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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
HARRINGTON POINTE CLUSTER UNIT DEVELOPMENT**

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**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
HARRINGTON POINTE CLUSTER UNIT DEVELOPMENT**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR HARRINGTON POINTE CLUSTER UNIT DEVELOPMENT ("Declaration") is made this 10th day of November, 2004, by CENTEX HOMES, a Nevada general partnership ("Declarant").

OVERVIEW

Declarant is the owner of the real property described on Exhibit "A" (the "Project Land"). Declarant plans to develop a residential community on the Project Land (the "Project") in multiple stages. Declarant desires to establish covenants, conditions, restrictions and easements for the Project to provide for the efficient administration, operation and maintenance of facilities, infrastructure, amenities and services which will benefit the Project.

Accordingly, Declarant has created a North Carolina non-profit corporation known as the Harrington Pointe Town Home Owners Association, Inc., to exercise certain rights and obligations in this Declaration with respect to the Project Land, whose membership shall be comprised of the owners of residential dwellings in the Project.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Project Land shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Project Land and any part thereof and which shall be binding upon all parties having any right, title or interest in the Project Land or any part thereof.

ARTICLE 1
EXHIBITS

The following exhibits are attached to and made a part of this Declaration:

- Exhibit A Legal Description of the Project Land
- Exhibit B Development Plan for the Project
- Exhibit C Stormwater Operations Maintenance Manual and Budget for the current Phase(s) of the Project
- Exhibit D Approved Form of City Agreement

ARTICLE 2
DEFINITIONS

"Additional Land" means any real property that is contiguous to the Project Land, which may be subjected to the terms of this Declaration as provided in Article 12.

"Amendment(s)" mean(s) any and all amendments to this Declaration.

"Articles" mean the Articles of Incorporation of the Association.

"Assessment(s)" means a payment which a Residential Owner is obligated to pay to the Association as permitted or contemplated by the Association Documents.

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"Association" means Harrington Pointe Town Home Owners Association, Inc., a North Carolina corporation not for profit.

"Association Documents" mean in the aggregate this Declaration, the Articles and Bylaws, and all of the instruments and documents referred to or incorporated therein, as they may be amended from time to time.

"Association Property" means the Entrance Facilities, the Recreation Facilities, the Project Drainage System, the Private Open Space, Buffer Areas, and any other lands, systems, facilities, personal property, equipment, rights and easements which may be deeded, leased, granted, reserved, assigned or transferred to the Association, as described in this Declaration, together with all improvements thereon and equipment, facilities and rights associated therewith.

"Attached Unit" means a Living Unit that is attached to an adjacent Living Unit by a common wall located on the boundary between the abutting Lots.

"Bio-Retention Basin" means a bio-retention area installed on the Project Land as part of the Project Drainage System, designed to filter nitrogen during the absorption of surface water through layers of landscape materials, mulch, soil and sand, prior to releasing the Stormwater into the underground piping.

"Board" means the Board of Directors of the Association.

"Bylaws" means the Bylaws of the Association.

"City" means the City of Raleigh, Wake County, North Carolina.

"City Agreement" means the agreement between Declarant, the City and the Association in the form attached as Exhibit "D" (as same may be amended from time to time to reflect additional Stormwater Control Measures shown on any Final Plat recorded subsequent thereto), for the purposes of granting easements and self-help rights to the City to enable the City to inspect, maintain, repair or replace the Stormwater Control Measures System if the Association fails to do so, which also requires an escrow account to be maintained by Declarant and the Association with the City to provide funds to preserve the Stormwater Control Measures.

"Committee" means the Architectural Control Committee for the Project established and empowered as provided in Article 10 of this Declaration.

"County" means Wake County, North Carolina.

"Declarant" means Centex Homes, a Nevada general partnership, and any successor or assign to which Centex Homes specifically assigns all or part of the rights of Declarant by an express written assignment recorded in the Public Records.

"Declaration" means this document, as it may be amended or supplemented from time to time.

"Deficit" means the difference between the Operating Expenses incurred by the Association during a fiscal year of the Association occurring within the Deficit Funding Period, and the applicable Assessments payable by the Residential Owners as provided in Section F of Article 6.

"Deficit Funding Period" means the period during which Declarant shall fund the Deficit, as more particularly described in Section F of Article 6.

“Detached Unit” means a Living Unit that is free-standing and not attached to any other Living Unit.

“Director” means a member of the Board.

“Dry Detention Basin” means a dry detention basin or pond installed on the Project Land as part of the Project Drainage System, intended to temporarily detain storm water during periods of rainfall and to gradually release the storm water into underground piping.

“Entrance Facilities” means any Project entrance monuments or features, together with all related landscaping, signage, irrigation, and other ancillary improvements constructed as part of such entrance feature(s).

“Extended Detention Wetland Pond” means a detention basin or pond on the Project Land that functions as part of the Project Drainage System and is designed to collect and hold sediment and storm water until the accumulated sediment reaches the maximum storage level for such basin or pond, at which time the sediment shall be removed.

“Final Plat” means and a final record plat approved by the City for a portion of the Project Land and recorded in the Public Records, including, but not limited to, that certain plat entitled “Subdivision Plat, Harrington Pointe, Phase One”, recorded in the Public Records at Plat Book 2004, Pages 2062 –2064, inclusive.

“Governmental Authorities” means the federal government, the State of North Carolina, the County of Wake, the City of Raleigh, and any agency or instrumentality of them having jurisdiction over the Project Land or any portion thereof.

“Improvement” means any structure or improvement which is constructed, made, installed, attached, placed or developed within or upon any portion of the Project Land, including but not limited to any building, fence, wall, patio area, driveway, walkway, antenna, satellite dish, sign, mailbox, pool, tennis court, deck, or any change, alteration, addition or removal of any such structure or improvement.

“Institutional Mortgagee” means any lending institution holding an interest in a Living Unit or Lot pursuant to a first mortgage covering a Living Unit or Lot. Institutional Mortgagees shall include, but not be limited to (i) the successors and assigns of such lending institutions, (ii) any “secondary mortgage market institution” who typically purchase, insure or guaranty mortgages (such as the Federal National Mortgage Association, the Veterans Administration (“VA”), the Federal Housing Administration (“FHA”), the Department of Housing and Urban Development (“HUD”), and similar entities), (iii) Declarant, if Declarant holds a mortgage on any portion of the Project Land.

“Interest” means the rate of twelve percent (12%) per annum, provided that Interest shall not be greater than the maximum interest rate allowed by law on the specific debt or payment obligation on which such Interest accrues.

“Legal Fees” mean reasonable fees for attorney and paralegal services and court costs incurred in connection with any pending or active litigation, claims or other forms of legal action, including the collection of past due Assessments.

“Living Unit” means each individual single-family residential dwelling unit in the Project, and includes the Lot upon which a Living Unit is constructed.

“Lot” means a portion of the Project Land shown on a Final Plat as a delineated parcel of land upon which a single-family Living Unit is permitted to be erected, and includes any Living Unit which may be constructed thereon.

“Member” means a member of the Association.

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“Operating Expenses” mean the expenses for which Residential Owners are liable to the Association as described in Article 6 and the Association Documents.

“Owner” means the owner of fee simple title to a Lot or a Living Unit, including Declarant.

“Person” means a natural individual or any other entity with the legal right to hold title to real property.

“Phase” means each portion of the Project developed as a separate parcel on a Final Plat.

“Planned Community Act” means the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes), as may be amended or supplemented from time to time.

“Pond” means a portion of the Project Land shown on the Site Plan or a Final Plat as a delineated parcel of real property that contains all or any portion of a lake, pond, lagoon, retention or detention area, or similar body of water comprising part of the Project Drainage System, including any Extended Detention Wetland Ponds.

“Private Drainage Easements” means the non-exclusive easements and rights dedicated and granted to the Association within those portions of the Project Land shown on the Final Plat as a “Private Drainage Easement” for the purpose of locating, operating, maintaining, repairing and replacing the Stormwater Control Measures in accordance with this Declaration and the City Agreement.

“Private Open Space” means those portions of the Project Land identified on a Final Plat or the Site Plan as “private open space” or other delineated parcel of land for use as an open area designated for ownership and maintenance by the Association.

“Product Area” means those portions of the Project developed or planned to be developed into Lots appropriate for construction of the same type of Living Unit (i.e. either Attached Units or Detached Units).

“Project” means the residential development to be constructed upon the Project Land.

“Project Drainage System” means the system of storm water drainage for the Project, consisting of the Stormwater Control Measures, the Private Drainage Easements, underground piping, catch basins, and other related facilities and easements required to achieve proper drainage for the Project.

“Project Land” means the real property described on Exhibit A, and any additions thereto of Additional Land made subject to this Declaration as provided in Article 12.

“Public Records” means the Register of Deeds Office of Wake County, North Carolina, or such other authorized County office in which deeds and other land records and documents are filed for public notice.

“Recreation Facilities” means the swimming pool, pool house, associated parking area, and related facilities which will be constructed by Declarant and conveyed to and operated by the Association.

“Residential Owner” means the owner of fee simple title to a Living Unit or Lot (but does not include Declarant or any builder exercising Declarant rights with regard to Assessments payable to the Association during the Deficit Funding Period).

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“Site Plan” means the site development plan for the Project approved by the appropriate Governmental Authorities, as such may be supplemented or amended from time to time, the current version of which is attached to this Declaration as Exhibit B.

“Stormwater Control Measures” means the Bio-Retention Basins, the Dry Detention Basins, the Extended Detention Wetland Ponds, the Grassed Swales and other related apparatus and facilities intended to provide storm water management and control for the Project that are located outside street right-of-way (excluding those pipes and measures serving a single Lot).

“Stormwater Maintenance Plan” means one or more instruments entitled “Stormwater Operations Maintenance Manual and Budget” that address the maintenance, operation, repair and replacement of the portion of the Project Drainage System located within a Phase, as approved by the City, which is required to be adhered to by the Association. A copy of the current Stormwater Maintenance Plan is attached to this Declaration as Exhibit C.

“Total Planned Units” means the total number of Living Units planned for the Project by the Site Plan as may be modified from time to time with the approval of the City, which is currently 266 Living Units.

“Turnover Date” means the earlier of (i) the date when ninety percent (90%) of the Total Planned Units have been conveyed to a Residential Owner, or (ii) the date on which Declarant records in the Public Records a document relinquishing its control of the Association to the Members.

ARTICLE 3

PLAN OF DEVELOPMENT OF THE PROJECT

A. Declarant’s General Plan. Declarant plans to develop the Project Land in multiple stages. Currently, Declarant plans to develop a total of 266 Living Units on the Project Land, including a Product Area of approximately 157 Attached Units and a Product Area of approximately 109 Detached Units, which number is subject to change as development of the Project Land progresses. Declarant may add and develop Additional Land as part of the Project in accordance with Article 12. Declarant may also expand or reduce each Product Area in accordance with changes to the Site Plan approved by the City. A Product Area may be scattered throughout the Project in multiple locations that may or may not be contiguous.

Declarant’s general plan of development contemplates the construction of Living Units thereon and, further, that various Improvements will be constructed on other portions of the Project Land which will enhance the Project and benefit the Residential Owners, however there is no obligation imposed by this Declaration on the Declarant to build a Living Unit on any particular Lot or portion of the Project Land. Declarant’s general plan of development further contemplates that such Living Units shall be whatever types of structures Declarant may choose (subject to the applicable zoning and density requirements of the applicable Governmental Authorities). Declarant’s general plan of the Project is reflected by the Site Plan and may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to the Project. Declarant reserves the right to increase or decrease the number of Lots or Living Units reflected and/or permitted by the Site Plan as approved by the City in accordance with applicable law, and such change shall not require an amendment to this Declaration.

B. Density. The current zoning classification of the Project Land is R-4, which means that the maximum number of units per acre within the Project without rezoning the Project Land to another zoning classification is four (4) Living Units per acre. However, because of the approval of the Project as a cluster unit development which permits density transfers within the Project Land, portions of the Project may be developed into Lots containing less than 1/4 acre. The approved density for the Project is reflected by the Site Plan and for any portion thereof, may be lower or higher than the maximum number of units permitted by the “R-4” zoning classification. Notwithstanding any other provision of this Declaration, the Articles, or the

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Bylaws, the maximum amount of land area and the maximum number of Living Units located on the Project Land subject to this Declaration shall not, without rezoning the Project Land, exceed 150 acres or exceed a total of 600 dwelling units, or exceed a density in any area of ten (10) Living Units per acre.

ARTICLE 4
ASSOCIATION PROPERTY

C. Association Property. The Association Property is for the use, enjoyment, and benefit of the Association and the Residential Owners, the residents of the Project, and their respective guests and invitees, tenants, and subject to the ordinances of the City and other applicable Governmental Authorities, and any other Person authorized to use the Association Property or any portion thereof by Declarant or the Association.

D. Residential Streets. Those portions of the Project Land shown on a Final Plat as a right of way for vehicular access and all Improvements thereon (the "Residential Streets") shall be dedicated and conveyed to the City for use by the public. Until Declarant dedicates a Residential Street or portion thereof to the City, there is hereby reserved and granted to the Governmental Authorities, a non-exclusive easement across such Residential Street or portion thereof for all governmental purposes including, but not limited to: police and fire protection, garbage collection, mail delivery, building inspection, and all other available public services. The Association shall have no responsibility for the maintenance of the Residential Streets, but shall have the right and not the obligation, to provide supplemental maintenance together with the City and other applicable Governmental Authority, as the Board may determine in its sole discretion.

E. Project Drainage System. The Project Drainage System shall be kept, repaired, replaced, and maintained by the Association. The Association shall use and maintain those portions of the Project Drainage System owned or controlled by the Association substantially in the same fashion as constructed by Declarant and in accordance with the Stormwater Maintenance Plan, the City Agreement and other applicable requirements of the City and other applicable Governmental Authorities.

The Project Drainage System shall consist of the Stormwater Control Measures located on portions of the Association Property and within any Private Drainage Easements located on the Lots. The Association shall maintain and repair any underground piping located beneath the Private Drainage Easements. The Association shall also maintain the surface area, landscaping, underground piping and all portions of the Bio-Retention basins, Dry Detention Basins, Extended Detention Wetland Ponds, and the Grassed Swales located on the Association Property, as provided in this Declaration and in the Stormwater Maintenance Plan. The cost of such maintenance performed by the Association shall be an Operating Expense of the Association and payable out of the funds collected as Base Assessments from the Residential Lot Owners.

Declarant and the Association are required to enter into (or are entering into) the City Agreement, which includes the obligation to establish an escrow account with the City to provide the estimated funds necessary for future maintenance, repair or replacement of the Stormwater Control Measures for all existing and future Phases of the Project. Pursuant to the City Agreement, Declarant shall contribute the initial funds to establish the escrow account by depositing funds in an amount equal to 15% of the estimated amount of the original cost to construct new Stormwater Control Measures if the Stormwater Control Measures constructed by (or to be constructed by) Declarant are damaged or destroyed. Thereafter, the Association shall make annual payments into the escrow account according to the schedule of payments set forth in the City Agreement. If the Association or the City withdraws funds from the escrow account as permitted in the City Agreement, the Association is obligated to replenish the funds so withdrawn. The City Agreement allows the Association to draw funds from the escrow account, with the consent of the City, for the purpose of funding major repair or reconstruction of the Stormwater Control Measures. The City also has the right to inspect the Stormwater Control Measures and to perform the Association's obligation to maintain, repair and replace the Stormwater Control Measures, if the Association fails to do so

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(as determined in the City's sole discretion). If the City performs any of the Association's obligations under the City Agreement as permitted thereby, the City shall be reimbursed out of the funds in the escrow account or otherwise reimbursed by the Association. Any expenses incurred by the Association as a result of the obligation to replenish funds withdrawn from the escrow account by the Association or the City shall be the subject of a Special Assessment that the Board may impose pursuant to Section D.2 of Article 6. The Association's required annual contributions to the escrow account according to the schedule set forth in the City Agreement, shall be an Operating Expense and included in the Budget for each fiscal year of the Association during the period the City Agreement requires the Association to make such payments. The Association shall not be permitted to withdraw any funds from the escrow account in order to fund the expenses incurred by the Association in performing the routine and recommended maintenance and repair of the Stormwater Control Measures as required by this Declaration and by the Stormwater Maintenance Plan, which expenses shall be an Operating Expense of the Association and reflected in the Budget referred to in Section R of Article 6.

F. Entrance Facilities. The Association shall maintain, at the Association's sole cost, the Entrance Facilities, including repair and replacement if any such Improvements are damaged or destroyed. The Association shall maintain such Improvements in a state of good repair and in conformity with the standards maintained in developments of a similar nature and quality as the Project. Notwithstanding the foregoing, the Association shall have the right, at any time, to modify the Entrance Facilities by reducing the amount of landscaping material to be maintained or by changing the type or density of any such landscaping material. To the extent any Entrance Facilities are located on a Lot, an easement is reserved in favor of the Association and Declarant over and upon the applicable portion of the Lot as provided in Section B of Article 8.

G. Common Parking Spaces. Any parking spaces located on Association Property, within a Residential Street or otherwise not located upon a Lot ("Common Parking Space") shall be maintained by the Association. The Association shall use and maintain the Common Parking Spaces in substantially the same fashion as constructed by Declarant and in accordance with the requirements of the City. The Common Parking Spaces shall be for the use and benefit of all of the Residential Owners and no Residential Owner shall claim any exclusive right to use any Common Parking Space, regardless of the location of any such Common Parking Space.

H. Mail Service Areas. Any portion of the Project Land shown on the Site Plan or a Final Plat as a site containing a mail kiosk and the associated landscaping, sidewalk, and parking spaces shall be owned and maintained by the Association.

I. Recreation Facilities. The Recreation Facilities shall be part of the Association Property and shall be used for recreational purposes by the Association, Declarant, the Residential Owners and their family members, guests, invitees and lessees, and other Persons who may be permitted by Declarant to use the Recreation Facilities as provided in this Declaration. Such portion, if any, of the Recreation Facilities upon which Declarant has constructed, or hereinafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. The Recreation Facilities shall be used for recreational purposes and such proper ancillary uses as may be determined by Declarant (who shall have the right to determine such uses until the Association assumes such right after the Turnover Date). All remaining portions of the Recreation Facilities shown on the Master Plan, including, but not limited to, the swimming pool, shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Recreation Facilities shall be maintained, administered and ultimately owned by the Association. The Board may adopt specific rules and regulations regarding the use of the Recreation Facilities as provided in Section N below.

Notwithstanding the foregoing, Declarant has not made and is not deemed by any provision of this Declaration to make, any representation or warranty regarding when the Recreational Facilities will be completed

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and available for use by the Residential Owners. Each Residential Owner, by acceptance of a deed or other instrument of conveyance of a Living Unit in the Project shall be deemed to have acknowledged and agreed that (i) Declarant is under no obligation to construct any Recreation Facilities by a certain date or within a certain time period, (ii) Declarant has not made any representations or warranties regarding when the Recreation Facilities will be completed and available for use, and (iii) such Residential Owner recognizes that no salesperson, employee, representative, or other agent of Declarant has the expertise or the authority to make any such representations or render any opinions regarding the time frame for the completion of the Recreation Facilities.

During the period following the completion of the Recreation Facilities and the conveyance thereof to the Association and ending on the Turnover Date, Declarant shall have and hereby reserves the right, but shall not be obligated, to construct additional recreational facilities upon the Recreation Facilities. Until the Turnover Date, the decision as to whether to construct additional recreational facilities and the construction thereof shall be in the sole discretion of Declarant.

NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL FOR THE RECREATION FACILITIES, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS. ANY INDIVIDUAL USING THE RECREATION FACILITIES SHALL DO SO AT HIS OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

J. Private Open Space. Private Open Space and any Improvements installed thereon shall be owned, used and maintained by the Association in substantially the same fashion as installed and constructed by Declarant and in accordance with any applicable City requirements. Private Open Space may contain other specific items of Association Property, or portions thereof, including but not limited to, Bio-Retention Basins, Dry Detention Basins, Grassed Swales, Extended Detention Wetland Ponds, or other components of the Project Drainage System, Buffer Areas and "Permanently Protected Undisturbed Open Space Areas" (as that term is regulated by City storm water control and water course buffer requirements), and greenway areas that are controlled and maintained by the City as easements. No land-disturbing activity, placement of impervious surface, removal of vegetation, encroachment, construction or erection of any structure or Improvement shall occur with Permanently Protected Undisturbed Open Space Areas, except in accordance with a watercourse buffer permit first being issued by the City.

K. Buffers: Landscape Areas; Protective Yards. Any portion of the Property shown on a Final Plat as a landscape area, landscape easement, buffer, perimeter protective yard, or otherwise established to provide a landscaped or natural area buffer between the Project Land and the adjacent properties ("Buffer Area") shall be used and maintained by the Association either substantially in the same fashion as constructed by Declarant, or in its natural state as required by City zoning regulations. To the extent that any portion of a Buffer Area is located upon any Lot, an easement upon the applicable portion of such Lot is hereby reserved in favor of Declarant and the Association as provided in Section B of Article 8, and no Residential Owner shall perform or allow any land-disturbing activity, removal of vegetation, encroachment, construction or erection of any Improvements within any portion of such Residential Owner's Lot contained within a Buffer Area, except with the approval of the Committee and if applicable, the City and any other Governmental Authorities having jurisdiction over the Buffer Areas in the Project.

L. Right to Add Additional Improvements. Such portions of the Association Property upon which Declarant has constructed, or hereinafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located, or to be located thereon. Until the Turnover Date, Declarant reserves the right, but shall not be obligated, to construct additional facilities upon the Association Property. Until the Turnover Date, the decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant.

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M. Private Use. Except as may otherwise be expressly provided for herein, for the term of this Declaration, the Association Property is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, and the Residential Owners, their family members, guests, invitees and lessees, and any other Person authorized to use the Association Property or any portion thereof by Declarant or the Association but only in accordance with this Declaration and the laws of the City and the applicable Governmental Authorities.

N. Declarant's Rights to Use Association Property. Declarant, hereby expressly reserves the right to use the Association Property, the Lots and the unsold Living Units in connection with the sale and marketing by Declarant of Living Units or Lots in the Project, including, but not limited to, the holding of sales and marketing meetings, sales promotions and related activities.

O. Conveyance of Association Property. Declarant agrees that fee simple title or other applicable interest in and to the Association Property shall be conveyed to the Association by deed, bills of sale, easements or leases, as applicable, and the Association is obligated to accept, fee simple title or other applicable interest in and to the Association Property, subject to: (i) the terms and provisions of this Declaration; (ii) all applicable Association Documents; (iii) real estate taxes for the year of such conveyance; (iv) all applicable zoning ordinances; and (v) utility, greenway, and drainage easements. While Declarant shall have the right to convey or cause to be conveyed all or such portions of the Association Property as Declarant shall from time to time determine, the conveyance of the Association Property located within any Phase or portion of the Project shall be effectuated no later than the sale by Declarant of the first Living Unit shown on the Final Plat for such Phase or other portion of the Project, except that the conveyance of the Recreation Facilities shall not be required to be made to the Association until Declarant completes the Recreation Facilities. At the time of conveyance of the Association Property or any portion thereof, the Association shall be required to accept such conveyance of the Association Property or portions thereof and the personal property and improvements appurtenant thereto. The Association hereby agrees to accept the Association Property and the personal property and improvements appurtenant thereto "AS IS", without any representation or warranty, expressed, implied, in fact or by law, as to the condition or fitness of the Association Property or portions thereof and the personal property and improvements thereon, subject to the obligation of Declarant to convey the Association Property to the Association free of any liens or encumbrances, including, but not limited to, any mortgages, deeds of trust, or mechanic's or materialmen's liens for any work performed by or on behalf of such developers for the completion of the Improvements to the Association Property.

The Association Property shall not be mortgaged or conveyed by the Association without (i) the approval of at least eighty percent (80%) of the Members, and (ii) compliance with and satisfaction of the applicable provisions of the Planned Community Act (if any), including the affirmative approval of any other percentage of Members or of votes attributable to the Members (or each class of Members) than the percentage specified herein as may be prescribed by the Planned Community Act. All rights of the mortgagee shall be subordinate to the rights of the Association and its Members. Easements granted or permitted in the Association Property and as long as the land area of the Association Property is not materially reduced, conveyances for the purpose of eliminating encroachments or making minor necessary boundary adjustments shall not be considered to be a conveyance of such Association Property and shall not require the approval or consent of the Members or any other party or Person except if applicable, the approval of the planning director of the City.

In consideration of the benefits accruing to the Association and to the Members under this Declaration and in consideration of the covenants and agreements of the Declarant hereunder, the Association hereby agrees to accept title to any property, or to any interest in property, now or hereafter conveyed to it pursuant to the terms and conditions of this Declaration. Upon the due recording of a deed, easement, lease or other instrument or memorandum of conveyance to the Association filed in the Public Records, title or such other interest in property conveyed will vest in and to the Association without the necessity of any further act, deed or approval of any person, including the grantor, lessor and/or Association.

P. Rules and Regulations. The Association shall be entitled to adopt and enforce reasonable rules and regulations related to the use and operation of the Association Property. All users of the Association Property shall be subject to comply with such rules and regulations, provided any such rules and regulations are not applied or enforced in a discriminatory manner. Enforcement of such rules and regulations can include the right to prohibit use, deny access to facilities, and suspend voting rights of Members for material violations. The rules and regulations so promulgated shall, in all respects, be consistent with the provisions of the Association Documents.

ARTICLE 5
ASSOCIATION MEMBERSHIP AND GOVERNANCE

A. Membership. Every Owner, including Declarant, of a Lot or a Living Unit will be a Member of the Association. Ownership of a Lot or a Living Unit will be the sole qualification for such membership. If fee title to a Lot or Living Unit is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include any Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

B. Voting Rights. The Association will have two (2) types of voting memberships which are as follows:

1. "Class A Members" will be Owners (including Declarant) of Lots and Living Units. A Class A Member will be entitled to one (1) vote for each Lot or Living Unit owned.
2. "Class B Members" shall be Declarant or its designated assign. The Class B Member will be entitled to two times the total number of votes of the Class A Members, plus one (1) vote until the Turnover Date. Thereafter, Declarant will exercise votes only as to its Class A Memberships.

Only those Members in good standing and eligible to vote pursuant to the Bylaws shall be entitled to cast any vote required or permitted hereunder, and only the votes of Members in good standing and eligible to vote shall be considered in any calculation of votes or any required percentage thereof. On the Turnover Date, Class A Members, including Declarant, shall assume control of the Association and elect the Board.

C. Voting By Multiple Owners. When any Lot or Living Unit of a Class A Member is owned in the name of two or more persons, other than husband and wife (either of whose vote will bind both), by an entity, or in any other manner of joint or common ownership, the vote for such Lot or Living Units will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners filed in the Public Records, a copy of which will be delivered to the Secretary of the Association and will remain effective for all meetings until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.

D. Association Governance by Board. The Board shall consist of three (3) or five (5) members who will govern the Association. Initially, prior to the Turnover Date, the Board will consist of three (3) members appointed by the Declarant, and following the Turnover Date, the Board will consist of five (5) members elected as provided in the Bylaws.

E. Meetings and Membership Voting. Except as otherwise provided in this Declaration, rules and procedures of the Association, including, but not limited to, conducting elections, meetings (both regular and special), and for casting of votes by Members, and the number thereof required for quorums and approval or ratification, shall be as set forth in the Bylaws.

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ARTICLE 6
ASSESSMENTS AND OPERATING EXPENSES:

A. Affirmative Covenant to Pay Operating Expenses. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Association Documents; and (ii) maintain, operate and preserve the Association Property for the welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Lot and Living Unit and Residential Owner (with the exception of Declarant during the Deficit Funding Period) the affirmative covenant and obligation to pay to the Association (in the manner herein set forth) all Assessments, including, but not limited to, the Base Assessments, Special Assessments, Individual Expense Assessments, Working Capital Contributions, and if applicable, any Product Area Assessments. Each Residential Owner (except, if applicable, Declarant) by acceptance of a deed or other instrument of conveyance of a Living Unit or Lot from Declarant, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments for Operating Expenses in accordance with the provisions of the Association Documents.

B. Establishment of Liens. Any and all Assessments made by the Association in accordance with the Association Documents with interest thereon and costs of collection (including, but not limited to, Legal Fees), are declared to be a charge and continuing lien upon each Lot and Living Unit against which each such Assessment is made. Each Assessment against a Lot or Living Unit (together with interest thereon and costs of collection) shall be the personal obligation of the Residential Owner thereof. Said lien shall be effective only from and after the date a written, acknowledged statement of the Board setting forth the amount due to the Association as of the date the statement is signed, is recorded in the Public Records. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Where an Institutional Mortgagee obtains title to a Living Unit or Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such Institutional Mortgagee shall not be liable for the share of Assessments pertaining to such Living Unit or Lot that became due prior to the acquisition of title by such Mortgagee as a result of the foreclosure or deed in lieu thereof, unless the Assessment is secured by a claim of lien for Assessments recorded prior to the recording of the applicable mortgage.

C. Amount of Base Assessment. The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Association Documents. The total anticipated Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment) shall be apportioned equally among the Lots and Living Units by dividing the total anticipated Operating Expenses as reflected by the Budget, by the total number of Lots and Living Units, with the quotient thus arrived at being the "Base Assessment". Provided, however, the first Budget and all subsequent Budgets prepared during the Deficit Funding Period referred to below, shall be based upon a projection of the total Operating Expenses at full build-out of the Project and the Base Assessment shall be determined by dividing the amount of the total anticipated Operating Expenses at full build-out by a number equal to 75% of the Total Planned Units. On any Budget, the Board shall have the right to make adjustments to the amount of the total Operating Expenses anticipated at full build-out of the Project or any component thereof, from the amounts reflected on the previous Budget (subject to the ratification of the Budget as provided below). Such adjustments shall be made based on the Board's reasonable determination of actual or potential increases or decreases in the costs associated with the services and materials covered in the Budget. Accordingly, the amount of the Base Assessment may vary from year to year during the Deficit Funding Period, as long as the Base Assessment is calculated according to the formula described in the previous sentence and the applicable Budget is ratified as provided below.

Within 30 days after adoption of a Budget, the Board shall provide to all Residential Owners, a summary of the Budget and a notice of the meeting to consider ratification of the Budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The Budget is ratified unless at that meeting, ninety percent (90%) or more of the Residential Owners. If the Budget is rejected, the

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Budget last ratified by the Residential Owners or in effect for the preceding fiscal year of the Association, shall be continued until such time as the Residential Owners ratify a subsequent Budget adopted by the Board.

D. Special Assessment.

1. "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Association Documents, those Assessments which are levied for capital improvements which include the costs of constructing or acquiring Improvements on or for the Association Property or the costs of reconstructing or replacing such Improvements. Special Assessments shall be in addition to, and are not part of, any "Base Assessment". Any such Special Assessments assessed against Lots and Living Units shall be paid by the Residential Owners in addition to any other Assessments. Special Assessments shall be assessed in the same manner as the Base Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. In any fiscal year of the Association after the Turnover Date, the levying of any Special Assessment shall require the affirmative assent of at least two-thirds (2/3) of the votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Except as set forth in subparagraph 2 below, in any fiscal year of the Association prior to the Turnover Date, the levying of any Special Assessment which exceeds five percent (5%) of the budgeted Operating Expenses of the Association for that fiscal year, shall require the affirmative assent of at least two-thirds (2/3) of all votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Any Special Assessment levied prior to the Turnover Date in an amount equal to 5% or less of the budgeted Operating Expenses of the Association for a fiscal year may be levied by the Board without the approval or consent of the Residential Owners or any other party.

2. City Agreement Special Assessment. Notwithstanding the requirements of Section D.1 of this Article 6, the Association, acting by and through the Board shall levy a Special Assessment for the purpose of funding any monetary obligations that the Association may have to replenish the funds in the escrow account established in accordance with the City Agreement as a result of the withdrawal of funds from the account by the Association or the City. The Board may levy any such Special Assessment without the approval or consent of any Owner, Member, or any other party. The right of the Association to enforce its lien for payment of such Special Assessment may be exercised by either the Association or the City. The Association hereby assigns to the City, its rights to claim and enforce the lien for any Special Assessment levied pursuant to this Section D. 2 of Article 6, who may act on behalf of the Association and shall have all of the rights of the Association, including those rights in Section H of this Article 6, with respect to any such Special Assessment levied hereby.

E. Individual Expense Assessments. Individual Expense Assessments include any Assessment levied against a Residential Owner as a result of such Residential Owner's use, maintenance, or treatment of the Association Property or such Residential Owner's failure to comply with the Association Documents, including, but not limited to, non-compliance of Living Units and any other Improvements or personal property contained therein with the standards set forth in the Association Documents. The amount of the Individual Expense Assessment(s) shall be equal to the amount of any additional costs and expenses incurred by Declarant or the Association as a result of such Residential Owner's failure or refusal to comply with the Association Documents. The Individual Expense Assessment and any late charges relating thereto shall be assessed and collected and enforced in the same manner as any other Assessments hereunder as provided herein. Individual Expense Assessments shall be in addition to and not part of any other Assessment. For the purposes of this Section, the term "Residential Owner" shall also mean any such Residential Owner's family members, guests, or lessees, and such lessee's family members, or guests.

F. Product Area Assessments. If the Association owns or maintains any Association Property that benefits the Residential Owners in a Product Area without providing a benefit to the other Product Area(s), or if the Association

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otherwise provides any services or incurs any expenses exclusively on the behalf of the Residential Owners of Living Units in a specific Product Area, the Association may, at its sole option, levy "Product Area Assessments" on the Living Units of the applicable Product Area. Operating Expenses incurred for the exclusive benefit of a Product Area in accordance with the foregoing shall be determined in the same manner as the Base Assessments, and shall be addressed by a separate Product Area budget or otherwise clearly distinguished from the Operating Expenses allocated to the Residential Owners as Base Assessments. Any Product Area Assessments shall be payable in the same manner as the Base Assessments, in advance in monthly, quarterly, annual or semi-annual installments with the due dates being established by the Board. Notwithstanding the foregoing, the Association is under no obligation to levy Product Area Assessments or to otherwise exclude any Operating Expenses associated with any service or Association Property benefiting a Product Area from the total Operating Expenses used to determine the Base Assessment, as provided in Section R of Article 6.

G. Deficit Funding Period. Declarant covenants and agrees with the Association and the Residential Owners that for the period ("Deficit Funding Period") commencing with the date of recordation of this Declaration and ending upon the sooner to occur of the following: (i) the date upon which one hundred thirty (130) Living Units have become certified for occupancy by the applicable Governmental Authorities, or (ii) the date that is four (4) years after the date this Declaration is originally recorded in the Public Records, that (a) the Base Assessment will be determined by spreading the total anticipated Operating Expenses projected at full build-out of the Project as set forth in the Budget, by a number equal to 75% of the Total Planned Units; and (b) Declarant will pay the "Deficit," being the difference, if any, between the Operating Expenses incurred by the Association during the Deficit Funding Period, and the Assessments paid by other Residential Owners. During the Deficit Funding Period, Declarant shall not be obligated to pay any Assessments with respect to any Lots or Living Units owned by Declarant. Declarant hereby reserves the right to extend the Deficit Funding Period to a date ending not later than the Turnover Date at Declarant's sole election by providing written notice to the Association of such election at least thirty (30) days prior to the expiration of the current Deficit Funding Period. After the Deficit Funding Period terminates, Declarant shall pay Base Assessments for any Lots or Living Units owned by Declarant at a rate equal to ten percent (10%) of the full amount of the applicable Base Assessments charged for Lots or Living Units that are not owned by Declarant.

Declarant's obligation to fund the Deficit during the Deficit Funding Period as set forth above is hereby declared to be a charge and continuing lien upon each Lot and Living Unit owned by Declarant. Said lien shall be effective only from and after the time of the recordation in the Public Records of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, Declarant shall be entitled to a satisfaction of the statement of lien in recordable form.

H. Working Capital Contribution. The first Residential Owner who purchases a Living Unit from Declarant or a builder who constructed the Living Unit, shall pay to the Association at the time title is conveyed to such Residential Owner a "Working Capital Contribution". The Working Capital Contribution shall be an amount equal to a two-month share of the Base Assessment. The purpose of the Working Capital Contribution is to insure that the Association will have cash available for initial start up expenses including, but not limited to Operating Expenses, to meet unforeseen expenditures or to acquire additional equipment and services deemed necessary or desirable by the Board. Working Capital Contributions are not advance payments of Base Assessments and shall have no effect on future Base Assessments. Working Capital Contributions are payable only by the first Residential Owner and any Residential Owner who is not the first purchaser of a Living Unit, but buys the Living Unit from another Residential Owner shall have no obligation to pay a Working Capital Contribution.

I. Collection of Assessments. If any Residential Owner shall fail to pay any Assessment (or installment thereof) charged to such Residential Owner within thirty (30) days after the same becomes due, then the Association shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

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1. To accelerate the entire amount of any Assessments levied on the applicable Living Unit or Lot for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

2. To advance on behalf of the Residential Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Residential Owner(s) is liable to the Association. The amount of any funds so advanced, together with Interest and all costs of collection thereof (including, but not limited to, Legal Fees), may be collected by the Association and such advance by the Association shall not waive the Residential Owner's default.

3. To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, or as otherwise provided in the Planned Community Act.

4. To file an action at law to collect said Assessment plus Interest and Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.

5. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five Dollars (\$25.00) by the Association to defray additional collection costs.

J. Collection by Declarant. If for any reason the Association shall fail to collect the Assessments, then prior to the Turnover Date, Declarant shall have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments (and if applicable, any such sums advanced by Declarant); using the remedies available to the Association against a Residential Owner as set forth above, all of which remedies are hereby declared to be available to Declarant.

K. Payments by Declarant and Institutional Mortgagees. Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Living Units or Lots. Declarant and any Institutional Mortgagees shall also have the right, but not the obligation, jointly or singly, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association when overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagees paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection. The Association shall execute an instrument in recordable form evidencing the Association's obligation to make such immediate reimbursement and deliver the original of such instrument to each party who is so entitled to reimbursement.

L. Rental and Receiver. If a Residential Owner remains in possession of his Living Unit or Lot and the claim of lien of the Association against his Living Unit or Lot is foreclosed, the court, in its discretion, may require the Residential Owner to pay a reasonable rental for the Lot or Living Unit, and the Association is entitled to the appointment of a receiver to collect the rent.

M. Assignment of Claim and Lien Rights. The Association, acting through its Board, shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessments and any other monies owed to the Association, to any third party.

