (the Plans) and expressly approved in writing. In addition, no subsequent alteration or modification of any Improvements or the construction, erection or installation of additional Improvements may be undertaken or allowed to remain on any Lot without the review and express written approval of the Architectural Board. The Architectural Board shall establish minimum

requirements for Plans submitted for approval, but shall have the authority to request such additional information as it may determine is necessary to render its decision; provided, however, during the Declarant Control Period, any Builder with whom Declarant has contracted to sell a Lot and who has received Declarant approval of such builder's Plans (pursuant to such contract), shall be deemed to have complied with the terms and conditions of this section 8.4. Any Improvement or alterations executed without Board approval shall be subject to immediate removal at the expense of the Owner of the subject Improvement or alteration. Any Lot Owner or occupant is required to obtain a permit from the Architectural Review Board to disturb protected areas shown on the Plat or otherwise required by the City, including open space or areas within Neuse riparian buffers.

8.4.2 Discretion of the Architectural Board. The Architectural Board or the Declarant acting pursuant to section 8.4.1 above shall be the sole arbiter of submitted Plans and may withhold approval based upon any reasonable grounds, including purely aesthetic consideration; provided, however, the Architectural Board shall at all times endeavor to be fair, reasonable, and uniform in its application of the Design Code and the Board's procedures and shall use its best efforts to balance the equities between matters of taste, Community design standards and the use of private property.

8.4.3 Effect of Failure to Approve or Disapprove. In the event that the Architectural Board fails to approve or disapprove the design of any proposed Improvements within forty-five (45) days after the Owner has submitted Plans, approval will not be required and the Owner shall be deemed to have fully complied with the provisions of this section 8.4; provided, however, that such submission shall not be deemed to have been received by the Architectural Board if submitted Plans are incomplete, fail to meet the minimum requirements established by the Architectural Board, contain erroneous data or fail to present adequate information upon which the Architectural Board can base its decision. In connection therewith the Association shall promulgate a schedule of reasonable review fees consistent with the complexity of the type of plans reviewed.

8.5 Right to Inspect. Any Architectural Board member (or the authorized representatives thereof) or Declarant shall have the right, during reasonable hours, to enter upon any Lot or Lot Unit to inspect such property and any Improvements thereon for the purpose of ascertaining whether or not such property and improvements complies with the terms of this Declaration and the Design Code; such inspector shall not be deemed guilty of trespass by reason of such entry.

8.6 Enforcement.

8.6.1 All construction commenced and completed pursuant to Board approved Plans shall be constructed substantially and materially in accordance with such approved Plans. In the discretion of the Architectural Board, an Owner may be required to verify any conditions of Plan approval by a written instrument acknowledged by such Owner on his and his successors-in-interest's behalf and recorded in the County Records.

8.6.2 The Board of Directors and the Declarant during the Declarant Control Period shall have the specific right (but not obligation) acting through and directing the Architectural Board to enforce the provisions of this Article and/or prevent any violation thereof by a proceeding at law or equity.

8.7 Liability. NO PERSON SHALL RELY ON PLAN APPROVAL PURSUANT TO THIS ARTICLE VIII AS EVIDENCE THAT SUCH PLANS AND THE IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH (I) ARE OR WILL BE IN COMPLIANCE WITH ANY BUILDING CODES, ZONING ORDINANCES OR ANY OTHER STATUTE, LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL UNIT OR AUTHORITY HAVING JURISDICTION THEREOF; OR (II) ARE CONSISTENT WITH GOOD ENGINEERING ARCHITECTURAL

OR CONSTRUCTION STANDARDS, PRACTICE, AND PROCEDURES. NEITHER DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM ASSUMES LIABILITY OR RESPONSIBILITY FOR ANY DEFECT IN ANY IMPROVEMENTS CONSTRUCTED FROM THE APPROVED PLANS AND SHALL NOT BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS, OR TO ANY OWNER OF PROPERTY AFFECTED BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS. EVERY PERSON AND EVERY OWNER SUBMITTING PLANS FOR REVIEW AGREES NOT TO BRING ANY ACTION OR SUIT AGAINST THE DECLARANT, THE ASSOCIATION, THE ARCHITECTURAL BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ANY CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