N. Certificate of Payment. Within ten (10) days after written request by any Residential Owner or any Institutional Mortgagee, the Association shall provide the requesting party a written certificate as to whether or not the Residential Owner of the Living Unit or Lot is in default with respect to the payment of Assessments or with respect to

compliance with the terms and provisions of this Declaration. Any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any Living Unit or Lot shall be protected thereby.

O. Application of Payments. Any payments made to the Association by any Residential Owner shall first be applied towards any sums advanced and paid by the Association for taxes and payment on account of superior mortgages, liens or encumbrances which may have been advanced by the Association in order to preserve and protect its lien, next toward reasonable attorneys' fees incurred by the Association incidental to the collection of Assessments and other moneys owed to the Association by the Residential Owner and/or for the enforcement of its lien; next towards Interest on any Assessments or other moneys due to the Association, as provided herein, and next towards any unpaid Assessments owed to the Association, in the inverse order that such Assessments were due.

P. Assessment Payments. The Base Assessments shall be payable in advance in monthly, quarterly, annual or semi-annual installments with the due dates being established by the Board.

Q. Liability of Residential Owners for Individual Assessments. By the acceptance of a deed or other instrument of conveyance of a Living Unit or Lot in the Project, each Residential Owner thereof acknowledges that the Residential Owners are jointly and severally liable for their own Base Assessment and their applicable portion of any Special Assessments as well as for all Individual Expense Assessments and Product Area Assessments for which they are liable (with the exception of Declarant so long as Declarant pays the Deficit). Such Residential Owners further recognize and covenant that they are jointly and severally liable with all Residential Owners (except for Declarant during the Deficit Funding Period) for the payment of Operating Expenses. Each Residential Owner, recognizes and agrees that if other Residential Owners fail or refuse to pay their Assessments or any portion thereof, then the remaining Residential Owners may be responsible for increased Base Assessments or a Special Assessment or other Assessments levied as a result of such nonpayment. Any such increased Base Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments in accordance with the Association Documents.

R. Operating Expenses. The Assessments for Operating Expenses are payable by each Residential Owner to the Association notwithstanding the fact that Declarant may not have yet conveyed title to the Association Property to the Association. Operating Expenses shall include the cost of all items or expenses benefiting the Association, the Project Land, the Project, the Lots and Living Units, and the Residential Owners, as determined to be an appropriate item of Operating Expense by the Board. Operating Expenses include, but are not limited to, the following expenses, costs, fees and charges:

1. Taxes. Any and all taxes levied or assessed at any and all times by any and all taxing authorities against the Association Property and against any and all personal property and Improvements, which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue thereon.

2. Utility Charges. All charges levied for utilities providing services for the Association Property whether supplied by a private or public firm, including (but not limited to) all charges for water, gas, electricity, telephone, sewer and any other type of utility or any other type of service charge.

3. Insurance. The premiums on any policy or policies of insurance required to be maintained by the Association under this Declaration and the premiums on any policy or policies the Association determines to maintain even if not required to be maintained by the specific terms of this Declaration.

4. Destruction of Buildings or Improvements on the Association Property. Any sums necessary to repair or replace, construct or reconstruct damages caused by the destruction of any building upon the Association Property by fire, windstorm, flood or other casualty regardless of whether or not the same is covered in whole or in part by insurance shall be Operating Expenses. In the event insurance money shall be payable, such insurance money shall be paid to the Association

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who shall open an account with a banking institution doing business in the County, for the purpose of providing a fund for the repair and reconstruction of the damage and the procedures for disbursement of any such insurance proceeds or funds shall be in accordance with the applicable and/or additional provisions of the Planned Community Act (if any). The Association shall pay into such account, either in addition to the insurance proceeds or in the event there are no insurance proceeds, such sums as may be necessary so that the funds on deposit will equal the costs of repair and reconstruction of the damage or destruction. The sums necessary to pay for the damage or destruction as herein contemplated shall be considered Operating Expenses but shall be raised by the Association under the provisions for Special Assessments and subject to the limitations therein set forth with respect to Special Assessments. The Association agrees that it will commence the Special Assessments process to provide the funds for the cost of reconstruction or construction within ninety (90) days from the date the destruction takes place and shall go forward with all deliberate speed so that the construction or reconstruction, repair or replacement, shall be completed within a reasonable period of time from the date of damage.

5. Maintenance, Repair and Replacements. All expenses necessary to keep and maintain, repair and replace any and all buildings, other Improvements, personal property and furniture, fixtures and equipment upon the Association Property, including landscaping, lawn and sprinkler service, in a manner consistent with the standards and requirements in the Association Documents and in compliance with the requirements and regulations of all applicable Governmental Authorities having jurisdiction over the Project.

6. Exterior Maintenance of Lots. Operating expenses shall include all expenses necessary to keep and maintain, repair and replace those portions of the Lots for which the Association is responsible as provided in Section A.2 of Article 9.

7. City Agreement. The scheduled annual contributions required to be made by the Association to the escrow account maintained by the City pursuant to the City Agreement shall be an Operating Expense of the Association. Any expenses incurred by the Association as a result of the City or the Association withdrawing funds from the escrow account as permitted by the City Agreement shall be the subject of a Special Assessment as provided in Section C of Article 4 and in accordance with Section D.2 of Article 6.

8. Product Area Expenses. The costs and expenses related to the Association's provision of services for the benefit of a particular Product Area (and not for the benefit of all Residential Owners) may be an Operating Expense that is the subject of a Product Area Assessment payable only by the Residential Owners of Living Units of the applicable Product Area. Provided however, the levying of a Product Area Assessment by the Association is an optional right, and the Association, at its sole option, may allocate the expenses incurred by the Association for the benefit of a specific Product Area among all of the Residential Owners, by combining such expenses with the rest of the Operating Expense used to determine the Base Assessments payable by all Residential Owners.

9. Additional or Offsite Maintenance. The expenses of any additional maintenance that the Board elects to provide in order to enhance the overall appearance of the Project for or on any property or Improvements located within or outside of the Project, if permitted by the owner of such property or the Governmental Authority responsible for maintaining same.

10. Indemnification. The costs of fulfilling the covenant of indemnification in Section G of Article 15.

11. Administrative and Operational Expenses. The costs of administration of the Association including, but not limited to, any secretaries, bookkeepers and other employees, and the costs of retaining a management company, as necessary to carry out the obligations and covenants of the Association.

12. Compliance with Laws. The cost and expense of the Association's compliance with all applicable laws, statutes, ordinances and regulations of any Governmental Authority, including, without limitation, any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions, environmental conditions, and fire hazards.

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13. Non-Payment of Base Assessments. Funds needed for Operating Expenses due to the failure or refusal of Residential Owners to pay the Assessments levied. Provided, however, that any Assessment for any such sums so needed to make up a deficiency due to the failure of Residential Owners to pay a Special Assessment shall, itself, be deemed to be a Special Assessment.

14. Costs of Reserves. The funds necessary to establish an adequate reserve fund ("Reserve") for periodic maintenance, repair, and replacement of the Association Property and the facilities and Improvements thereupon in amounts determined sufficient and appropriate by the Board from time to time. Reserves shall be deposited in a separate account to provide such funds and reserves. The monies collected by the Association on account of Reserves shall be and shall remain the exclusive property of the Association and no Residential Owner shall have any interest, claim or right to such Reserves.

15. Miscellaneous Expenses. The cost of all items or costs or expenses pertaining to or for the benefit of the Association, the Association Property, the Lots, the Living Units, the Project, or any part thereof, not herein specifically enumerated and which is determined to be an appropriate item of Operating Expense by the Board shall be an Operating Expense.

16. Legal Action against Declarant. Legal expenses incurred by the Association to begin legal proceedings against Declarant shall be deemed an Operating Expense, which is properly the subject of a Special Assessment and not the subject of a regular Base Assessment.

ARTICLE 7 INSURANCE AND CONDEMNATION

The Association shall purchase and maintain the following insurance coverage subject to the following provisions, and the cost of the premiums therefore shall be a part of the Operating Expenses:

A. Casualty Insurance. Property and casualty insurance naming Declarant as an additional named insured for so long as Declarant owns any portion of the Project Land, in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all Improvements and personal property which is owned, or to be owned, by the Association and now or hereafter located upon the Association Property, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Association Property in developments similar to the Project in construction, location and use. If insurance proceeds are payable to the Association as a result of casualty and the Association is obligated or elects to repair or reconstruct the Improvements damaged or destroyed by such casualty, such insurance money shall be paid to the Association who shall open an account with a banking institution doing business in the County, for the purpose of providing a fund for the repair and reconstruction of the damage.

B. Public Liability Insurance. A comprehensive policy of public liability insurance naming Declarant as an additional named insured until Declarant's ownership of any portion of the Project Land ceases, insuring against any and all claims or demands made by any person or persons whomsoever for injuries received in connection with, or arising from, the operation, maintenance and use of the Association Property and any Improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000) for damages incurred or claimed by any one person for any one occurrence; not less than One Million Dollars (\$1,000,000) for damages incurred or claimed for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000) property damage per occurrence with no separate limits stated for the number of claims.

C. Fidelity Coverage. Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all other who handle and are responsible for handling funds of the Association shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

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D. Other Insurance. Such other forms of insurance and in such coverage amounts as the Association shall determine to be required or beneficial for the protection or preservation of the Association Property and any improvements now or hereafter located thereon or in the best interests of the Association.

E. Cancellation or Modification. All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least ten (10) days prior written notice to the Association.

F. Condemnation. In the event the Association receives any award or payment arising from the taking of any Association Property owned in fee or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and Improvements thereon to the extent deemed advisable by the Association and the remaining balance thereof, if any, shall be allocated or applied as determined by the Board.

G. Property Damage and Casualty Insurance on the Living Units. Each Residential Owner shall maintain a property damage and casualty insurance or "hazard" insurance policy, with full replacement coverage, to protect against casualty damage to their Living Unit. Each Residential Owner shall provide a copy of such Owner's current hazard insurance policy, and all replacements and renewals thereof, to the Association. If a Residential Owner fails or refuses to provide the Association with a copy of such insurance policy (or renewal or other reasonable evidence of the availability of current property damage and casualty insurance coverage on the Residential Owner's Living Unit) within thirty (30) days following the Association's written notice to provide such insurance policy or evidence, the Association shall have the right to obtain and purchase such insurance as required by this Section on behalf of such Owner. In such event, the costs incurred by the Association procuring such insurance, shall be assessed against the applicable Residential Owner as an Individual Expense Assessment levied against the Residential Owner's Lot.

H. Planned Community Act. The insurance maintained by the Association and the application, allocation or distribution of the proceeds thereof shall be subject to Section 47F-113 of the Planned Community Act and any other applicable terms and provisions of the Planned Community Act.

ARTICLE 8
EASEMENTS

A. Recognition of Existing Easements. Each Residential Owner, by acceptance of a deed or other instrument of conveyance, recognizes and consents to the easements reserved and/or granted with respect to the Project Land under this Declaration.

B. Reservation and Establishments of Easements. In addition to the easements set forth and specifically granted and referred to in other provisions of this Declaration, this Declaration hereby creates and establishes the following perpetual easements over and across the Project Land as covenants running with the Project Land for the benefit of the Residential Owners, the Association, Declarant, and other Persons as hereinafter specified for the following purposes:

1. Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any Governmental Authority or private utility company or other Person, upon, over, under, and across all of the Association Property in accordance with this Declaration; as shown on the Site Plan or a Final Plat; and other such easement areas recited in any Supplement for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, the Project Drainage System, and electrical, gas, telephone, water, and sewer lines. Such

easements may be granted or accepted by Declarant, its successors or assigns, or by the Board, provided, however, that for as long as the Declarant owns any of the Project Land primarily for the purpose of development and sale, the Board must obtain the written approval of Declarant prior to granting and accepting any such easements. To the extent practical, in Declarant's sole discretion, all utility lines and facilities serving the Project and located therein will be located underground. By virtue of any such easement and facilities, it will be expressly permissible for the providing utility company or other supplier or Person, with respect to the portions of the Project Land so encumbered, to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, to cut and remove any trees, bushes, or shrubbery, to grade, excavate, or fill, or to take any other similar action reasonable necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

2. Easement for Encroachment. If (i) any Improvements which are constructed as Association Property or upon Association Property, or (ii) any Improvements which are specifically constructed upon a Lot (subject to the limitation describe below), encroach upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of such Improvements, and such Improvements have been constructed, reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist so long as the encroachment remains, provided, however, that in no event shall such an easement exist for willful encroachments. This easement shall only apply to Improvements upon a Lot which constitute completed building Improvements which do not encroach more than three (3) feet into or upon an adjacent Lot, and shall not include fences, walls, patios, antennas, driveways, walkways, sign, mailboxes, pools, tennis courts, landscaping or other structures or Improvements which are not a completed building Improvement. If any Lot Improvement of the type described in the foregoing sentence encroaches upon the Association Property as a result of construction, reconstruction, repair, shifting, settlement or movement of the subject Lot Improvements, and such Improvements have been constructed, reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist so long as the encroachment remains, provided, however, that in no event shall such an easement exist for willful encroachments.

3. Easement to Enter Upon Lots. An easement or easements for ingress and egress in favor of Declarant, the Committee, the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of inspecting any construction, proposed construction of Improvements, or fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Association Documents, including the making of such repairs, maintenance or reconstruction as are necessary for the Association Property or any Living Unit.

4. Easement Over Association Property. An easement of use and enjoyment in favor of all Residential Owners, their family members, guests, invitees and lessees in and to the Association Property which shall be appurtenant to and shall pass with title to every Lot and Living Unit, subject to the following:

- i. the right of the Association to suspend the voting rights and rights to use the Association Property of any Residential Owner (other than the right to use the Residential Streets and the Project Drainage System, which rights the Association may not suspend) for any period during which Assessments against his Living Unit or Lot remain unpaid;
- ii. the right of the Association to grant permits, licenses and easements over the Association Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project;
- iii. all provisions set forth in the Association Documents, including the easements granted and reserved in this Declaration.
- iv. Declarant's right to add Additional Land to this Declaration and the rights to grant easements for the benefit of any such Additional Land added to this Declaration.
- v. All existing easements of record.

5. Project Drainage Easement. An easement is hereby established over, under, across and upon all portions of the Project Land for the benefit of the Project Land (the "Project Drainage Easement"). The Project

Drainage Easement shall be for the purpose of installing, constructing, maintaining, using, operating, repairing and replacing so much of the Project Drainage System as may be within the burdened property as may be required to provide storm water control for the benefited property in accordance with the approved development plans for the Project Drainage System. The location of the Project Drainage Easement on the Project Land shall be as reflected on the Final Plat of the applicable property. The Project Drainage Easement also includes reasonable rights to enter upon the Project Land in order to access the locations, facilities, and installations of the Project Drainage System thereon, and the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action that Declarant, the Association, or any applicable Governmental Authority having jurisdiction over the Project Drainage System, deems reasonably necessary or appropriate, as provided in this Declaration and in the City Agreement.

6. Private Drainage Easements. The Private Drainage Easements affect specific portions of the Project Land in which portions of the Project Drainage System are located. The Private Drainage Easements are shown on the Final Plat and are hereby granted and dedicated in favor of the Association for the purpose of enabling the Association to perform its obligation to operate, maintain, repair, and replace the Project Drainage System. Pursuant to the City Agreement, Declarant is granting (or shall grant) the City easement rights within the Private Drainage Easements. The City shall have the same rights as the Association over, under and upon the portions of the Project Land subject to the Private Drainage Easements, for reasonable rights of access for persons and equipment to monitor, construct, install, maintain, alter, inspect, remove, relocate, replace, and repair the Stormwater Control Measures and to maintain and correct drainage or surface water runoff in accordance with the provisions of the City Agreement. Such rights expressly include the right of the City to perform the obligations of the Association if the Association fails to adequately operate, maintain, keep, repair, replace and reconstruct all or any portion of the Project Drainage System, as provided in the City Agreement.

7. Sale and Development Easement. An easement in favor of Declarant over, upon, across and under the Project Land as may be reasonably required in connection with the development, construction, sale and promotion, or leasing, of any Lot or Living Unit within the Project or within any other property owned by Declarant, provided that no such easement shall be located within or upon any Living Unit and shall not materially adversely impair or diminish any Residential Owner's use or enjoyment of such Residential Owner's Lot or Living Unit.

8. Maintenance Easements. If any Living Unit is located closer than five (5) feet from its Lot line or if any utility lines or facilities exclusively serving a Living Unit are located in whole or in part on an adjoining Lot, the Residential Owner of said Living Unit shall have a perpetual access easement over the adjoining Lot to (i) repair, maintain, perform, paint, or reconstruct his Living Unit, and (ii) to repair, maintain, replace, and inspect any utility lines or facilities serving his Living Unit. Within said easement area no fence or vegetation shall be located."

9. Blanket Easement. An easement is hereby reserved in favor Declarant and the Association over the Lots and Association Property for the installation, operation, inspection, and maintenance of landscaping, a common cable television system, a common sprinkler system, entrance sign or features, or any other item for the common enjoyment and benefit of the Residential Owners. No Residential Owner shall damage, destroy, alter or otherwise disrupt any of such items so installed. Each Residential Owner shall hold the Association and/or Declarant harmless from the cost of repairing or replacing any of such items which are damaged or destroyed the acts of such Residential Owner, his family, his guests or invitees.

10. Landscape and Sign Easement. An easement for the preservation, installation, maintenance, repair, and replacement of the Entrance Facilities, and any entry monument, sign, landscaping, or other facilities located in any portion of the Project Land shown on a Final Plat as a landscape or sign easement is reserved in favor of Declarant and the Association over, upon, across and under such portion of the Project Land. The Residential Owner of any Lot on which any landscape or sign easement is located, his or her family members, tenants, agents or contractors shall not remove, harm or damage any landscaping, signage, or other Improvements installed by Declarant or the Association within said easement.

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11. Buffer Area Easement. An easement for the preservation and maintenance of the Buffer Areas shown on a Final Plat is reserved in favor of Declarant and the Association over, upon, across and under the applicable portion of the Project Land on which any portion of a Buffer Area is located. The Residential Owner of any Lot on which any portion of a Buffer Area is located, his or her family members, tenants, agents or contractors shall not remove, harm, damage or alter, any landscaping installed by Declarant or the Association within said easement, and shall not be permitted to install or construct any Improvements within said easement without the prior written approval of the Committee, and if applicable, the City and other Governing Authorities having jurisdiction over the Buffer Areas.

12. Declarant's Easement to Inspect Lots and Living Units. A perpetual easement is hereby reserved in favor of Declarant over and upon the Project Land for the purpose of allowing Declarant's inspection of the structural portions of the Living Units and the grade and contour of the Lots. Declarant's easement to perform such inspections shall be perpetual to the extent permitted by applicable law and not subject to the provisions of Section C below.

13. Additional Easements. Declarant (until the Turnover Date) and the Association, on their behalf and on behalf of all Residential Owners, each shall have the right to (i) grant additional easements over, upon, under and/or across the Association Property in favor of Declarant or any Person, entity, Governmental Authority or utility company, or modify, relocate, abandon or terminate existing easements benefiting or affecting the Project Land. In connection with the grant, modification, relocation, abandonment or termination of any easement, Declarant reserves the right to relocate roads, parking areas, utility lines, and other Improvements upon or serving the Project Land. So long as the foregoing will not adversely interfere with the use of Living Units or Lots for dwelling purposes, no consent of any Residential Owner or any mortgagee of any Lot or Living Unit shall be required or only the consent of the Residential Owners and Institutional Mortgagees adversely affected shall be required. To the extent required, all Residential Owners hereby irrevocably appoint Declarant and/or the Association as their attorney-in-fact for the foregoing purposes.