8.8 Non-Liability of Governmental Entities. The City of Raleigh shall not be responsible for failing to provide any emergency or regular fire, police or other public service to the Properties, any Lot, or any Owner or occupant in part or in whole due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction, blocking of access routes, inadequate maintenance or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

ARTICLE IX

COVENANTS, RESTRICTIONS AND AFFIRMATIVE OBLIGATIONS

9.1 General. This Article, beginning at section 9.2 sets out certain restrictions, conditions and obligations which must be complied with by all Occupants of the Community. These restrictions may be amended or modified only pursuant to amendment of this Declaration under Article XII.

9.2 Signs. No sign of any kind shall be erected within the Community without the written consent of the Architectural Board except (i) such signs as may be required by legal proceedings, (ii) signs of a political nature in conformity with local ordinance, (iii) one "For Sale" sign per Lot, six (6) square feet; such sales sign shall not remain on the advertised premises for longer than six (6) months albeit this deadline may be extended for an additional similar period by written approval of the Architectural Board; provided, however, the Association shall have the right to erect any reasonable and appropriate signs upon the Common Elements, and the Declarant is allowed to erect reasonable promotional and marketing signs and banners at the entry of the Community and on the Common Elements. (iv) unit numbering identification signs required by the Raleigh City Code. All signs are subject to any regulations and ordinances of any governmental authority having jurisdiction thereof.

9.3 Vehicles.

9.3.1 Parking. Permitted motorized vehicles shall not be parked on any sidewalk, Community street rights of way, but only in those areas specifically improved and designated for such purpose including by way of example, garages, driveway, or parking pads; provided, however, that such restriction shall not apply to the Declarant and Builders in the course of construction and development activities and shall not prohibit guests,

invitees, or the general public from parking upon any public street.

9.3.2 Oversized Vehicles. Except in areas specifically designated by the Association and adequately screened for such purposes, if any, or otherwise permitted in the sole and unrestricted discretion of the Architectural Board, no mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than standard family pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft or associated trailers, may be parked within any portion of the Community except in an enclosed permissible garage or areas specifically designated by the Board for such parking; provided, however, that such restriction shall not apply to the Declarant and Builders in the course of construction and development activities nor preclude entry into the Community of commercial trucks and vehicles providing legitimate goods and services to residences within the Community during normal business hours. So long as no sight distance restriction is created, visitors with motor homes may park on the street for no more than one (1) week.

9.3.3 Inoperable Vehicles. No abandoned, unlicensed, inoperable or unsightly vehicles shall be stored or kept on any portion of the Community so as to be seen from any Lot or Community street rights of way. No Occupant shall repair any vehicle of any kind within the Community except within enclosed garages or workshops or as occasioned by the need for emergency repairs, and then only to the extent necessary to enable the transport of such vehicle to a proper repair facility.

9.4 Street Trees and Other Plant Material. Street trees and other plant material located in or on Community street rights of way, Common Elements and planting strips shall not be damaged or removed by any Community Occupant. Trees damaged by an Owner or Occupant shall be replaced with a similar type at such responsible Person's expense payable to the Association within 10 days. Tree replacement within such rights of way or Common Elements shall be handled exclusively by the Association.

9.5 Garbage Cans and Trash Removal. Garbage cans or approved dumpsters shall be located or screened so as to be concealed from view of neighboring Lots, Common Elements and Community street rights of way. All rubbish, trash, and garbage shall be regularly removed from any Lot and shall not be allowed to accumulate thereon. Trash spillage shall be the responsibility of the subject Owner or Occupant for removal. Yard waste must be disposed of properly and not deposited on any other Lot or on the Common Elements, easements, drainage ways or street rights of way within the Community. Notwithstanding the foregoing, the Declarant hereby expressly reserves for itself only the right to dump and bury rocks, trees and stumps on property within the Community as needed for efficient construction development of the Community provided that such fill is done according to good building practice and in accordance with all applicable governmental regulations which generally prohibit such dumping. Nor shall any other restrictions of this section 9.5 apply to the Declarant provided trash generated by such party shall be periodically placed in trash bins customarily used in development and building construction activities.

9.6 Porches, Stoops, Decks and Front Yards. Porches, stoops, decks and yards exposed to frontage and side streets shall be maintained in a neat and orderly fashion. Outdoor furnishings visible from the street shall be limited to traditional porch furnishings. No appliances, interior furniture or unusual items may be placed in the yard, on the porch, patio or deck. Toys, bicycles, carriages, strollers and similar items exposed to the street shall not be stored on porches, decks or in locations visible from the street. In addition, lattice is required to be installed around all porches and decks.

9.7 Antennas, Satellite Dishes or Discs. Except as otherwise set forth herein and subject to any regulations of the Federal Communication Commission (as from time to time amended), no exterior antennas of any kind or satellite dishes or discs larger than one meter in diameter shall be placed, allowed or maintained, upon

any portion of the Community without the prior written consent of the Association. Any satellite dish or disc one meter in diameter or smaller may be erected without such approval provided it is not attached to the street facing elevation(s) of a building unit and shall be mounted on the roof of a Single-family home. Nothing in this section 9.7, however, shall prohibit (albeit not obligate) the Declarant or the Association from erecting a central master antenna, satellite dish or other similar master telecommunication system for the benefit of the entire Community and charging fees for usage thereof.

9.8 Fences and Walls. All fencing, walls and vegetative screening shall be designed, located and maintained according to the rules and regulations approved by the Architectural Board. Fences, walls and screening shall be maintained and kept in good repair in accordance with the original intent when installed, including privacy and height. Household Pet kennels, pens, lots, cages, houses or enclosures of any type are prohibited in any yard, patio, porch, or deck areas except those that are attached to the main part of the home and must match in material and color. No fence or wall can be more than 4 feet in height without Architectural Board approval. Acceptable materials include wood or white vinyl only.

9.9 Entry Features. Occupants shall not alter, remove or add improvements to any site features (including, but not limited to walls, piers, fences, monuments, light fixtures, signage and planting) constructed by the Declarant on any Community property, or any part of any easement area associated therewith without the prior written consent of the Association.

9.10 Nuisance. Each Owner and Occupant shall be responsible for preventing the development of any unclean, unhealthy, unsightly, or unkempt condition on his Lot. No Lot shall be used, in whole or in part, for the storage of anything that will cause such property to appear unclean or untidy or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon or within any Lot that will emit foul or obnoxious odors (including pet waste) or that will cause any excessive noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of Community Occupants including any speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes. No noxious or offensive activity shall be carried on upon any Lot or within any Single-family home, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Community Occupant. The owners of lots shall see to the mowing of their lawn as needed, the maintenance and protection of landscaping. Upon the lot or homeowner's continued failure or refusal to abide by these or other covenants and restrictions after fourteen (14) days written notice, the Architectural Committee may perform the required maintenance and repairs, with the lot or homeowner to be responsible for the reasonable charges for same, together with a twenty-five percent (25%) surcharge to the Association to cover its administrative costs. The charges and surcharge shall constitute a lien upon the lot to the same extent as an unpaid Regular Annual Assessment.