C. Assignments. The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any Governmental Authority, or any duly licensed or franchised public utility, or any other designee of Declarant. The Residential Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Project Land or portions thereof in accordance with the provisions of this Declaration.

Except as may be expressly provided otherwise, all easement rights reserved or granted to Declarant shall terminate upon Declarant no longer owning any portion or interest in the Project Land for sale in the ordinary course of business. In addition, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

ARTICLE 9 MAINTENANCE AND REPAIR

A. By the Association.

1. Association Property. Except as otherwise specifically set forth herein, the Association shall repair, maintain and replace any and all Improvements located on the Association Property commencing with the completion of same by Declarant. The Improvements shall be maintained in the same condition as originally constructed by Declarant. In the event of any damage or destruction to the Association Property, or to the Improvements and facilities located thereon by fire, storms, acts of God, acts of government, acts of third parties or other calamity, the Association shall be required to rebuild such Improvements and facilities as quickly as practicable.

2. Services Provided for the Lots and Living Units. The Association shall be for maintaining the grass, plants, shrubs, trees, and landscaping, (hereinafter the "Yard Improvements") on the Lots installed by the Declarant or

the Association. The Association shall also maintain any Yard Improvements installed by a Residential Owner with prior approval by affirmative vote of a majority of the Members of each Class, and prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping), provided, however, that: (i) the Association shall not be responsible for maintaining any fence installed on any Lot, (ii) if an Owner who has installed a fence does not comply with the requirements of Section W of Article 11 regarding fences, the Association shall have no responsibility for maintaining any Yard Improvements inside of such fence unless and until such Residential Owner complies with the applicable requirements; (iii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (iv) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Residential Owner or any utility company or Governmental Authority.

The Association may charge a fine (or fines) to any Residential Owner who installs a fence on their Lot and who thereafter repeatedly fails or refuses to maintain adequate access to the rear yard of the Lot, causing the Association to be unable to maintain the rear Yard Improvements to acceptable standards (as determined by this Declaration and the Standards published by the Committee) in accordance with Article 13. In addition to the imposition of fines, the Association may also remove the obstruction, object, or Improvement which prevents access by the Association to and from the rear yard of any Lot on which a fence is installed and otherwise enforce the provisions of Article 10 regarding Improvements in violation of the provisions of this Declaration.

Except as specifically provided for in this Section A.2 of Article 9, the Association shall have no responsibility to maintain or repair any Living Unit or any portion thereof or for insuring any Living Unit or other Improvements on any Lot, and shall not be liable for any damage to any Living Unit, except such damage caused by the Association, its duly authorized agents or employees. The Association shall have the right, but not the obligation, by the affirmative vote of a majority of the Members of each Class, to accept certain items, areas or Improvements on a Lot for maintenance by the Association, including, but not limited to, Yard Improvements installed by a Residential Owner. Such acceptance shall be in writing and may be subject to such terms and conditions, including, but not limited to, a special assessment or increased annual assessment for that Living Unit, as the Association might establish in such written acceptance.

B. By the Residential Owners.

1. Living Units and Lots. Except for any items to be maintained by the Association, each Residential Owner shall maintain his Living Unit and all Improvements and personal property upon his Lot in good condition at all times. The exterior of all Living Units including but not limited to roofs, walls, doors, windows, patio areas, pools, screenings, and awnings shall be maintained in good condition and repair and in a neat and attractive manner. All exterior painted areas shall be painted as reasonably necessary, with colors which are harmonious with other Living Units, and no excessive rust deposits on the exterior of any Living Unit, peeling of paint or discoloration of same shall be permitted. No Residential Owner shall change the exterior color of his Living Unit without the consent of the Committee. All sidewalks, driveways and parking areas within the Residential Owner's Lot or serving the Residential Owner's Living Unit shall be cleaned and kept free of debris; and cracks, damaged and/or eroding areas on same shall be repaired, replaced and/or resurfaced as necessary.

2. Association's Right to Perform Maintenance. If a Residential Owner fails to maintain his Lot or Living Unit in accordance with this Declaration, the Association shall have the right, but not the obligation, upon fifteen (15) days' written notice to the Residential Owner, to enter upon the Lot for the purpose of performing the maintenance and/or repairs described in such notice to the Residential Owner, as applicable. Provided, however, if the maintenance or repair is necessitated due to an emergency, the Association shall have the right to perform the maintenance and/ or repairs upon 24 hours advance written notice. The cost of performing such maintenance and/or repairs and the expense of collection

(including, but not limited to, Legal Fees) shall be assessed by the Association against the Residential Owner as an Individual Expense Assessment.

3. Private Drainage Easements. The Residential Owner of a Lot upon which a Private Drainage Easement is located shall maintain the grass and surface area of that portion of the Lot subject to the Private Drainage Easement, unless a dry detention basin or bio-retention basin is located within the Private Drainage Easement, in which event the Association shall maintain the surface area of the Private Drainage Easement.

C. Party Walls. Each wall which is built as a part of the original construction of a Living Unit and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls. To the extent not inconsistent with the provisions of this Section C of Article 9, the general rules of law regarding party walls, lateral support, in-below ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply.

1. The Residential Owners of contiguous Lots who share a party wall shall both equally have the right to use such wall, provided that such use by one Residential Owner does not interfere with the use and enjoyment of the party wall by the other Residential Owner.

2. The following provisions shall apply to all party walls constructed in the Project: (i) The cost of reasonable repair and maintenance of a party wall shall be shared by the Residential Owners who make use of the wall in proportion to such use; (ii) If a party wall is destroyed or damaged by fire or other casualty, any Residential Owner who has used the wall may restore it. If other Residential Owners make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; subject, however, to the right of any Residential Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions; (iii) The Residential Owner may construct or reconstruct a party wall subject to and within the limitations of architectural control and other limitations of this Declaration with the right to go upon the adjoining Lot to the extent reasonably necessary to perform the construction. The construction shall be done expeditiously. Upon completion of the construction, the Residential Owner shall restore, as is reasonably practicable, the adjoining Lot to as near the same condition which prevailed on or before the commencement of the construction; (iv) The right of any Residential Owner to contribution from any other Residential Owner under this Section C.2 shall be appurtenant to the land and shall pass to the Residential Owner's successors in title; and (v) If any Residential Owner desires to sell his Living Unit, he may, in order to assure a prospective purchaser that no adjoining Residential Owner(s) has a right of contribution as provided in this Article, request that the adjoining Residential Owner(s) provide a certification that no right of contribution exists. It shall be the duty of each adjoining Residential Owner to make a certification as to whether there is any pending claim of contribution immediately upon request and without charge.

3. Any Residential Owner proposing to modify, make additions to rebuild his Living Unit in any manner which requires the alteration or disturbance of any party wall shall obtain the written consent of the adjoining Residential Owner prior to commencing the applicable work. The provisions of this Article shall also apply to any fence, barrier or other shared Improvement installed by Declarant on the dividing Line between Lots and to any replacement thereof authorized by the Committee.

4. In the event of a dispute between Residential Owners with respect to the repair or rebuilding of a party wall or other shared Improvement, then upon the written request of one of such Residential Owners addressed to the Association, the matter shall be submitted to the Board, who shall decide the dispute, and the decision of the Board shall be final and conclusive upon the Residential Owners.

D. Inspections by Declarant.

1. Structural. Declarant shall have the right to perform periodic inspections of the structural Improvements located upon each Lot, including but not limited to, the roof, foundation, and exterior wall of the Living Unit situated on the

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Lot. Declarant shall provide a Residential Owner with reasonable advance notice of Declarant's intent to perform such inspection. Each Residential Owner shall cooperate with Declarant as is reasonably necessary for Declarant to be able to complete an accurate and thorough inspection of the structural components of such Residential Owner's Living Unit. No Residential Owner shall take any action that would disrupt, prevent or limit Declarant's ability to perform such inspection(s).

2. Grading; Drainage. Declarant shall have the right to perform periodic inspections of the grading, contour, and landscaping on a Lot for the purpose of determining any deficiencies or problems contributing to inadequate drainage, excessive moisture retention, structural deterioration, or other damaging or adverse conditions. Declarant shall prepare a report of such inspection(s) and provide a copy to the Association. Following the receipt of Declarant's report, the Association shall provide a copy of the report to all of the Owners.

ARTICLE 10 ARCHITECTURAL CONTROL

A. Establishment. "Committee" shall mean the architectural control committee, which shall be the governing body charged with promoting and maintaining a high level of design, quality, harmony and conformity throughout the Project consistent with this Declaration. Until the Termination of Declarant's Architectural Control (referred to below), Declarant shall constitute the Committee, and may approve Plans and Submissions or take other actions on behalf of the Committee in Declarant's own name or in the name of the Committee. After the Termination of Declarant's Architectural Control, the Committee shall be composed of at least three (3) individuals appointed by the Board, each of who shall be a Residential Owner. The Committee shall act by simple majority vote. In the event of death, resignation or other removal of any Board appointed member of the Committee, the Board shall appoint a successor member. No member of the Committee shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of services performed pursuant to this Declaration. Declarant shall cease to control and constitute the Committee on the earlier of: (a) the date on which Declarant records in the Public Records, a document declaring the termination of its control of the Committee, or (b) at such time as Declarant no longer owns a Lot or Living Unit in the Project ("Termination of Declarant's Architectural Control").

B. Purpose. The Committee is established to provide a system of review for the construction or modification of all Improvements within the Project. No Improvement shall be commenced, improved or altered, nor shall any grading, excavation or change of exterior color or other work which in any way alters the exterior appearance of an Improvement be done without the prior written approval of the Committee.

C. Development Standards. The Committee is empowered to publish or modify from time to time, design and development standards for the Project, including, but not limited to, standards for the following ("Standards"): (i) architectural design of Improvements, including, but not limited to, design standards for any Living Unit or other Improvement constructed upon a Lot; (ii) fences, walls and similar structures; (iii) exterior building materials and colors; (iv) exterior appurtenances relating to utility installation; (v) signs and graphics, mailboxes and exterior lighting; (vi) building setbacks, pools and pool decks, side yards and related height, bulk, and design criteria; (vii) pedestrian and bicycle ways, sidewalks and pathways; and (viii) all buildings, landscaping and Improvements on lands owned or controlled by the Association. The Committee may adopt different Standards for each Product Area, as long as such Standards are equally applied to all Residential Owners and Living Units of the applicable Product Area. After Termination of Declarant's Architectural Control, a copy of any Standards promulgated by the Committee shall be subject to approval by the Board. After the Board's approval, a copy of the Standards will be made available to all Members.

D. Requirement of Committee Approval. No Improvement of any kind shall be erected, placed or maintained on the Project Land, and no addition, alteration, modification or change to any Improvement on the Project Land shall be

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made without the prior written approval of the Committee. For purposes of this Declaration, Declarant Improvements means any Improvement erected, placed, or maintained with the approval of Declarant, including, without limitation, any building, wall, fence, swimming pool, or screened enclosure, constructed, installed or placed by or with the approval of Declarant prior to the Termination of Declarant Control (collectively, "Declarant Improvements"). Declarant Improvements are not subject to the approval of the Committee and are deemed to conform to the plan of development for the Project Land.

E. Obtaining Committee Approval. In order to obtain the approval of the Committee, a complete set of plans and specifications ("Plans") for proposed Improvements shall be submitted to the Committee for its review. The Plans shall include, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, approximate costs, and nature, type and color of materials to be used. The Committee may also require the submission of additional information and materials as may be reasonably necessary for the Committee to evaluate the proposed Improvement or alteration ("Submissions"). The Committee shall have the right to refuse to approve any proposed Plans that, in its sole discretion, are not suitable or desirable. Any and all approvals or disapprovals of the Committee shall be in writing and shall be sent to each respective Residential Owner submitting same. If the Committee fails to approve or to disapprove in writing any Plans and/or Submissions after: (i) submission to the Committee of the last item of the Plans and Submissions requested by the Committee, so that the Committee has a complete package of all Plans and Submissions requested by the Committee; and (ii) sixty (60) days have elapsed since submission and written request for approval or disapproval was delivered to the Committee by the Residential Owner; then said Plans and Submissions shall be deemed to have been approved by the Committee provided, however, that no Improvement shall be erected or shall be allowed to remain which violates any conditions or restrictions contained in this Declaration, or which violates any applicable zoning or building ordinance or regulation. The approval by the Committee relates only to the aesthetics of the Improvements shown on the Plans and Submissions and not to their sufficiency or adequacy. Each Residential Owner shall be responsible for obtaining all necessary technical data and to make application to and obtain the approval of the appropriate Governmental Authorities prior to commencement of any construction.

F. Scope of Review. The Committee shall review and approve or disapprove all Plans and Submissions solely on the basis of aesthetic standards as to the aesthetic quality of materials and workmanship to be used, suitability and harmony of location, structure and external design in relation to surrounding topography and structures and the overall benefit or detriment which would result to the immediate vicinity and to the Project as a whole and any other factors deemed relevant to the review by the Committee in its opinion, reasonably exercised. The Committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features, and shall not be responsible for reviewing, nor shall its approval of any Plans be deemed approval of, any design or plan from the standpoint of structural safety or conformance with building or other codes.

G. Variance from Standards. The Committee may authorize, in a reasonable manner so as not to destroy the general scheme or plans of the development of the Project, variances from compliance with any Standards which it has promulgated pursuant to its authority when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations may require. If any such variances are granted, no violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to that particular property and particular provision hereof or Standards promulgated hereby which are covered by the variance. Such variance shall be evidenced in writing.

H. Enforcement. There is specifically reserved unto the Committee the right of entry and inspection upon any Lot or other portion of the Project Land for the purpose of determination by the Committee whether there exists any Improvement which violates the terms of any approval by the Committee or the terms of this Declaration. Except in emergencies, any exercise of the right of entry and inspection by the Committee hereunder should be made only upon

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reasonable notice given to the Residential Owner of record at least twenty-four (24) hours in advance of such entry. The Association, acting pursuant to the direction of the Committee, is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any Improvement, or to remove any unapproved Improvements, the prevailing party in such litigation shall be entitled to recover all Legal Fees incurred in connection therewith. The Association shall indemnify and hold harmless any member of the Committee from all costs, expenses and liabilities, including attorneys fees incurred by virtue of any member's service as a member of the Committee, provided such member acted in good faith and without malice.

I. Subcommittees and Delegation of Authority. The Committee may establish subcommittees for the purpose of acting on behalf of the Committee with respect to similar circumstances, situations, or types of Improvements, such as a swimming pool subcommittee, a Product Area subcommittee, or a subcommittee which would deal with modifications of existing Improvements or additional new Improvements ancillary to an existing Living Unit, in contrast to the construction of initial Improvements upon a previously unimproved Lot. All rights and powers of the Committee may be delegated to such subcommittee with regard to the subject matter of the subcommittee. The rights and powers of the Committee may be assigned to a management company, an architect, design professional or other entity, or any portion of such rights and powers applicable to a particular subcommittee or area of similar circumstance.

ARTICLE 11 USE RESTRICTIONS

For purposes of this Article 11, unless the context otherwise requires, Residential Owner shall also include the family, invitees, guests, licensees, lessees and sublessees of any Residential Owner, and any other permitted occupants of a Living Unit. In addition to any other restrictions set forth in this Declaration, all the Lots and Living Units shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant as provided in this Article and elsewhere in this Declaration.

A. Residential Use. The Lots and Living Units shall be for single-family residential use only. No trade, business, profession or commercial occupation or activity may be carried on in the Project Land without the consent of the Board except for such occupation or activity permitted to be carried on by Declarant or as is expressly permitted below. In addition, temporary guests are permitted so long as they do not create an unreasonable source of noise or annoyance to the other residents of the Project.

B. Non-Residential Activities or Uses. No trade, business, profession or commercial activity, or any other non residential use shall be conducted on the Property or within any Lot or Living Unit without the consent of the Board except that a Residential Owner or occupant residing in a Living Unit may conduct business activities within the Living Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Living Unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents noticeably greater than that which is typical of Living Units in which no business activity is being conducted; and (v) the business activity is consistent with the character of the Project, and does not constitute a nuisance, a hazardous or offensive use, or a threat to the security or safety of others, (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Project which is beyond the level of traffic and vehicular parking that occurs in residential developments similar to the Project, as the Board determines in its sole discretion. The foregoing limitations shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities, provided that such activities may not be held on any one Lot more than once in any three-month period and, when held, may not exceed three consecutive days in duration. The foregoing shall not prohibit a Residential Owner from leasing his Living Unit.

C. Nuisances. No obnoxious or offensive activity shall be carried on about the Lots or in or about any Improvements, Living Units, or on any portion of the Property nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Residential Owner. No use or practice shall be allowed in or around the Living Units and Lots which is a source of annoyance to Residential Owners or occupants of Living Units or which interferes with the peaceful possession or proper use of the Living Units or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements, Living Units or Lots.

D. Outside Storage of Personal Property. The personal property of any Residential Owner shall be kept inside the Residential Owner's Living Unit or a fenced-in yard, except for patio furniture and accessories, and other personal property commonly kept outside, which must be kept in the rear of the Lot and must be neat appearing and in good conditions.

E. Parking and Vehicular Restrictions. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than 2 vehicles. Any driveway or parking pad constructed upon any Lot shall have either an asphaltic concrete surface, a cement concrete surface, or brick pavers.

No mobile house trailer (whether on or off wheels), vehicle or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), or commercial vehicle of any kind shall be parked on the street within the Project, nor shall any such vehicle be parked or kept on any Lot. Furthermore, no boat or boat trailer shall be parked on the street within the Project. No tractor trailer trucks or cabs shall be parked on any street or Lot within the Project.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Project or any Association Property and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

F. No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of any Living Unit or Lot nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any Residential Owner or occupant of the Project. Residential Owners shall observe and obey all valid laws, zoning ordinances and regulations of all Governmental Authorities. Violations of laws, orders, rules, regulations or requirements of any Governmental Authority, relating to any Living Unit or Lot shall be corrected by, and at the sole expense of the Residential Owner of the Living Unit or Lot.

G. Trash and Other Materials. Each Residential Owner shall regularly pick up all garbage, trash, refuse or rubbish on his Lot, and no Residential Owner or resident shall place or dump any garbage, trash, refuse, rubbish or other materials on any other portions of the Project Land. Garbage, trash, refuse or rubbish that is required to be placed at the front of a Lot in order to be collected may be placed and kept at the front of the Lot after 5:00 p.m. on the day before the scheduled day of collection, and any trash facilities must be removed on the collection day. All garbage, trash, refuse or rubbish must be placed in appropriate trash facilities or bags. All containers, dumpsters or garbage facilities shall be stored inside a Living Unit or fenced-in area and screened from view and kept in a clean and sanitary condition. No noxious or offensive odors shall be permitted.

H. Leases. No portion of a Living Unit (other than an entire Living Unit) may be rented. All leases must be in writing and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles, Bylaws, of applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Living Units. No lease shall be for a period of less than six (6)

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months without the approval of the Board. A copy of the proposed lease must be delivered to the Association prior to occupancy by the tenant. The Residential Owner of a leased Living Unit shall be jointly and severally liable with his tenant to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association whether before or after such lease was entered into.