9.11 Drainage. Catch basins and drainage areas are solely for the purpose of natural flow of water only and no Owner or Occupant may obstruct (with debris or otherwise) or re-channel the drainage flows after the location and installation of drainage swales, storm sewers, or storm drains. Declarant and the Association reserve the right to prepare sloping banks, cut or fill on all Community streets and roads prior to acceptance of any public street, road, or right-of-way by a governmental entity. There is hereby reserved a perpetual easement across all portions of the Community for the purpose of altering drainage and water flow; provided, however, that the rights exercised pursuant to such reservations shall be exercised with a minimum of interference to the quiet enjoyment of the affected property with reasonable steps be taken to protect such property and any resulting damage repaired. No Owner or Occupant shall intentionally divert water runoff from their property onto neighboring property. The failure to maintain the storm water control measures is a violation potentially subjecting each lot owner to significant daily civil penalties and other enforcement actions. The failure to maintain

the drainage facilities for nitrogen removal is a violation of the Raleigh City Code, potentially subjecting each lot owner to significant daily civil penalties and other enforcement actions.

9.12 Subdivision of Lot or Lot Unit. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Declarant or its designee or assigns and in accordance with applicable municipal or state law. Declarant, however, hereby expressly reserves the right to subdivide, re-subdivision or recombine any Lot or other property in the Community owned by the Declarant so long as any such subdivision or recombination shall be pursuant the requirements of applicable law.

9.13 Use of Lot. Lots and the improvements constructed thereon shall be used for residential purposes. The use of a portion of a Single-family home, however, as a home office by an Owner or Occupant shall not constitute a violation of this covenant if such use does not (i) create regular customer, client, or employee traffic to the extent that it compromises the Community's residential character and enjoyment and safety of its Occupants or (ii) create objectionable lights, noise or odors or (iii) violate any applicable local government regulation. The Executive Board shall arbitrate any conflict resulting from such business use. Rental of a Single-family home for residential purposes also shall not be deemed a violation of this covenant so long as the lease (i) is for not less than the entire primary dwelling and all the improvements thereon, and (ii) is otherwise in compliance with the Rules and Regulations and this Declaration and must be for six (6) months or more.

9.14 Garages. Garages must be maintained in their original intended use and shall not be converted to habitable living space. If a garage is included on any Single-family Lot, garage parking for at least one vehicle must be maintained within the garage at all times. Garage doors facing either the Lot frontage or side streets must remain closed when not in use, and under no circumstances shall garage doors remain open overnight.

9.15 Household Pets.

9.15.1 No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot with the exception of dogs, cats, or other usual and common domestic pets. The maximum allowable number of such household pets is three (3) (with the exception of exotic fish and birds), which number may be exceeded only if the pets are the newborn to three month old offspring of those same three household pets, which offspring shall not have been bred for commercial purposes.

9.15.2 Vicious or excessively barking dogs are considered a nuisance and shall not be left outside at any time. Excessive barking or other pet noise within single-family homes annoying to neighboring properties is also prohibited. Based on its behavior, any dog can be determined to be vicious, obnoxious dangerous and therefore a nuisance to the Community which determination shall result in removal from the Community.

9.15.3 It shall be a pet owner's responsibility to immediately remove pet waste from the Lot yard and all other portions of the Community including but not limited to grassed park and open space areas. Due to its detrimental effect on grass and planting materials, pet urination shall not be allowed on any common elements or plantings and only in other natural areas if cleaned and flushed.

9.15.4 Driveways. All driveways shall be paved with concrete, brick or such other material as may be approved in writing by the Architectural Committee.

9.17 Mailboxes. All mailboxes shall be of the same design, color, construction, and materials and

shall be as approved by the Architectural Committee. Receptacles for newspapers or other publications are not permitted except as part of the approved mailbox design.

9.18 Clotheslines. Clotheslines of any type are not permitted.

9.19 Square Footages. The total heated floor areas of the main residential structure exclusive of open porches, unfinished basements, storage areas, and garages for a two (2) story home shall be no less than 3000 square feet. The total heated floor areas of the main residential structure exclusive of open porches, unfinished basements, storage areas, and garages for a one-story (1) or one and a half (1 1/2) story home shall be no less than 2800 square feet.