I. Temporary Buildings; Accessory Buildings; Play Structures. No tents, trailers, shacks or other temporary buildings or structures shall be constructed or otherwise placed upon the Project Land except in connection with construction, development, leasing or sales activities permitted by the Committee or performed by Declarant. No temporary structure may be used as a Living Unit. No garden shed, storage shed, out-building, play structure, or other permanent structures which are detached from the Living Unit shall be constructed or placed upon the Project Land unless approved by the Committee.

J. Garages. No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage space and no garage opening shall have a screen covering without the consent of the Committee. All garage doors shall remain closed when vehicles or Persons are not entering or leaving the garage. The foregoing shall not include any garages used or formerly used by Declarant as an office or other area in connection with the sale of Living Units, which are Declarant Improvements and not subject to the restrictions in this Article 11. All garage doors shall remain closed when vehicles are not entering or leaving the garage.

K. Animals and Pets. Only common domesticated household pets may be kept on any Lot or in a Living Unit, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Project Land. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board. The Board shall have the right to forbid or prohibit certain breeds or types of animals. Any pet must not be an unreasonable nuisance or annoyance to other residents on the Project Land. The Board may adopt rules and regulations concerning animals which are more restrictive than the provisions of this Declaration including rules requiring that all animals be kept on a leash when on the Association Property or outside a fenced yard and that animals be restricted to designated areas within the Association Property and that Residential Owners are responsible for cleaning up any mess that a pet created within any Lot or the Association Property. The Board may require any pet to be immediately and permanently removed from the Project Land due to a violation of this Section. Each Residential Owner who keeps or intends to keep a pet agrees to indemnify the Association and Declarant and hold them harmless against any loss or liability of any kind or character whatsoever arising from he or she having any animal on the Project Land.

L. Additions and Alterations. No Living Unit shall be enlarged by any addition thereto or to any part thereof, and no Residential Owner shall make any improvement, addition, or alteration to the exterior of his Living Unit, including, without limitation, the painting, staining, or varnishing of the exterior of the Living Unit or re-roofing with shingles of a different color or material, without the prior written approval of the Committee, which approval may be withheld for purely aesthetic reasons.

M. Increase in Insurance Rates. No Residential Owner may engage in any action that may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Project Land not owned by such Residential Owner.

N. Air Conditioning Units. Only central air conditioning units are permitted, and no window, wall, or portable air conditioning units are permitted. No air-conditioning or heating apparatus, unit or equipment shall be installed on the ground in front of, or attached to, any front wall of any Living Unit.

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O. Clotheslines and outside Clothes Drying. No clotheslines or clothespoles shall be erected, and no outside clothes-drying is permitted, except where such activity is advised or mandated by Governmental Authorities for energy conservation purposes, in which event the Committee shall have the right to approve the portions of any Lot used for outdoor clothes-drying purposes and the types of devices to be employed, which approval must be in writing

P. Outside Antennas and Satellite Dishes. No Residential Owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar apparatus or equipment unless: (i) such apparatus is two (2) feet or less in diameter, (ii) the apparatus is screened from public view and located behind the Living Unit either in the rear yard or affixed to the rear roof, (iii) the apparatus is not visible while standing at any point along the property boundary line in front of the house that abuts or is adjacent to a street, right-of-way or sidewalk, and (iv) the Committee has approved the apparatus, its location and the type of screening.

Q. Flagpoles. No Residential Owner may erect or install a flagpole or decorative banner on any portion of a Lot or Living Unit, including freestanding detached flagpoles or banners, and those that are attached to a Living Unit, without the prior written approval of the Committee.

R. Oil and Gas Tanks. All oil tanks, bottled gas tanks, and similar apparatuses and housing shall be underground or placed in walled-in or landscaped areas as approved by the Committee so that they shall be substantially concealed or hidden from any eye-level view from any street or adjacent property.

S. Signs. Except as otherwise required by the City, no sign of any kind shall be displayed to the public view on any Lot except signs used by Declarant to advertise Living Units for sale during the construction and sales period, and one sign of not more than six (6) square feet advertising the property for sale. No signs advertising a Living Unit "for rent" or "for lease" shall be permitted within the Project without the prior written consent of Declarant (until the Termination of Declarant Control of the Committee) and the Committee.

No Residential Owner shall be permitted to install any signs on or in the following: (i) the Association Property, (ii) within the right of way of any Residential Street, or (iii) on any other portion of the Project located outside the boundaries of such Residential Owner's Lot.

T. Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one (1) week after a Residential Owner or tenant first moves into a Living Unit or when permanent window treatments are being cleaned or repaired.

U. Ponds. The Ponds shall be owned and maintained by the Association as part of the Project Drainage System. The rules and regulations of the Association, as published and amended from time to time, may contain rules, regulations and requirements concerning the use of the Ponds and any open space or other areas surrounding the Ponds, which shall be in addition to any provisions of this Declaration. There shall be no swimming, use of personal flotation devices, or boating of any type (whether powered or not) on the Ponds. No Residential Owner shall construct or install any piers or docks on any portion of the Ponds, or on any portion of a Lot which abuts a Pond, provided, however, that the Declarant or the Association may construct a pier or dock on or adjacent to a Pond for the use and enjoyment of the Residential Owners and their family members, guests and invitees. No Residential Owner shall be permitted to use water from the Ponds for irrigation or for any other purpose whatsoever. Declarant and the Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the Ponds.

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V. Swimming Pools. No swimming pools, spas, or the like, shall be permitted in the Project without the prior written consent of the Committee. No above-ground swimming pools whatsoever shall be permitted within the Project, except that small, inflatable wading pools shall be permitted.

W. Fences and Walls. No fence or wall shall be erected on any Lot without the prior written approval of the Committee. Nothing in this Section shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots, nor shall anything in this Section apply to any fence installed by the Declarant at any entrance to or along any street within the Project.

The Standards published by the Committee may contain specific requirements regarding the design, maintenance, location, and use of any fences or walls proposed to be installed upon a Lot, including, but not limited to, the location, number and design of the gates. In addition, the rules and regulations published by the Board may contain specific requirements regarding fences and walls installed by a Residential Owner on a Lot. In general, any fence installed upon a Lot shall be designed and used in a manner that will allow access to and from the rear yard of such Lot to allow the Association to perform maintenance of the Yard Improvements for such Lot, and to allow public utility companies to inspect, maintain and repair any utility facilities located within the boundary of the Lot. If a Residential Owner who is permitted by the Committee to install a fence upon such Owner's Lot, fails to comply with any of the requirements in this Section on the scheduled day for the Association's maintenance of the Yard Improvements on the Lot, then the Association shall have no responsibility to perform the scheduled maintenance on such day. If a Residential Owner continues to prevent access to the rear yard of such Owner's Lot, the Association shall have the right to levy a fine on the Residential Owner, in addition to the right to remove the obstructing Improvement(s) as provided in Article 9. The Residential Owner of a Lot upon which a fence or wall is installed shall be solely responsible for providing and maintaining access to and from the rear yard of such Lot.

X. Mailboxes. Residential Owners of Attached Units shall not be permitted to install any mailboxes on any portion of the Lot on which their Living Unit is constructed. All mailboxes for the Attached Units shall be located in mail kiosks on Association Property, as indicated on the Site Plan. No mailboxes are permitted for the Detached Units without the consent of the Committee, except for mailboxes which are identical to mailboxes originally provided for the Detached Units by Declarant.

Y. Surface Water Management. No Residential Owner or any other person shall do anything to adversely affect the Project Drainage System and the general surface water management and drainage of the Project Land, without the prior written approval of the Committee, the Association and any controlling Governmental Authority, including, but not limited to, the excavation or filling in of any Lot. Provided, however, the foregoing shall not be deemed to prohibit or restrict the initial construction of Improvements upon the Project Land by Declarant in accordance with permits issued by controlling Governmental Authorities. In particular, no Residential Owner shall install any landscaping or place any fill on the Residential Owner's Lot which would adversely affect the drainage of any contiguous Living Unit or Lot. No Residential Owner shall be permitted to reshape or alter the topographical features or area within any drainage easement, nor shall any Residential Owner be permitted to install fences or other Improvements or structures within a drainage easement, including the installation of landscaping, plants, trees or other vegetation, except for low growing grass. The application of herbicide to the portions of the Project Land within any drainage easement is prohibited.

Z. Wetland Areas. No Residential Owner shall remove native vegetation that becomes established within any wetland areas located on or adjacent to any portion of the Project Land. Removal includes dredging, the application of herbicide, and cutting. No Residential Owner shall add or introduce additional vegetation or other forms of plantlife or landscaping within any wetland areas located on or adjacent to any portion of the Project Land. Residential Owners should address any question regarding authorized activities within any wetland areas to the applicable Governmental Authorities. No Residential Owner may construct or maintain any building, residence, or structure, or undertake or perform any activity

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in any wetland areas without the prior approval of the Association and the applicable Governmental Authorities and utility providers.

AA. Building Location. Any Living Unit erected on a Lot other than a corner Lot shall face the street on which the Lot abuts. On corner Lots, a Living Unit may be erected so as to face the intersection of the 2 streets on which the Lot abuts.

BB. Damage and Destruction. If any Improvement contiguous with a Living Unit is damaged or destroyed by casualty or for any other reason, the Residential Owner of the Living Unit shall repair and restore the damaged Improvement as soon as is reasonably practical to the same condition that the Improvement was in prior to such damage or destruction, unless otherwise approved by the Committee.

CC. Subdivision and Partition. No Lot shall be subdivided without the Committee's prior written consent except by Declarant. Although a Lot within the Project may appear to contain enough land area to permit construction of additional Living Units, because of the approval of the Project as a cluster unit development, prior approved density transfers may, in fact, preclude City approval of additional Living Units. No Lot within the Project may be subdivided by sale or otherwise so as to reduce the total lot area shown on the Final Plat, except by and with the consent of Declarant and, if required, the approval of the City.

DD. Construction. All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed Living Unit or other Improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Residential Owner of each Lot shall at all times keep contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction on the subject Residential Owner's Lot.

EE. Irrigation Systems. The Association has the right to establish rules and regulations regarding the operation of irrigation systems installed by a Residential Owner on such Residential Owner's Lot, including but not limited to, requirements regarding the times and frequency such systems may be operated. Subject to the limitations of applicable law, and the requirements of Section C of Article 13, if the Association is unable to maintain the Yard Improvements for any Living Unit to acceptable standards (as determined by this Declaration and the Standards published by the Committee) as a result of a Residential Owner operating an irrigation system on the days that the Association is scheduled to perform maintenance of such Yard Improvements and such operation is in violation of the applicable rules and regulations established by the Association, the Association may charge a fine (or fines) to such Residential Owner. Any Residential Owner who operates an irrigation system in violation of the applicable rules and regulations established by the Association, will indemnify and hold harmless the Association, Declarant, and their agents, representatives, contractors and employees, from any damages, expenses, claims or causes of action arising from any personal injury or damages to property caused by such Residential Owner's failure to comply with the rules and regulations regarding the operation of irrigation systems for the Living Units.

FF. Septic Tanks; Wells. No septic tank shall be installed, used or maintained on any Lot. No well shall be installed, used or maintained on any Lot for human domestic water consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the Living Unit, which mains furnish domestic water from sources beyond the boundaries of the Lot. No Residential Owner shall be permitted to use water from the Ponds for irrigation or for any other purpose whatsoever.

GG. Certain Rights of Declarant. The provisions, restrictions, terms and conditions of this Article 11 shall not apply to Declarant.

ARTICLE 12
ADDITIONAL LAND: WITHDRAWAL: BOUNDARY ADJUSTMENTS

A. Additional Land. Prior to the Turnover Date, Declarant shall have the right, without the approval or joinder of the Association, the Residential Owners or any other Person (except as provided in Section N of Article 15, the consent of the City), to bring under the provisions of this Declaration and thereby add to the Project, any real property owned or acquired by Declarant which is contiguous to the Project Land or which is contiguous with a public or private street adjacent to the Project Land (all of which is herein referred to as "Additional Land"), provided that the annexation of such Additional Land is for the purposes of reflecting changes or modifications to the Site Plan which have been approved by the Planning Director of the City and other applicable Governmental Authorities, by recording a supplemental declaration ("Supplement"). The Supplement may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Additional Land being subjected to this Declaration and as are not inconsistent with the general scheme of this Declaration, including the right to grant or reserve easements for the benefit of such Additional Land. To the extent that any Additional Land is made part of the Project, reference herein to the Project Land shall be deemed to include such Additional Land. Declarant is not obligated to add to the Project, or subject to the approval of the City, to develop any Additional Land under a common scheme or be prohibited from changing development plans with respect to future portions of the Project comprised of any Additional Land. All Residential Owners by acceptance of a deed to their Living Units and Lots, consent to any change, rezoning or addition made by Declarant and shall evidence such consent in writing if requested to do so by Declarant at any time without obviating the effect of this provision.

After the Turnover Date, upon the vote or written consent of seventy five percent (75%) of the votes held by the Members of the Association, any real property which is contiguous to the Project Land or which is contiguous with a public or private street adjacent to the Project Land may be brought under the provisions of this Declaration and thereby added to the Project, provided that the annexation of such real property is for the purposes of reflecting changes or modifications to the Site Plan which have been approved by the Planning Director of the City. To the extent that any contiguous property approved for annexation by the Members after the Turnover Date is thereafter made part of the Project, reference herein to the Project Land shall be deemed to include such property.

B. Association Property within Additional Land. If any Additional Land is subjected to this Declaration as permitted by this Declaration, any Association Property located within such newly annexed portion of the Project Land shall be conveyed to the Association as provided in Article 4.

C. HUD/VA Approval. If prior to the Turnover Date, the Project is subject to any requirements of VA, FHA, the Federal Home Loan Mortgage Corporation or any other governmental or quasi-governmental agency that insures, guaranties, or purchases mortgages, which requirements make the annexation of any Additional Land subject to the approval of such agency, then the annexation of any such Additional Land will require the prior approval of such agency.

D. Withdrawal. Prior to the Turnover Date, Declarant reserves the right to amend this Declaration at any time, without prior notice and without the consent of any Person (except as provided in Section N of Article 15, the consent of the City) for the purpose of removing certain portions of the Project Land then owned by Declarant from the provisions of this Declaration to the extent that such real property was included originally in error, or as a result of changes in the Site Plan for the Project approved by the City.

ARTICLE 13
ENFORCEMENT; NON-MONETARY DEFAULTS; ASSOCIATION REMEDIES

A. **Enforcement.** The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any portion of the Project Land), the Association, any Residential Owner, and any Institutional Mortgagee holding a mortgage on any portion of the Project Land, in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any Person violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, Legal Fees. All rights, remedies and privileges granted to the parties entitled to enforce the covenants, restrictions and provisions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude a party entitled to enforce the provisions of this Declaration from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

B. **Non-Monetary Defaults of Residential Owners.** In the event of a violation by any Residential Owner or any tenant of a Residential Owner, or any person residing with them, or their guests or invitees, (other than the non-payment of any Assessment or other monies) of any of the provisions of this Declaration, the Articles, the Bylaws or the rules and regulations of the Association, the Association shall notify the Residential Owner and any tenant of the Residential Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Residential Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable within seven (7) days after written notice by the Association or if any similar violation is thereafter repeated, the Association may, at its option:

1. Impose a fine against the Residential Owner or tenant as provided in this Article; and/or
2. Commence an action to enforce the performance on the part of the Residential Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
3. Commence an action to recover damages; and/or
4. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, Improvement or change which has not been approved by the "Committee" or erected in accordance with the Committee's approval (as herein defined), or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any failure, plus a service charge of ten percent (10%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable Legal Fees, shall be assessed against the applicable Residential Owner as an Individual Expense Assessment. The Association shall have a lien for any such Individual Expense Assessment and any associated Interest, costs or expenses, including Legal Fees, and may take such action to collect such Assessment or foreclose said lien in the manner of any other Assessment as provided in this Declaration. Any such lien shall only be effective from and after the recording of a claim of lien in the Public Records or applicable court of jurisdiction.

C. **Fines.** The amount of any fine shall be determined by the Board, and shall not exceed any amount mandated by applicable law, if any. Prior to imposing any fine, the Residential Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Residential Owner or tenant of not less than fourteen (14) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of this

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Declaration, Bylaws or rules and regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Residential Owner of a leased Living Unit shall have the right to participate in any hearing involving the tenant of such Living Unit, and the Association shall provide notice to the Residential Owner of such Living Unit concurrently with the Association's notice to the tenant of the subject Living Unit. The Residential Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Residential Owner or tenant. If the Residential Owner or tenant fails to attend the hearing as set by the Board, the Residential Owner or tenant shall be deemed to have admitted the allegations contained in the notice to the Residential Owner or tenant. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Board's decision at the hearing. Any fine levied against a Residential Owner shall be deemed an Individual Expense Assessment, and if not paid when due all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

D. Negligence. A Residential Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or Living Unit or the Association Property.

E. Responsibility for Occupants, Tenants, Guests, and Invitees. Each Residential Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in his Living Unit, and for all guests and invitees of the Residential Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Association Property, or any liability to the Association, the Residential Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, the Articles, or the Bylaws, by any resident of any Living Unit, or any guest or invitee of a Residential Owner or any resident of a Living Unit, shall also be deemed a violation by the Residential Owner, and shall subject the Residential Owner to the same liability as if the violation was that of the Residential Owner.

F. Eviction of Tenants, Occupants, Guests, and Invitees. To the extent permitted by applicable law, if any tenant or any person present in any Living Unit other than a Residential Owner and the members of his immediate family permanently residing in the Living Unit, shall materially violate any provision of this Declaration, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to other residents of the Project, or shall willfully damage or destroy any Association Property or personal property of the Association, then upon written notice by the Association such Person shall be required to immediately leave the Project. If such person does not immediately leave the Project, the Association is authorized to commence an action to evict such tenant or compel the Person to leave the Project and, where necessary, to enjoin such person from returning. The expense of any such action, including Legal Fees, may be assessed against the applicable Residential Owner as an Individual Expense Assessment, and the Association may collect such Assessment and have the same lien rights as for other Assessments provided for herein. The foregoing shall be in addition to any other remedy of the Association. The Association shall provide notice to the Residential Owner of a leased Living Unit concurrently with any notices sent to the tenant of such Living Unit pursuant to this Section, and such Residential Owner shall have the right to participate in any hearings or eviction proceedings involving the tenant of such Residential Owner's Living Unit. The right of eviction provided for in this Section shall be

inserted in every lease, but the omissions from the lease agreement of such right shall not affect the right to evict as set forth herein.

G. No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles, or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

H. Rights Cumulative. All rights, remedies and privileges granted to the Association pursuant to any terms, provisions, covenants or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

ARTICLE 14
AMENDMENT

The process of amending or modifying this Declaration shall be as follows:

A. Prior to Turnover Date. Until the Turnover Date and except as specifically provided otherwise in this Article, only Declarant may amend this Declaration, which amendment can be made without the approval of any Member provided the amendment does not materially alter or change any Residential Owner's right to the use and enjoyment of such Residential Owner's Lot or Living Unit, or of the Association Property as set forth in this Declaration, and the amendment does not adversely affect the title to any Living Unit.