9.20 Exterior Siding. The only acceptable exterior siding permitted on all single family homes is a choice or combination of stone, brick, or cement. Vinyl siding is not permitted.

9.21 Open Space Preservation and Protection Areas. Within open space preservation and protection areas, no land disturbing activity, placement of impervious surface, removal of vegetation, encroachment, construction, or erection of any structure shall occur except in accordance with a watercourse buffer first being issued by the City of Raleigh.

ARTICLE X

ADDITIONAL EASEMENTS

10.1 Easements for Utilities. There is hereby reserved to the Declarant and the Association easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining telecommunications, electrical, sanitary sewer, water, gas, storm drainage systems, including but not limited to, a master television antenna system, cable television system, fiber optic telecommunications system or security system which the Declarant or Association may install (but is not required to install) to serve the Community. It shall be expressly permissible for the Declarant, the Association (or the designee of either including any private or public utility or governmental authority, as appropriate) to install, repair, replace, and maintain or to authorize the installation, repair, replacement and maintenance of such wires, conduits, cables and other equipment related to the provision of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement or license. It is further provided, however, that any Person exercising rights pursuant to such easement shall be liable for any damage to the property so entered and be responsible for reasonably restoring such damaged property to substantially the same condition as existed prior to such damage.

10.2 Association's Easement and Right of Entry. The Association, for itself and its employees, agents, contractors, and subcontractors and invitee's, shall have a perpetual easement over each Lot to the extent reasonably necessary to perform maintenance pursuant to Article VII.

10.3 Easement for Entry. The Executive Board shall have the right (but not the obligation) to enter upon any property within the Community for emergency, security, and safety reasons. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure such condition after written

notice of the Board.

10.4 Easement to Governmental and Public Authorities. An easement is hereby established for government agencies or other public utilities serving the community, and for their agents and employees over all portions of the Community, specifically including common elements and private streets, if applicable, for setting, removing and reading utility meters, maintaining or replacing water and sewer facilities, fire lines, utility or drainage connections, and acting for other purposes consistent with public safety and welfare, including without limitation, law enforcement, fire protection, emergency services, garbage collection, and the delivery of mail.

10.5 Easements for Encroachments. If, by reason of the initial construction of the Single Family home or improvements comprising a part of the Property, any part of such improvement encroaches upon any part of the Common Elements, or upon any part of another Lot, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if the encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lots so encroached upon.

10.6 Sight Triangle or Site Distance Easements. Within sight distance easements and sight triangles shown on any recording plot of the Community, no obstruction, in whole or in part, between two and eight feet above the curb shall occur. For purposes of this section, an obstruction shall include, without limitation, any wall, fence, berm, foliage, sign, or parked vehicle.

ARTICLE XI

CONDEMNATION

11.1 Common Elements. If a portion of the Common Elements shall be acquired by any authority having the power of eminent domain (collectively or individually the "Condemnation Authority") or conveyed by the Board in lieu of and under threat of condemnation pursuant to the written direction of eighty percent (80%) of the Total Association Vote, the provisions of section 6.7 (applicable to damage or destruction to Common Element Improvements), shall govern the replacement or restoration of the affected improvements and the actions to be taken in the event that such improvements are not restored or replaced. Pursuant to section 47F-1-107 of the Act the condemnation award attributable to such elements shall be paid to and be an asset of the Association.

11.2 Lots.

11.2.1 Entire Lot. In the event any Condemnation Authority shall acquire an entire Lot leaving the owner of such Lot with a remnant which is not practically or lawfully useable for any purpose permitted by this Declaration, such award shall be payable to such owner for his interest in the Lot together with the value of the property rights and benefits granted to the Owner hereunder. Upon such acquisition, unless the court decree otherwise provides, such Lot's allocated interests hereunder are automatically reallocated to the remaining Lots in proportion to the respective allocated interests of those Lots before the taking, exclusive of the Lot taken.

11.2.2 Partial Lot. Except as provided in section 11.2.1 above, in the event a portion of a Lot shall be acquired by any Condemnation Authority, such award shall compensate the affected Owner for the reduction in value of the Lot. Upon such acquisition, unless the court decree otherwise provides, (i) such Lot's allocated interests are reduced in proportion to the reduction in the size of the Lot and (ii) the portion of the allocated interests divested from the partially acquired Lot are automatically reallocated to such Lot and the remaining Lots

in proportion to the respective allocated interests of those Lots before the taking.

ARTICLE XII

SALES AND CONSTRUCTION ACTIVITIES OF DECLARANT AND BUILDERS

12.1 Rights Reserved. Notwithstanding any provisions or restrictions contained in the Rules and Regulations, this Declaration, Supplementary Declaration, use restrictions or any amendments to the foregoing it shall be expressly permissible for Declarant, and its respective agents, employees, and approved Builders during the Development Period to maintain such facilities and carry out such activities as may be reasonably required, convenient, or incidental to the development, improvement, completion and sale of the any portion of the Community, including, without limitation, the installation and operation of sales and construction trailers and offices, sales models and appropriate signs; provided, however, that in the event a sales office has been maintained in any portion of a Single-family home such sales office must be removed and the original intended and approved use of such structure must be restored prior to conveyance from the Declarant or Builders to any consumer-occupant Lot Owner. Declarant, its respective agents, employees, and approved Builders must comply with all State and local regulation applicable to the rights it has reserved.

12.2 Easement to Perform Reserved Rights. During the Declarant Control Period, the Declarant hereby expressly reserves unto itself and approved Builders, a non-revocable (during such defined period) right, privilege, and easement with respect to all property within the Community for the benefit of the Declarant and such Builders over, under, in, and/or on such property, without obligation and without charge for the purposes of taking all actions related to or connected with the activities specified in section 12.1 above, including the right to reserve up to five (5) parking spaces for use on Monday through Saturday between the hours of 8 a.m. and 6 p.m.

ARTICLE XIII

AMENDMENT OF DECLARATION

13.1 Amendment by Owners. The covenants, conditions and restrictions of the Declaration may be amended during the first thirty (30) year period or thereafter by an instrument signed by the Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated; provided, however, that the Executive Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction or to make an amendment requested by the Federal National Mortgage Association, without action or consent of the Owners, and such amendment shall be certified as an official act of the Executive Board and recorded in the Wake County Registry. All amendments to the Declaration require advance written approval by the Raleigh City Attorney's Office prior to enactment. Evidence of such approval shall be indicated by the signature of the Raleigh City Attorney or his or her deputy on the recorded amendment. Any amendment of the Declaration relating to requirement by the City of Raleigh without the required City signature is void.

13.2 Certification and Recordation of Amendment. Any instrument amending this Declaration (other than an amendment by the Executive Board to correct an error or inconsistency in drafting, typing, or reproduction or an amendment by Declarant or the Executive Board pursuant to section 13.4 hereof) shall be delivered, following approval by the Owners, to the Executive Board. Thereupon, the Executive Board shall, within thirty (30) days after delivery:

13.2.1 Approval. Reasonably assure itself that the amendment has been duly approved

by the Owners as provided in section 13.1, and for this purpose, the Executive Board may rely on its roster of Members and shall not be required to cause any title to be examined;

13.2.2 Certificate of Validity. Attach to the amendment a certification as to its validity, which certification shall be executed by the Association, and shall be in the following form:

CERTIFICATE OF VALIDITY

By authority of its Executive Board The Sanctuary Community Association, Inc. hereby certifies that the foregoing instrument has been approved by affirmative vote or by written statement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association have been allocated and is therefore, a valid amendment to the existing Declaration of The Sanctuary.

IN WITNESS WHEREOF, The Sanctuary Community Association, Inc. has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed, the day and year first above written.