B. After the Turnover Date. After the Turnover Date, and except for the annexation of Additional Land which shall be accomplished pursuant to the provisions of Article 12, this Declaration may be amended by: (i) the consent of sixty-seven percent (67%) of the votes held by each class of Members of the Association as such classes are set forth in the Association Documents; (ii) the consent of the City as provided in Section N of Article 15, together with (ii) the approval or ratification of a majority of the Board, provided that the percentage of votes attributable to the Class A Members shall not be less than the prescribed percentage (if any) of affirmative votes attributable to the Owners as specified by the Planned Community Act. The aforementioned consent of sixty-seven percent (67%) of the votes held by each class of Members of the Association may be evidenced by a writing signed by the required number of Members (in lieu of a meeting) or by the affirmative vote of the required number of Members at any regular or special meeting of the Association called and held in accordance with the Bylaws evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

C. Scrivener's Errors. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent by the Owners or any other Person.

D. Amendments to Declarant's Rights. No amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association or of any Institutional Mortgagee under the Association Documents without the specific written approval of such party affected thereby. Furthermore, no amendment to this Declaration shall be effective which would prejudice the rights of a then Residential Owner or his family members, guests, invitees and lessees to utilize or enjoy the benefits of the then existing Association Property unless the Residential Owner or Residential Owners so affected consent to such amendment in writing. No amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section F of Article 15 and any such amendment shall be deemed to impair and prejudice the rights of Declarant hereunder.

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E. FHA/VA Approval Prior to Turnover Date. As long as the "Class B" membership exists, and except for amendments permitted to be made by Declarant as provided herein, if the Project is subject to any requirements of the Veteran's Administration ("VA"), The Federal Housing Administration ("FHA"), the Federal Home Loan Mortgage Corporation or any other governmental or quasi-governmental agency which insures, guaranties, or purchases mortgages, and such requirements make any material amendments of this Declaration subject to such agency's approval, a material amendment of this Declaration will require the prior approval of such agency.

F. Certification and Recording of Amendments. A true copy of any amendment to this Declaration shall be sent certified mail by the Association to Declarant and to all Institutional Mortgagees holding a mortgage on any portion of the Project Land requesting notice. The amendment shall become effective upon the recording of a Certificate of Amendment to this Declaration setting forth the amendment in the Public Records.

G. Amendments to Satisfy Lending Requirements. Declarant may, without the consent of any Residential Owners, file any amendments which may be required by an Institutional Mortgagee for the purpose of satisfying its planned unit development criteria or such other criteria as may be established by such mortgagee's secondary mortgage market purchasers, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; provided, however, any of Declarant's filed amendments must be in accordance with any applicable rules, regulations and other requirements promulgated by HUD.

H. Boundary Adjustments. While Declarant owns any Lot or Living Unit, Declarant reserves the right to make minor boundary adjustments between the Lots owned by Declarant and the Association Property without the consent or approval of any other Person, provided that any such adjustment will not materially decrease the acreage of the Association Property and will be reflected by a modification of the Site Plan approved by the Planning Director of the City. If such amendment is to be made following the conveyance of the subject Association Property to the Association, the Association is obligated to sign any plats, deeds, or other instruments or forms necessary to accomplish any of the actions that Declarant is permitted to take in accordance with this Section.

ARTICLE 15
GENERAL PROVISIONS

A. Conflict with Other Association Documents. In the event of any conflict between the provisions hereof and the provisions of the Articles, Bylaws, and/or rules and regulations promulgated by the Association, the provisions of this Declaration shall control.

B. Notices. Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, first class, postage prepaid, to: (i) any Residential Owner, at the address of the person whose name appears as the Residential Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Living Unit owned by such Residential Owner; and (ii) the Association, certified mail, return receipt requested, at 2301 Sugar Bush Road, Suite 400, Raleigh, North Carolina, 27612, or such other address as the Association shall hereinafter notify Declarant and the Residential Owners of in writing; (iii) Declarant, certified mail, return receipt requested, at 2301 Sugar Bush Road, Suite 400, Raleigh, North Carolina, 27612, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Residential Owners.

C. Captions, Headings and Titles. Article and Section captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit

or in any way affect the subject matter of the terms and provisions hereunder or the terms and provisions of this Declaration.

D. Context. Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

E. Severability. In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. If any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

F. Certain Rights of Declarant. Improvements constructed or installed by Declarant shall not be subject to the approval of the Association or the Committee. During the period that Improvements constructed by Declarant are owned by Declarant, Declarant's Improvements shall not be subject to the provisions and requirements of this Declaration. Declarant reserves the right for Declarant and its nominees, to enter into and transact on the Project Land any business necessary to consummate the sale, lease or encumbrance of Lots and Living Units or real property including, but not limited to, the right to maintain models and a sales and/or leasing office, place signs, employ sales and leasing personnel, use the Association Property and show Living Units. Declarant reserves the right to make repairs to the Association Property and to carry on construction activity for the benefit of the Project Land, and its nominees may exercise the foregoing rights applicable to each without notifying the Association. Any such models, sales and/or leasing office, signs and any other items pertaining to such sales or leasing efforts shall not be considered a part of the Association Property and shall remain the property of Declarant, or its nominees, as applicable. This Section may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Association Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Project Land or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Project Land as a result of the foreclosure of any mortgage encumbering any portion of the Project Land securing any such loan to Declarant or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Association Documents, shall terminate upon Declarant no longer owning any portion of the Project Land (and having any equitable or legal interest therein) or upon such earlier date as Declarant shall notify the Association in writing of such party's voluntary election to relinquish the aforesaid rights and privileges.

G. Association's Indemnification. The Association covenants and agrees that it will indemnify and save harmless Declarant and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Project Land or the appurtenances thereto from and against all costs, Legal Fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. Included in the foregoing provisions of indemnification are any expenses that Declarant may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the

Association. The indemnification provisions of this Section shall not apply to any expenses which may be incurred by Declarant to avoid the performance of any of the obligations to be kept and performed by Declarant, or any liability which may be incurred by a Residential Owner as a result of ownership of a Lot or a Living Unit.

H. Disputes as to Use. In the event there is any dispute as to whether the use of the property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Any use by Declarant of the Project Land or any parts thereof shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

I. Delegation. The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant. The fees or costs of this or any other management company or contractors so retained shall be deemed to be part of the Operating Expenses hereunder. All contracts with management companies shall contain a provision that allows the Association to unilaterally terminate the contract without cause after ninety (90) days notice.

J. Term. This Declaration shall run with and bind the Project Land and inure to the benefit of Declarant, the Association, the Residential Owners, and their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded in the Public Records, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of any applicable term in effect, an instrument agreeing to terminate this Declaration signed by Residential Owners owning at least two-thirds (2/3) of the Living Units (or such higher percentage (if any) of Residential Owners prescribed by the applicable provisions of the Planned Community Act), and Institutional Mortgagees holding first mortgages encumbering at least two-thirds (2/3) of all Living Units encumbered by first mortgages held by Institutional Mortgagees, is recorded in the Public Records, whereupon this Declaration shall be terminated upon the expiration of the applicable term in effect at the time.

K. Rights of Mortgagees.

1. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Association Documents and the books, records and financial statements of the Association to Residential Owners and the Institutional Mortgagees. In addition, evidence of insurance shall be issued to each Residential Owner and mortgagee holding a mortgage encumbering a Living Unit or Lot upon written request to the Association.

2. Rights of Listed Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot or a Living Unit and the legal description of such Lot the Association shall provide such Listed Mortgagee with timely written notice of the following:

- i. Any condemnation, loss or casualty loss which affects any material portion of the Association Property;
- ii. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- iii. Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Living Unit or Lot; and

iv. Any failure by a Residential Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his obligations under the Association Documents, where such failure has continued for a period of sixty (60) days.

3. Right of Listed Mortgagee to Receive Financial Statement. Any Listed Mortgagee shall, upon written request made to the Association, be entitled to receive financial statements for the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

L. Approval of Association Lawsuits by Residential Owners. The Association shall be required to obtain the approval of Members holding at least three-fourths (3/4) of the total votes of the Association (at a duly called meeting of the Members at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

1. the collection of Assessments;
2. the collection of other charges which Residential Owners are obligated to pay pursuant to the Association Documents;
3. the enforcement of the use and occupancy restrictions contained in the Association Documents;
4. in an emergency where waiting to obtain the approval of the Residential Owners creates a substantial risk of irreparable injury to the Association Property or to Residential Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the total votes of the Association);
5. filing a compulsory counterclaim; or
6. termination of employment relationship or enforcement of a contract.

M. Rights and Requirements of Governmental Authorities. Any Governmental Authority or agency, including, but not limited to the City or the County, their agents, and employees, shall have the right of immediate access to the Project Land at all times if necessary for the preservation of public health, safety and welfare. Should the Association or its Board fail to maintain the Association Property in accordance with the specifications set forth in the applicable governmental approvals for the Project for an unreasonable time, not to exceed ninety (90) days after written request to do so, the City, County and any other applicable Governmental Authority, by and through the affirmative and official action of the governing body, shall have the same right (but not the obligation), power and authority as is herein given to the Association and its Board to enforce this Declaration and levy Assessments necessary to maintain the Association Property. In such event, the applicable governing body may elect to exercise the rights and powers of the Association or its Board, to the extent necessary to take any action required that the Association might have taken, or levy an Assessment that the Association may have levied, either in the name of the Association or otherwise, to cover the cost of maintenance of any Association Property. The rights granted herein shall be supplemental to any governmental authority the City or County may have, and application of this provision shall not diminish, limit, or restrict the right of the City or the County to apply any other legal rights it may have.

N. City Approval of Certain Actions. Notwithstanding anything contained elsewhere in the Association Documents to the contrary, the following actions shall require the prior written approval of the City (which may act by or through the City Planning Director) before being implemented or effective:

1. The annexation of any Additional Land to the provisions of this Declaration;
2. The withdrawal of any land from the provisions of this Declaration; or
3. The amendment of this Declaration.

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O. Non-Liability of the City. The City shall not be responsible for failing to provide any emergency or regular fire, police or other public service to the Project, any Living Unit, or any Residential Owner or occupant when such failure is due to the lack of access to the Project Land or any Living Unit thereon due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, a Residential Owner, or an occupant of any Living Unit.

IN WITNESS WHEREOF, Declarant has signed this Declaration on the date set forth above.

DECLARANT:
CENTEX HOMES, a Nevada general partnership
By: Centex Real Estate Corporation,
a Nevada corporation
Its: Managing General Partner

(SEAL)

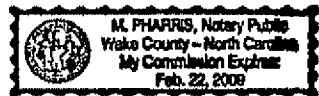
By: *W. Hampton Pitts*
W. Hampton Pitts
Division President

STATE OF NORTH CAROLINA §
COUNTY OF WAKE §

I, M. PHARRIS, a Notary Public for the County and State aforesaid, certify that W. Hampton Pitts personally appeared before me this day and, being duly sworn, says and deposes, that he is the Division President of Centex Real Estate Corporation, a Nevada Corporation, the Managing General Partner of Centex Homes, a Nevada general partnership, and that he executed the foregoing instrument for and on behalf of such partnership.

WITNESS my hand and official seal, this the 10 day of November, 2004.

M. Pharris
Notary Public
My Commission Expires:



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EXHIBIT "A"

Legal Description of the Project Land

(Page 1 of 3)

Parcel 1

Lying and being in Leesville Township, Wake County, North Carolina and being more particularly described as follows:

Beginning at an iron pipe at the southwestern corner of property belonging now or formerly to Larry Phillips Bridges as described in Book 6423, Page 20, Wake County Registry; thence from said point of beginning along and with the northerly line of property belonging now or formerly to Satterwhite Construction, Inc. North 58 degrees 05' 39" West 703.20 feet to an iron pipe; thence along and with the eastern line of Dominion Park, Phase 1, North 00 degrees 29' 42" East 956.30 feet to an iron pipe; thence along and with the eastern line of property belonging to the Roman Catholic Diocese North 00 degrees 29' 27" East 605.43 feet to an iron pipe in the southern right-of-way of Leesville Road (60 foot right-of-way); thence along the southern right-of-way of said Leesville Road the following distance and calls:

following the arc of a circle to the right having a radius of 1841.88 feet (chord bearing and distance North 87 degrees 08' 16" East 85.91 feet) and an arc length of 85.92 feet to a point; North 85 degrees 48' 06" East 263.74 feet to a point; following the arc of a circle to the right having a radius of 2169.26 feet (chord bearing and distance North 87 degrees 08' 32" East 101.51 feet) and an arc length of 101.52 feet to a point; following the arc of a circle to the right having a radius of 1199.37 feet (chord bearing and distance South 88 degrees 48' 57" East 113.05 feet) and an arc length of 113.09 feet to a point; thence south 86 degrees 06' 52" East 39.35 feet to a bent iron pipe;

thence along and with the western line of property belonging to Linwood C. Barlow South 00 degrees 33' 22" West 720.27 feet to an iron pipe; thence along and with the western line of property belonging to Lois Spikes Berry South 00 degrees 33' 22" West 840.52 feet to a bent iron pipe; thence along and with the western line of property belonging to Larry Phillips Bridges South 00 degrees 33' 22" West 396.29 feet to the **POINT AND PLACE OF BEGINNING**; being that certain tract of land identified as "Tract Three" containing 1,061,504 square feet or 24.37 acres, more or less, as shown on a plat prepared by Priest, Craven & Associates, Inc., dated June 1-June 15, 2003, and entitled "Boundary Survey Satterwhite Construction, Inc. (Tracts One & Two) Lois Spikes Berry (Tract Three)" to which plat reference is hereby made for a more particular description of same.

EXHIBIT "A"

Legal Description of the Project Land

(Page 2 of 3)

Parcel 2

Lying and being in Leesville Township, Wake County, North Carolina and being more particularly described as follows:

Beginning at an iron pipe at the southwestern corner of property belonging now or formerly to Larry Phillips Bridges as described in Book 6423, Page 20, Wake County Registry; thence from said point of beginning along and with the southerly line of Farmbridge Subdivision South 58 degrees 06' 48" East 847.74 feet to an iron pipe; thence along and with the southerly line of property belonging now or formerly to Lois Spikes Berry South 58 degrees 17' 47" East 646.33 feet to a loose angle iron found in the northerly right-of-way of the Northern Wake Expressway I-540 (NCDOT Project Ref. #R-2000CA); thence along said Northern Wake Expressway I-540 the following courses and distances:

South 56 degrees 03' 12" West 42.36 feet to a right-of-way marker; South 53 degrees 56' 34" West 99.50 feet to a right-of-way marker; South 55 degrees 53' 59" West 289.50 feet to a right-of-way marker; South 66 degrees 06' 36" West 284.95 feet to a right-of-way marker; South 73 degrees 06' 40" West 290.55 feet to a right-of-way marker; South 83 degrees 01' 17" West 48.47 feet to a right-of-way marker;

thence leaving the northerly right of way of the Northern Wake Expressway I-540 North 56 degrees 24' 51" West 148.91 feet to a point; thence South 17 degrees 19' 35" West 106.25 feet to a point; thence along the northerly right-of-way of the Northern Wake Expressway I-540 the following courses and distances:

South 83 degrees 01' 17" West 396.32 feet to a right-of-way marker; South 65 degrees 47' 00" West 230.47 feet to a right-of-way marker; South 83 degrees 24' 35" West 276.13 feet to a right-of-way marker; South 78 degrees 10' 05" West 119.73 feet to an iron pipe;

thence along and with the eastern line of Dominion Park, Phase 1, North 00 degrees 36' 58" East 998.01 feet to an iron pipe; thence along and with the southern line of Dominion Park, Phase 1, South 52 degrees 18' 59" East 264.02 feet to an iron pipe; thence along and with the eastern line of Dominion Park, Phase 1, North 00 degrees 22' 13" East 990.80 feet to an iron pipe; thence along and with the southern line of Lois Spikes Berry South 58 degrees 05' 39" East 703.20 feet to the POINT AND PLACE OF BEGINNING; being those certain tracts of land identified as "Tract One" containing 1,471,461 square feet or 33.78 acres, more or less, and "Tract Two" containing 544,817 square feet or 12.51 acres, more or less, as shown on a plat prepared by Priest, Craven & Associates, Inc., dated June 1-June 15, 2003, and entitled "Boundary Survey Satterwhite Construction, Inc. (Tracts One & Two) Lois Spikes Berry (Tract Three)" to which plat reference is hereby made for a more particular description of same.

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EXHIBIT "A"

Legal Description of the Project Land

(Page 3 of 3)

Parcel 3

BEGINNING at the southwestern most boundary of Department of Transportation (formerly David Talton) as shown on a sketch provided to the Department by the Grantee and now being on file in the Offices of the Department of Transportation in Raleigh, North Carolina being further described with NC GRID COORDS - NAD 83 N 786487.4911 E 2078692.4209; thence North 17°19'35" East 106.25 feet to a point; thence South 56°24'51" East 149.91 to a point; thence South 83°01'17" West 601.65 feet to the point and place of **BEGINNING** and containing 0.17 acre more or less.

This description was taken from a sketch

on file in the Offices of the Department of Transportation in Raleigh, North Carolina and from the Master Plans for State Highway Project 8.U401703, Wake County with the aforesaid Master Plans, also, being on file in the Offices of the Department of Transportation in Raleigh, North Carolina.

EXHIBIT C

FOR

**HARRINGTON POINT - PHASE
ONE**

**STORM WATER OPERATIONS AND
MAINTENANCE MANUAL AND
BUDGET**

RALEIGH, WAKE COUNTY, NORTH CAROLINA

**EXHIBIT "C"
STORMWATER MAINTENANCE
PLAN**

REVISED MAY 18, 2004

MAINTENANCE PLAN

Revised May 18, 2004

HARRINGTON POINT - PHASE ONE
OPERATIONS AND MAINTENANCE PLAN AND BUDGET
Raleigh, Wake County, North Carolina

1.0 INTRODUCTION

Harrington Point, Phase 1 is a single family attached and detached residential development located between Leesville Road and the Western Wake Expressway adjacent to the Dominion Park Subdivision in northwest Raleigh, within Wake County.

The City of Raleigh Neuse River Nutrient Reduction Ordinance, Part 10, Chapter 9, applies to this subdivision. Compliance with this ordinance will require the installation and perpetual maintenance of a number of Storm Water Control Measures.

The Storm Water Control Measures are being constructed by Centex Homes, the developer and builders of Harrington Point - Phase One. Upon completion of the Storm Water Control Measures and other subdivision infrastructure, the measures will be transferred to the Harrington Point Homeowners Association who will be responsible for the operation and maintenance of the Storm Water Control Measures. These measures are shown on construction drawings prepared by Priest, Craven & Associates, Inc., entitled "Harrington Point - Phase One", originally dated December 28, 2003.

2.0 STORM WATER CONTROL DEVICES

2.1 General

The approved storm water management plans prepared by Priest, Craven & Associates, Inc. and titled "Harrington Point, Phase One" originally dated December 28, 2003, call for the installation of the following Storm Water Control Measures .

2.2 Extended Detention Wetland Ponds

There shall be one Extended Detention Wetland Pond located in an easement within Phase One.

Extended Detention Wetland Pond 3 will be located within an easement, in the common open space behind units 23 – 32, along the western property line with Dominion Park. Extended Detention Wetland Pond 3 shall have a minimum surface area of 10,500 square feet. The pond shall provide a 3 foot deep forebay at the inlet for sediment storage. The level of accumulated sediment shall be checked during the annual inspection of the devices. Accumulated sediment shall be removed from the pond before the level reaches the top of the sediment storage zone. It is estimated that accumulated sediment will have to be removed every five years. The inlet to the Extended Detention Wetland Pond shall have a stone lined velocity dissipater pad located at the forebay. A rip rap lined velocity dissipater pad shall be downstream of the riser barrel structures. Design for velocity dissipater pads are indicated on the plans. The rip rap dissipator pad shall be replenished every three years. The above mentioned Extended Detention Wetland Pond shall have three City of Raleigh standard Drop Inlet, Standard # 30.03 taken from City of Raleigh Central Engineering Department Standard Details. The Pond shall have a rip rap lined emergency spillway. The anticipated draw down time of the volume of runoff stored in the Extended Detention Wetland Pond is between 2 and 5 days.

2.3 Bioretention Areas

There shall be two Bioretention Areas to be located in permanent easements within Phase One.

2.3.1 Bioretention Area 4

Bioretention Area 4 will be located along the eastern property line of the tract, within an easement in the common open space behind units 255-258, as shown on plans. Bioretention Area 4 shall have a minimum surface area of 3200 square feet. A 15 foot wide rip rap lined Emergency Spillway shall be provided to pass more severe storms.

2.3.2 Bioretention Area 5

Bioretention Area 5 will be located along the eastern property line of the tract, within an easement in the common open space behind units 241-248, as shown on the plans. Bioretention Area 5 shall have a minimum surface area of 4000 square feet. A 15 foot wide rip rap lined emergency spillway shall be provided to pass more severe storms.

2.3.3 Bioretention Area Standards

All Bioretention Areas shall provide a 4 foot deep planting area over a 12 inch deep sand bed. The planting soil utilized in the bioretention area shall be as described in the Construction Procedures and Requirements contained on the construction drawings, a sandy loam with a clay content of less than 25%, and an infiltration rate in excess of 0.52 inches per hour. Planting Soil shall be in a pH range of 5.5 to 6.5, organic matter from 1.5% to 3.0%, and soluble salts shall not exceed 500 ppm. A 2-inch thick layer of shredded hardwood mulch shall cover the surface of the bioretention area. Planting within the bioretention area shall be a mixture of trees and shrubs in accordance with the plant list on the construction drawings. The storm sewer inlets into the

Bioretention Areas shall have a stone lined rip rap apron level spreader at all discharge points into the bioretention areas. All storm sewer outlets from the overflow inlets of the Bioretention Areas shall have a stone lined rip rap apron at their discharge points. Stone for riprap apron level spreaders and rip rap apron velocity reduction pads shall be replenished every three years to their original design specifications.

3.0 MAINTENANCE AND INSPECTION REQUIREMENTS

3.1 General

All maintenance and inspections shall be carried out in accordance with the requirements and recommendations contained in Stormwater Best Management Practices, of latest revision, the City of Raleigh Stormwater Design Manual, and Part 10, Chapter 9 of the Code of Ordinances of the City of Raleigh. Persons and/or organizations responsible for maintenance should obtain copies and thoroughly familiarize themselves with this information. The following general maintenance guidelines for each type of device are taken directly from the edition of Stormwater Best Management Practices in place at the time of preparation of the Maintenance Plan for Harrington Point – Phase One.

3.2.1 Extended Detention Wetland Pond Maintenance Guidelines

Extended Detention Wetland Ponds require frequent mowing of slopes and unclogging of outlets. Basins with steep side slopes may be hazardous to mow with power equipment creating difficult and/or expensive maintenance. Trash, debris and sediment accumulation is rapid in most basins, requiring frequent cleaning.

Extended Detention Wetland Ponds usually do not normally fail structurally; however, many Extended Detention Wetland Ponds are not functioning as designed mainly because they do not empty completely between storms. This reduces the effective storage volume and detention times for incoming storm flows.

Maintenance Requirements are as follows:

- All grassed areas of an Extended Detention Wetland Ponds should be mowed to a maximum height of six inches.
- Reseeding of any areas not germinating with ground cover. Periodic reseeding may be required to establish grass on areas where seed did not take or has been destroyed. Before seeding, fertilizer (12-12-12) shall be applied at a minimum rate of 12 to 15 pounds per 1000 square feet. The seed should be covered with soil to a depth of approximately 1/4 of an inch. Immediately following the planting, the area should be mulched with straw.

At a minimum, semi annual maintenance should include seeding and fertilizing of the Extended Detention Wetland Ponds shall be performed by the grounds keeping contractor or individual otherwise noted.

- Extended Detention Wetland Ponds will tend to collect debris. It should be removed whenever it accumulates, or at least quarterly.
- The Ponds should be inspected annually and after a rain event of more than one inch to ensure that it is operating as designed and that debris is removed from inlets and outlets and the crest of the spillway.
- At a minimum, items that should be included in the annual inspection and addressed are:
 1. clogging of the outlet or two rapid a release,
 2. erosion on the banks,
 3. erosion at the inlet and outlet,
 4. sediment accumulation and the need for removal ,
 5. condition of the emergency spillway,
 6. woody vegetation in the embankment, and condition of embankment.
 7. embankments shall be kept clear of any woody vegetation.
 8. rip rap pads, channels, and slope protection shall be repaired or replaced as needed.

Example Maintenance Schedule for Plantings in Extended Detention Wetland Ponds

Description	Method	Frequency	Time of Year
Plants			
Remove and replacement of all dead and diseased vegetation considered beyond treatment and replant per landscape plan	See planting specifications	Twice a year	3/15 to 4/30 and 10/1 to 11/30
Treat all diseased plants	Mechanical or by hand	N/A	Varies, but will depend on insect or diseased infestation
Watering plant material shall take place at the end of each day for fourteen consecutive days and after planting has been completed as needed	By hand	Immediately after completion of project as needed to accommodate any replanting	N/A

3.3 Bioretention Area Maintenance Guidelines

A schedule of recommended maintenance for bioretention areas is given in Table 4.7. The table gives general guidance regarding methods, frequency, and time of year for bioretention area maintenance.

Planting Soil

The planting soil utilized in the bioretention area shall be as described in the Construction Procedures and Requirements contained on the construction drawings, a sandy loam with a clay content of less than 25%, and an infiltration rate in excess of 0.52 inches per hour. Planting Soil shall be in a ph range of 5.5 to 6.5, organic matter from 1.5% to 3.0%, and soluble salts shall not exceed 500 ppm.

Urban plant communities tend to become very acidic due to precipitation as well as the influences of storm water runoff. For this reason, it is recommended that the application of an alkaline substance, such as limestone be considered once or twice a year. Testing of the pH of the organic layer and soil should precede the limestone, application to determine the amount of limestone required.

Soil testing should be conducted annually so that the accumulation of toxins and heavy metals can be detected or prevented. Over a period of time, heavy metals and other toxic substances will tend to accumulate in the soil and the plants. Data from other environments such as forest buffers and grass swales suggest accumulation of toxins and heavy metals within five years of installation. However, there is no methodology to estimate the level of toxic materials in the bioretention areas runoff, soil, and plant characteristics will vary from site to site.

As the toxic substances accumulate, the plant biological functions may become impaired, and the plant may experience dwarfed growth followed by mortality. The biota within the soil can also perish and the natural soil chemistry may be altered. The preventative measures would include the removal of the contaminated soil. In some cases, removal and disposal of the entire soil base, as well as the plant material, may be required.

Mulch

Bioretention areas should be mulched once the planting of trees and shrubs has occurred. Mulch shall be a two inch deep layer of 12 month old shredded hardwood mulch. Any ground cover specified as plugs may be installed once the area has been mulched. Ground cover established by seeding and/or consisting of grass should not be covered with mulch.

Table 4.7 Example Maintenance Schedule for Bioretention Areas

Description	Method	Frequency	Time of Year
Soil			
Inspect and Repair Erosion			
Soil Test for toxicity and chemistry	Visual	Monthly	Monthly
	Multiple samples	Once a year	Spring
Organic Layer			
Remulch any void area	By hand	Whenever needed	Whenever needed
Remove previous mulch layer before applying new layer (optional)	By hand	Once every two or three years	Spring
Any additional mulch added	By hand	Once a year	Spring
Plants			
Remove and replacement of all dead and diseased vegetation considered beyond treatment and replant per landscape plan	See planting specifications	Twice a year	3/15 to 4/30 and 10/1 to 11/30
Treat all diseased trees and shrubs	Mechanical or by hand	N/A	Varies, but will depend on insect or diseased infestation

Watering plant material shall take place at the end of each day for fourteen consecutive days and after planting has been completed as needed	By hand	Immediately after completion of project as needed to accommodate any replanting	N/A
Replacement of support stakes	By hand	Once a year	Only remove stakes in the spring
Replace any deficient stakes or wires	By hand	Whenever needed	Whenever needed
Fertilize Plants	By hand, within the plant root zone, with a slow release fertilizer	Twice a year, in accordance with the results and recommendations of the annual soil testing	Spring and Fall

Plant Materials

Plant material within the bioretention area will be a mix of trees and shrubs as specified in the Plant List on the construction drawings.

An important aspect of landscape architecture is to design areas that require little maintenance. Certain plant species involve maintenance problems due to dropping of fruit or other portions of the plant. Another problem includes plants, primarily trees, that are susceptible to windthrow, which creates a potential hazard to people and property (parked cars). As a result, some plant species will be limited to use in low traffic areas.

Ongoing monitoring and maintenance is vital to the overall success of bioretention areas. Annual maintenance will be required for plant material, mulch layer, and soil layer. A maintenance schedule should include all of the main considerations discussed.

Maintenance requirements will vary depending on the importance of aesthetics. Soil and mulch layer maintenance will most likely be limited to correcting areas of erosion. Replacement of mulch layers may be necessary every two to three years. Mulch should be replaced in the spring. When the mulch layer is replaced, the previous layer should be removed first. Plant material upkeep will include addressing problems associated with disease or insect infestations, replacing dead plant material, and any necessary pruning.

Non-Erosive Perimeter

The area around the perimeter of the bioretention area shall be maintained in a stabilized, non-erosive fashion with grass, ground cover, mulch, natural plant litter, or hardened surface areas. If sediment appears within the bioretention area, the source should be discovered and stabilized. Maintenance shall be performed as follows :

All grassed areas along the perimeter of the bioretention basin should be mowed to a maximum height of six inches.

3.4 Inspections

During the first year period commencing when the devices are placed in operation, inspections of all major components shall be conducted quarterly by the owner's representative. At the conclusion of the initial year operating period, the devices shall be inspected annually, and reports filed with the City of Raleigh Department of Inspections in accordance with Section 10-9028 of the City Code by a qualified registered Professional Engineer, Professional Land Surveyor, or Landscape Architect. Any deficiencies noted at that time should be corrected as soon as possible. A registered geotechnical engineer shall perform an inspection on the conditions of the embankment every five years. In addition to the above outlined annual inspection and report, the devices shall be inspected by a designated representative of the Homeowner's Association after all rainfall events of one inch or more.

3.5 Reports and Record Keeping

Copies of all inspection reports and records of any remedial or corrective action taken shall maintained in the files of the Homeowners Association.

3.6 Regularly Scheduled and Preventive Maintenance

The owner shall establish and maintain a schedule of regular maintenance as referenced above in sections 3.1.1 and as prescribed by the City requirements and State guidelines contained in Stormwater Best Management Practices. A report detailed scheduled and preventative maintenance activities undertaken shall be maintained by the Homeowners Association.

3.7 Items of Special Concern

The outlet structures and discharge channels should be inspected by the owner's representative after any rainfall event in excess on one inch for any sign of erosion or deterioration of any type. Should any instability become evident, the Homeowners Association should immediately request an inspection by a registered Professional Engineer or the City of Raleigh. Should erosion or deterioration of the devices occur, eroded areas should be repaired by backfilling with earth and covering with sod or planted in accordance with the original design of the device. If the area is a

reoccurring problem, an alternate remedial measure should be developed and submitted to the City for their review and approval. All repairs must be carried out under the direction of a registered Professional Engineer.

4.0 EMERGENCY ACTION PLAN

4.1 IDENTIFICATION OF EMERGENCY CONDITIONS

Representatives of the Homeowners Association and maintenance personnel must be prepared to act promptly and effectively when a stormwater control measure exhibits signs of failure. They should be familiar with principal types of failure and their identifiable signs. Because of their familiarity with the measures and associated appurtenances, the owners and maintenance personnel can more readily detect changes in the devices.

The six (7) principal types of catastrophic device failure the owner and maintenance personnel should be aware of are as follows:

- 1. Overtopping
- 2. Piping
- 3. Development of a large slide
- 4. Failure of an appurtenant structure
- 5. Seepage
- 6. Extended Detention Wetland Pond Major Repair

If any of these conditions are noticed, the EMERGENCY ACTION PLAN should be implemented immediately. A description of these conditions is as follows:

4.2 PRINCIPAL TYPES OF DEVICE FAILURE AND EARLY WARNING SIGNS

4.2.1 Overtopping - The water level of should be monitored during periods of heavy rainfall and runoff. The likelihood of the device being overtopped is slight due to the minimum freeboard at the spillway design storm and storage capacity of the device. However, overtopping could result if a large slide or slough in the upstream or downstream slope of the embankment significantly lowered the device crest. Overtopping could also occur if the primary and emergency spillways are not working adequately. The crest areas of the spillways must be cleaned bi-annually of any accumulated debris to maintain proper operations of flows.

4.2.2 Piping - Piping is usually indicated by a rapid increase in seepage rate, a muddy

discharge at or near the downstream toe, sinkholes on or near the embankment and/or a whirlpool (eddy) in the reservoir. Boils at or near the downstream toe may be an indication that piping is beginning. The downstream side of all devices and embankments, particularly in the area of the outlet device should be monitored regularly for any signs of change.

4.2.3 Development of any Slide or Slump - A slide or slump could develop in either the upstream or downstream slope of the embankment and threaten to release any impounded water. The slopes should be periodically inspected for signs of erosion and repairs should be made immediately. The upstream face is especially vulnerable due to saturated conditions and changes in water level. Arch shaped cracks are indications that slides are slipping or beginning to slip.

4.2.4 Failure of an Appurtenant Structure - The sudden or rapid failure of an appurtenant structure could threaten complete failure of the device and release of its impoundment. The concrete or metal outlet devices through the embankment pose the greatest threat to the dam's stability due to the potential for piping. Any large cracks in the slab, sides or walls could be signs of instability and potential piping. Cracks in these structures could also be signs of slope instability and a potential large slide. Culvert slabs and walls should be periodically inspected for signs of cracking and/or seepage. A "crack map" sketch should be kept to identify old and new cracks of monitoring.

4.2.5 Seepage - Seepage may vary in appearance from a soft, wet area to a flowing spring. It may show up first as only an area where vegetation is more lush and darker green. Cattails, reeds, mosses, and other marsh vegetation often become established in a seepage area. The downstream abutment areas where the embankment fill and natural ground interface are very common locations of seepage. Also, the contact between the embankment and the spillway conduit is a very common location, which is generally attributed to poor compaction around the conduit. Due to the way in which conduits are installed, this is generally more evident on the underside of the conduit. Slides may result from excessively saturated embankment slopes.

4.2.6 Extended Detention Wetland Pond - Accumulation of sediment or unusual diseased or Dying plant material. Major repairs to Extended Detention Wetland Ponds to consist of the removal and replacement of 33 % of plant material.

4.2.7 Bioretention Area - Excessive or continuous ponding of surface water several days after a rain event, or accumulation of sediment in the mulch layer, or unusual diseased or dying plant material. Major repairs to Bioretention Areas shall consist of the removal and replacement of 33% of plant material or 25% of the volume of planting soils.

4.3 EMERGENCY NOTIFICATION

The response to an identified emergency situation should proceed in four (4) steps:

1. The owner or person who identifies the emergency should notify local law enforcement officials. Law enforcement and local officials should then proceed at their discretion with warning and evacuation plans for potentially affected areas.
2. The owner should notify the City of Raleigh Engineering Department stormwater officials. Remedial actions to repair items 4.2.1 through 4.2.6 are major repair items for which escrow funds held by the City may be used.
3. The owner should notify downstream property owners that would be affected by a failure of the measure.
4. After notifying local law enforcement, City of Raleigh officials, and downstream property owners, the owner should initiate efforts to prevent or delay the failure and repair the problem.

EMERGENCY NOTIFICATION PLAN

If you are aware of any peculiarities or sudden changes in the stormwater management measures, water level, device embankments, or outlet structures, please:

FIRST - DIAL 9-1-1

calmly identify yourself, state your location and describe the situation.

then notify the following:

- | | |
|---|--|
| State Warning Point (Non-Business Hours) | (919) 733-3861 |
| State Emergency Management Agency | (919) 733-3942 |
| City of Raleigh Police Department | (919) 890-3335 |
| City of Raleigh Engineering Department | (919) 890-3030 |
| Dept of Environment, Health & Natural Resources,
Land Quality Section,
Raleigh Regional Office (Business Hours) | (919) 571-4700 |
| Mr./Ms. _____, President
Harrington Point Homeowner's Association | (919) _____ (work)
(919) _____ (home) |

Mr./Ms. _____, Sec. & Treasurer	(919) _____ (work)
Harrington Point Homeowner's Association	(919) _____ (home)
Emergency Management Agency, Wake County	(919) 856-6480
Sheriff's Department, Wake County	(919) 560-6900
Mr. Gray Methven, Land Development Manager, Centex Homes	(919) 760-1119

This Emergency Action Plan should be constantly updated to reflect changes in downstream development that may be affected by potential failures. Names and telephone numbers should be constantly kept up-to-date for all the above listed contract personnel.

Personnel should use their discretion in identifying a condition as an emergency. Most of the conditions described above are signs of impending emergency except small amounts of seepage through small cracks in appurtenances and minor erosion of upstream and downstream embankment faces. However, these conditions should be checked as soon as possible by a qualified professional. When in doubt, call the City of Raleigh Engineering Department.

4.4 EMERGENCY REPAIRS

After making the appropriate notifications for implementing warning procedures, the owner should initiate efforts to prevent or delay failure of the device.

It is also important to know what type of emergency repairs should be attempted for the different modes of failure. The following description of possible actions to take to avoid failure are offered. **Extreme caution must be exercised by those working around the device during implementation of any of these emergency repairs.**

Be sure that the spillways are not blocked with debris and are functioning as efficiently as possible. Debris removal may be difficult due to pressure from high velocity flow and should be accomplished using long poles or hooks. **Personnel should not be allowed close to spillway inlets.**

Open the drain valves on the primary outlet device to lower the water level.

Great care should be taken when attempting to temporarily raise the top of embankments with sandbags or other means to try to prevent overtopping of the device. This is because flood inflow may still increase and result in the overtopping of the raised device. If the temporary raised device fails, the release of an even greater volume and depth of water would result.

If an eroded area has not developed too widely, a temporary remedy may be to cover the discharge area with sand and gravel, or rip-rap stone, to temporarily prevent further erosion.

If a whirlpool (vortex) is visible in the impounded water, attempt to plug the "pipe" at the upstream end of the device by dumping material into the whirlpool or sinkhole. Straw has been used effectively for this purpose. If straw is not readily available, anything (earth, rock, etc.) should be tried. **Extreme caution should be taken during any attempts at temporary repairs.** If the "pipe" is plugged, the owner should be aware this is only a temporary repair. The device should be fully drained and a qualified professional should be contacted to recommend permanent remedial measures.