THE SANCTUARY COMMUNITY ASSOCIATION,
INC.

By: 
President

ATTEST 
Secretary

13.2.3 Recordation. Within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry; provided that any delay in recording such amendment within the aforesaid thirty (30) day period shall not invalidate the amendment.

13.3 Effect and Validity of Amendment. All amendments shall be effective from the date of proper recordation in the Wake County Registry. When any instrument purporting to amend this Declaration has been certified by the Executive Board and recorded as provided in this section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners.

13.4 Amendment by Declarant. Notwithstanding anything to the contrary set forth in this Article and in accordance with its rights as Declarant pursuant to section 47F-2-117 of the Act, the Declarant may unilaterally amend the Declaration at any time and from time to time (i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to qualify the Association for tax-exempt status; (iii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Property subject to this Declaration; or (iv) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration, or (v) if such amendment

is necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lot or subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any unless any of the affected Owner shall consent thereto in writing.

ARTICLE XIV

DISSOLUTION OR INSOLVENCY OF THE ASSOCIATION

The Association may be dissolved and the Community terminated pursuant to the provisions and procedures of section 47F-2-118 of the Act.

ARTICLE XV

GENERAL PROVISIONS

15.1 Duration. The covenants, restrictions and conditions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of twenty (20) years from the filing thereof, after which time, any such provision shall be (i) automatically extended for successive periods of twenty (20) years from the date hereof, unless such extension is disapproved by at least sixty-seven percent (67%) of the Total Association Vote as evidenced by an instrument reflecting such disapproval recorded in the Records of Wake County within the year immediately preceding the beginning of any twenty (20) year renewal period; (ii) or the Association is dissolved or otherwise terminated pursuant Article XV or (ii) as otherwise provided by law.

15.2 Enforcement. The Declarant (during the Declarant Control Period), the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by such parties to enforce any such provision herein shall in no event be deemed a waiver of the right to do so thereafter. Pursuant to the provisions and procedures of section 47F-3-107.1 of the Act the Association may also levy reasonable fines not to exceed \$150.00 per violation any violations for any infraction of this Declaration of any supplementary declaration or amendment thereto, the Bylaws and/or the Rules and Regulations; any fines so paid and collected by the Association shall be deposited in the Association's general fund or Reserve Account in the Board's discretion.

15.3 Notices. Any notice required to be sent to any Member pursuant hereto shall be deemed to have been properly sent and notice thereby given when delivered personally or sent by mail with the proper postage affixed to the address appearing on the Association membership list. It shall be the obligation of every Member to immediately notify the Association Secretary in writing of any change of address. Association notice to one or more co-Owners shall constitute notice to all co-Owners. Any Person who becomes a Member following the first day in the calendar month in which said notice is delivered or mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

15.4 Books and Records.

15.4.1 Inspection by Members and Mortgagees. This Declaration (and any amendments of supplementary declarations thereto), copies of the Rules and Regulations, membership register, books of account, and minutes of Member meetings of the Association, the Executive Board, Architectural Board and any

Association committee shall be made available for inspection and copying by any Member of the Association or Eligible Mortgagee (or their respective duly appointed representatives) for any lawful and reasonable purpose at the office of the Association or at such other reasonable place as the Board shall prescribe; provided, however, the Executive Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records; (ii) hours and days of the week such inspection may be made, and (iii) payment of the cost of document reproduction.

15.4.2 Inspection by Executive Board Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association. Such right of inspection by a director includes the right to make extra copies of documents at reasonable expense to the Association.

15.5 Financial Statements. Financial statements for the Association shall be compiled annually for distribution to the Members in the manner as the Executive Board may decide or is otherwise provided by law; provided, however, after having received the Board's financial statements at the Association annual meeting, the Members, by an affirmative majority vote, may require that the financial statements of the Association be audited as a Common Expense by an independent accountant. Upon written request of any Eligible Mortgagee and upon payment of all costs associated therewith, such Mortgagee shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request.

15.6 Indemnification. In accordance with the North Carolina Nonprofit Corporation Act and to the full extent allowed, the Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such Person is or was serving as a director or officer of the Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any such action, suit, or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interest of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon determination that indemnification of the Person is proper under the circumstances.

15.7 Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot or Lot Unit, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

15.8 Gender and Grammar. The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

15.9 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

15.10 Captions. The Captions of each Article and section hereof, as to the contents of each

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article and section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular article or section to which they refer.

15.11 Conflicts. In the event of any irreconcilable conflict between the Declaration and the Bylaws, the provisions of this Declaration shall control. In the event of an irreconcilable conflict between this Declaration and the Articles of Incorporation, the provision of the Declaration shall control. Unless otherwise allowable under the Act as being discretionary, in the event of a conflict between or among any provision in this Declaration, the Articles of Incorporation or the Bylaws and the Act, the Act shall control.

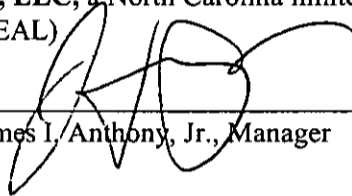
IN WITNESS WHEREOF, the undersigned Declarant has executed this instrument under seal by authority duly given all as of this 10 day of December, 2004.

[SIGNATURE PAGE AND ACKNOWLEDGMENT ATTACHED]

Signature Page
Declaration of Covenants, Conditions and Restrictions
The Sanctuary
Zogreo, LLC, Declarant

ZOGREO, LLC, a North Carolina limited liability company
(SEAL)

By:

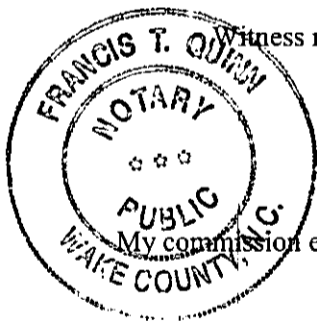

James I. Anthony, Jr., Manager

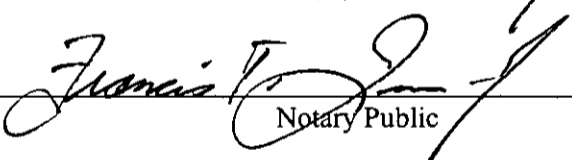
STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, JAMES I. ANTHONY, JR., a Notary Public for the State and County aforesaid, certify that JAMES I. ANTHONY, JR. personally appeared before me this day and acknowledged that he is Manager of ZOGREO, LLC, a North Carolina limited liability company (the "Company") and that by authority duly given and as the act of the Company, the foregoing instrument was signed in its name by him

Witness my hand and official seal this 10 day of DECEMBER, 2004




Notary Public

My commission expires: 5/10/2005

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EXHIBIT A

Legal Description

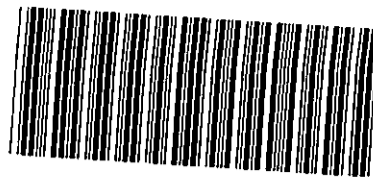
Lying and being in or near the City of Raleigh, Wake County, North Carolina and being more particularly described as BEING all of that 12.52 acre +/- tract as shown on plat entitled "The Sanctuary" recorded in Book of Maps 010556, page 02051 - 02053 and Book of Maps 010556, page 02054 – 02056, Wake County Registry.

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EXHIBIT B

Legal Description

Lying and being in or near the City of Raleigh, Wake County, North Carolina and being more particularly described as BEING all of that 6 acre +/- tract as shown on PIN #'s 0788539942, 0788632845, and 0788632649.



BOOK:011148 PAGE:02624 - 02655

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 Francis J Quinn

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: [Signature]
Assistant/Deputy Register of Deeds

This Customer Group _____ # of Time Stamps Needed

This Document _____ New Time Stamp
32 # of Pages