Attempt emergency repairs to prevent or delay failure. **Extreme caution should be taken during any attempts at emergency repairs.** Slides may be caused by seepage pressures, a saturated slope, a slope which is too steep, or possibly an earthquake. If a large slide in the upstream or downstream slope has occurred which significantly lowers the crest of the device and threatens to release impounded water, sandbags can be used to temporarily raise the crest to prevent overtopping. A complete breach of the device may result if the embankment slope protection fails and bare soil is exposed to overtopping flow. Temporary repair of the device and appurtenant structures will depend on the nature of the problem. **Extreme caution should be taken during any attempts at temporary repairs.**

5.0 BUDGET

The following annual Budget was developed from information provided by Centex Homes.

INITIAL CONSTRUCTION COST BUDGET

1. Initial cost of Extended Detention Wetland Pond 3	\$ 48,000.00
2. Initial cost of Bioretention Area 4	\$ 39,000.00
3. Initial cost of Extended Detention Wetland Pond 5	\$ 48,750.00

Total construction cost	\$135,750.00

ANNUAL INSPECTION, MANAGEMENT, AND MAINTENANCE BUDGET

1. Liability Insurance and Property Insurance	\$ 1,000.00
2. Admin., Management, and Annual Inspection Report	\$ 2,500.00
3. Maintenance Cost for mowing, seeding, fertilizing and trash removal	\$ 5,000.00
4. Sediment removal (every 5 years) annualized cost	\$ 1,000.00
5. Rip-rap replenishment (every 3 years) annualized cost	\$ 750.00
6. Maintenance cost of irrigation system	\$ 1,250.00

Total Annual Inspection, Management, and Maintenance	\$ 11,500.00

Exhibit D. Schedule of Escrow Payments

These numbers are based on initial construction costs. For years 1-5, the annual escrow payment is calculated as total construction cost minus 15% multiplied by .67 percent divided by five, with year 1 equal to year 2 escrow payment plus 15% of total construction cost.

Year 1	\$ 35,825.00	
Year 2	\$ 15,462.00	
Year 3	\$ 15,462.00	
Year 4	\$ 15,462.00	
Year 5	\$ 15,462.00	
Year 6	\$ 7,615.40	
Year 7	\$ 7,615.40	
Year 8	\$ 7,615.40	
Year 9	\$ 7,615.40	
Year 10	\$ 7,615.40	
Total Escrow	\$135,750.00	Equals the Initial Construction Cost

EXHIBIT "D"
CITY AGREEMENT

Instrument Prepared By: Raleigh City Attorney's Office
Brief Description for Index: _____
Parcel Identifier: _____
Mail After Recording To: City Attorney's Office
P. O. Box 590
Raleigh, N.C. 27602

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**STORMWATER REPLACEMENT PROTECTION EASEMENT
AND ACCESS MAINTENANCE AGREEMENT AND INSTALLMENT
REPLACEMENT CONTRIBUTION**

THIS STORMWATER REPLACEMENT PROTECTION EASEMENT AND ACCESS MAINTENANCE AGREEMENT AND LUMP SUM REPLACEMENT CONTRIBUTION (the "Agreement") made this ___ day of _____, 2004, by and between CENTEX HOMES, a Nevada general partnership, whose address and telephone number are 2301 Sugar Bush Road, Suite 400, Raleigh, North Carolina, 27612; (919) 781-1952 (hereinafter referred to as "Developer") and HARRINGTON POINT TOWN HOME OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, whose address and telephone number are 2301 Sugar Bush Road, Suite 400, Raleigh, North Carolina, 27612; (919) 781-1952 (hereinafter referred to as the "Association") (Developer and Association collectively referred to as "Grantors"), with, to and for the benefit of the CITY OF RALEIGH, a municipal corporation of the State of North Carolina, whose address is P. O. Box 590, Raleigh, North Carolina 27602 (hereinafter referred to as the "Grantee" or the "City"). These parties shall hereinafter sometimes be referred to collectively as the "Parties", and individually as a "Party".

WITNESSETH

WHEREAS, Developer is the owner in fee simple of (i) that certain property situated in Wake County, North Carolina and more particularly described on Exhibit A (the "Phase 1 Property"), and (ii) property situated adjacent to the Phase 1 Property also

located in Wake County, North Carolina (the "Phase 2-4 Property") and more particularly described on Exhibit A-1 (the Phase 1 Property and the Phase 2-4 Property are herein collectively referred to as the "Property"); and

WHEREAS, the Property is located within the planning jurisdiction of the City and subject to certain stormwater quantity and quality requirements set forth in Part 10, Chapter 9, Article B, Division I, Raleigh City Code (the "RCC"), as may be amended from time to time; and

WHEREAS, as required by the City in connection with the development of the Property, the Developer shall install engineered stormwater control measures including extended wetland detention ponds, bio-retention areas, and associated appurtenances and vegetation (collectively, the "Stormwater Control Measures") as shown on construction drawings prepared by Priest, Craven, and Associates, Inc., entitled "Harrington Point, Phase One" and originally dated December 28, 2003, revised February 20, 2004, and signed by the Chief Engineer of the City on May 28, 2004, located on those portions of the Property as described on Exhibit B (the "Stormwater Areas"), for purposes of establishing a stormwater management system for the Property, and the Grantors shall assume specific maintenance, replacement, reconstruction and repair, responsibilities set forth in the RCC and with respect to the Stormwater Control Measures; and

WHEREAS, the Association shall have the right and easement to enter upon, over, across and under the Stormwater Areas for the purpose of inspecting operating, maintaining, , repairing, reconstructing, and replacing the Stormwater Control Measures; and

WHEREAS, these Stormwater Control Measures are required to comply with the RCC and that failure to maintain these Stormwater Control Measures is a violation of the RCC potentially subjecting each lot owner of the Property to significant daily civil penalties and other enforcement actions; and

WHEREAS, the City also requires that the Developer grant or dedicate to the Grantee an access and maintenance easement over and across the Stormwater Areas for the purposes of inspecting, maintaining, repairing, reconstructing and replacing the Stormwater Control Measures set forth in the RCC and this Agreement; and

WHEREAS, as required by the City in connection with the development of the Phase 2-4 Property, the Developer will be required to install additional engineered stormwater control measures on such property including extended detention wetland ponds, bio-retention areas, and associated appurtenances and vegetation similar to those installed for the Phase 1 Property. Upon Developer's recording of lots on any portion of the Phase 2-4 Property to be developed as a separate parcel (a "Future Phase"), the Developer will cause the preparation of construction drawings for the stormwater control measures located on such Future Phase, the Developer will show the location of said stormwater control measures on the recording plat, the Developer will convey said stormwater control measures for such Future Phase to the Association, which the

Association shall maintain, and the Developer will grant to the Grantee, an access and maintenance easement over and across the stormwater areas for such Future Phase for the purposes of inspecting, maintaining, repairing, reconstructing, and replacing the said stormwater control measures for the applicable Future Phase.

WHEREAS, this Agreement has been procured in accordance with the requirements of N.C. General Statutes Chapter 143, Article 21, Part 1 and RCC §10-9027(c).

NOW, THEREFORE, for a valuable consideration, including the benefits Grantors may derive therefrom, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. RECITALS. The foregoing recitals shall constitute an integral part of this Agreement, and this Agreement shall be incorporated herein and made a part hereof.

2. GRANT OF EASEMENT. Grantors hereby dedicate, bargain, sell, grant, and convey unto the Grantee, its successors and assigns, a perpetual, non-exclusive and irrevocable right and easement over, under, through and across the Stormwater Areas and access through the Property to and from the Stormwater Areas for the purpose of permitting City inspection and, if deemed necessary, as determined by the City, maintenance, replacement, reconstruction, and repair of the Stormwater Control Measures and their appurtenances and vegetation, as more fully set forth herein and in the RCC (the "Protection Easement").

3. CONSTRUCTION AND MAINTENANCE OF STORMWATER MANAGEMENT FACILITIES. The requirements pertaining to the Protection Easement are more fully set forth in Part 10, Chapter 9, Article B, Division I of the RCC. The Developer shall be responsible for the construction of the Stormwater Control Measures for the Property; and, prior to conveying control of the Stormwater Control Measures for any portion of the Property, their appurtenances and vegetation to the Association by deed or easement, the Developer will be responsible for the maintenance, repair, reconstruction and replacement thereof. Following the conveyance of the Stormwater Control Measures for any portion of the Property to the Association, the Association and its members will be responsible for maintaining such Stormwater Control Measures, their appurtenances and vegetation in the manner specified herein and in strict compliance with the Stormwater Operations and Maintenance Manual and Budget for the Phase 1 Property attached hereto as Exhibit C which is incorporated herein by reference and made a part hereof (the "Maintenance Manual"), and any similar manuals subsequently approved by the City for a Future Phase. At all times, the Stormwater Control Measures shall perform as designed and shall at all times comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities.

4. GENERAL REPLACEMENT FUND. For purposes of insuring the availability of funds for the replacement and reconstruction of the Stormwater Control Measures for the Property for "Major Repairs" thereto (as specified in Section 4.2.6 and

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CITY AGREEMENT

4.2.7 of the Maintenance Manual) and any other repair work exceeding One Hundred Forty Five Thousand Dollars (\$145,000.00) (one-third the initial construction cost of the Stormwater Control Measures for the Property at full build out), Developer shall establish an account (the "General Replacement Account") with the City. (Payments made to this account will be combined with payments from other similar Agreements). The General Replacement Account shall be funded initially by a lump sum contribution of the Developer (the "Initial Payment"), and thereafter by additional contributions of the Association. The Developer shall deliver the Initial Payment to the Engineering Department of the City at the earlier of:

- (i) before the issuance of building permits for the construction of improvements on the Property; or
- (ii) prior to the recordation of either any subdivision plat or any right-of-way dedication plat of any portion of the Property.

The Initial Payment shall be equal to \$One Hundred Fourteen Thousand Eight Hundred Dollars (\$114,800.00) (which is equal to fifteen percent (15%) of the estimated construction cost of the Stormwater Control Measures for full build out for the Property) plus Forty Nine Thousand Five Hundred Fifty Dollars (\$49,550.00) as the first year's contribution to the General Replacement account as set forth in the schedule of payments for full build out of the Property as reflected on Exhibit D attached hereto, which is incorporated herein and made a part hereof. The Association shall pay to the City annual contributions to the General Replacement Account. Said payments by the Association to the City shall be made on or before July 1st of each year and shall be made in accordance with the schedule of payments set forth in Exhibit D for full build out for the Property.

With the consent of the City, funds deposited by the Grantors may be drawn out of the General Replacement Account for Major Repairs, repair work exceeding One Hundred Forty Five Thousand Dollars (\$145,000.00) (one-third the initial construction cost), reconstruction and replacement of the Stormwater Control Measures for the Property when constructed as determined by the Association. Consent of the City is to be given by its City Manager or his designee. Any funds withdrawn from the General Replacement Account shall be replaced by the Association, in accordance with the schedule of contributions specified by the City prior to the withdrawal of funds.

5. ABANDONMENT OF DEVELOPMENT OF FUTURE PHASES. If Developer chooses not to proceed with the subdivision and recording of any Future Phase or Phases at any time prior to November 1, 2010, Developer will be entitled to a refund as provided below. Such election by Developer not to proceed with the development of one or more Future Phases shall be in the form of a written letter to the Raleigh Planning Director and the Raleigh City Attorney stating it is abandoning the development of the remainder of Harrington Point Cluster Development/S-102-2003, and that it wishes the City to void all Future Phases of such project. The refund the Developer shall be entitled to receive will be based upon which Future Phase(s) the Developer is electing to void, as follows:

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<u>Abandoned Phase(s)</u>	<u>Refund Amount</u>
2, 3 & 4	\$83,750.00
3 & 4	\$70,730.00
4	\$44,340.00

Following the choice of the Developer not to proceed with the subdivision and recording of a Future Phase (or multiple Future Phases, as applicable), the Association shall make payments to the City on or before July 1 of each year and the amount of said payment shall be made in accordance with the schedule of payments set forth in Exhibit D for the Replacement Costs for the Phase 1 Property and those Future Phases that are not abandoned by the Developer. All previous payments in excess of the Replacement Costs for the applicable portion of the Property not abandoned by the Developer will be credited against future payments owed by the Association to the City.

6. **USE OF PROTECTION EASEMENT.** The City, its officers, employees, contractors and agents may access the Property and enter the Stormwater Areas for purposes of exercising Grantee's rights hereunder. This Agreement shall in no way obligate the City to maintain, replace, reconstruct and repair the Stormwater Control Measures, and the City shall not be liable to any person, firm, partnership, company, corporation, governmental agency, or entity for the condition or operation of the Stormwater Control Measures. Further this Agreement shall in no way diminish, limit, or restrict the right of the City to enforce any of its ordinances as permitted by law.

7. **DEFAULT.** If the Developer or the Association or its members shall fail to comply with the foregoing requirements or any other obligations imposed herein, in the RCC or pursuant to the terms of the Declaration of Covenants, Conditions and Restrictions for the Property as the same may be amended from time to time in accordance with the terms thereof (the "Declaration"), the City, in its sole discretion, may perform such work and recover the costs thereof from either the General Replacement Account or from the Party who is then responsible for the performance of such requirements and obligations (hereinafter referred to as the 'Owner'); provided, however, that, except in cases of emergencies, the City will give the Owner a minimum of thirty (30) days prior written notice of and an opportunity to cure the Owner's default hereunder. If the City exercises its rights hereunder and maintains, repairs, reconstructs or replaces all or a portion of the Stormwater Control Measures, then following acceptance and payment of the work, the City shall deliver to the Owner written notice of the costs of such work, and the Owner shall pay all such costs within thirty (30) days after receipt of such notice. Any costs not paid by the Owner to the City within the thirty (30) day period shall be delinquent, and the Owner shall be considered in default of this Agreement. In the event of such default, the City may either bring an action at law against the Owner for the cost of the work, plus interest at the rate of eight percent (8%) per annum, collection costs, late payment charge of three hundred dollars (\$300) during the first forty-five (45) days of default and five hundred dollars (\$500) thereafter, and reasonable attorneys' fees, or foreclose a lien against the Property, or both.

EXHIBIT "D"
CITY AGREEMENT

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The Declaration shall grant the Association the right to impose assessments to pay any monies owed by the Association to the City pursuant to this Agreement; payment of such assessment being secured by a lien against all of the Property upon the filing of a claim of lien by the Association or by the City, as the assignee of the Association's lien rights. The granted lien rights shall be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Article 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the Office of the Clerk of Superior Court of the County where the Property is situated, which claim shall state the description of the Property encumbered thereby, the name and address of the Association, the record owners of the encumbered Property at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be recordable any time after default, and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is recorded, plus interest at the rate set forth in the Declaration, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorneys' fees. City lien claims shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

Any payment required by this Agreement which is not paid to the City within thirty (30) days after its due date shall be delinquent. In the event of such default, the City may bring an action against the Owner for nonpayment plus interest at a rate of eight percent (8%) per year, collection costs, a late payment charge of three hundred dollars (\$300) during the first forty-five (45) days of default and five hundred dollars (\$500) thereafter and attorney fees.

The remedies set forth herein are cumulative, the city may for example bring an action for collection and foreclose its lien claim.

8. **RESERVATION BY RECORD OWNER.** The Developer and the Association and its members, as applicable, shall in all other respects remain the owner of the Property, subject to the Protection Easement, and may make all lawful uses of the Property not inconsistent therewith.

9. **NO WAIVER OF RIGHT.** The Grantee does not waive or forfeit the right to take action to ensure compliance with the terms, conditions and purposes of this Agreement by a prior failure to act.

10. **NOTICE.** Written notice as required hereunder shall be provided to the City of Raleigh at P. O. Box 590, Raleigh, N.C. 27602, and to the Owner at 2301 Sugar Bush Road, Suite 400, Raleigh, North Carolina, 27612. Written notice shall be deemed received four (4) days following its deposit, first class mail, with the United States postal system. In the event notice to the Owner is returned, the City may notify the Owner at either (i) the mailing address provided to the Wake County Tax Assessor; or (ii) the registered agent of the Association on file with the Corporations Division of the Secretary of State's Office.

EXHIBIT "D"
CITY AGREEMENT

11. **SUCCESSORS AND ASSIGNS.** The designation of Developer, Association, Grantors and Grantee shall include the Parties, heirs, assigns, and successors to the Grantors.

12. **AMENDMENT.** All amendments to this Agreement made during the initial ten (10) year period following the date hereto (the "Initial Period") shall be executed in writing by the Parties or their respective successors and assigns, except that amendments made to the Exhibits to reflect phased developments, additional Stormwater Control Measures, additional Stormwater Areas, additional Maintenance Manuals, or additional payments to the City may be made without the consent of the Association. All amendments to this Agreement made after the Initial Period need not be executed by the Developer; but shall be executed in writing by the Association and the Grantee or their respective successors and assigns. No Amendment to this Agreement shall become effective until executed by the appropriate parties, approved by the City Attorney and recorded in the office of the County Register of Deeds.

13. **TERM.** This Agreement shall continue as a servitude running in perpetuity with the Property.

TO HAVE AND TO HOLD the aforesaid rights, privileges and easements herein to the Grantee, its successors and assigns forever, and Grantors do covenant that Grantors are seized of said premises in fee or by easement and have the right to convey the same, and Grantors will warrant and defend such title to the same against claims of all persons whosoever.

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

DEVELOPER
CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation, a Nevada corporation
Its: Managing General Partner

By: _____
W. Hampton Pitts
Division President

EXHIBIT "D"
CITY AGREEMENT

BK011102PG02133

ASSOCIATION:
HARRINGTON POINT TOWN HOME OWNERS
ASSOCIATION, INC., a
North Carolina non profit corporation

By: _____
Larry L. Michael, President

CITY OF RALEIGH

By: _____ (SEAL)
J. Russell Allen, City Manager

Attest: _____
City Clerk

EXHIBIT "D"
CITY AGREEMENT

BK011102PG02134

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DEVELOPER
ACKNOWLEDGMENT

I, the undersigned Notary Public, certify W. Hampton Pitts personally came before me this day and acknowledged he/she is the Division President of Centex Real Estate Corporation, a Nevada corporation, who is the Managing General Partner of CENTEX HOMES, a Nevada general partnership, and that he/she as such officer being authorized to do so executed the foregoing instrument on behalf of said entity.

WITNESS my hand and official stamp seal this the ____ day of _____, 20__.

(SEAL)

Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA

COUNTY OF _____

ASSOCIATION
ACKNOWLEDGMENT

I, the undersigned Notary Public do hereby certify that Larry L. Michael personally appeared before me this day and acknowledged that he is the President of Harrington Point Town Home Owners Association, Inc., a North Carolina non-profit corporation, and that he/she as such officer, being authorized to do so, execute the foregoing instrument on behalf of said entity.

This the ____ day of _____, 20__.

(SEAL)

Notary Public

My Commission Expires: _____

EXHIBIT "D"
CITY AGREEMENT

BK011102PG02135

STATE OF NORTH CAROLINA

CITY/MANAGER
ACKNOWLEDGEMENT

COUNTY OF WAKE

This is to certify that on the _____ day of _____, 20____, before me personally came _____, with whom I am personally acquainted, who, being by me duly sworn, says that HE/she is the City Clerk and Treasurer and J. Russell Allen is the City Manager of the City of Raleigh, the municipal corporation described in and which executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by the said City Clerk and Treasurer and that the said corporate seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and official seal this the _____ day of _____, 20____.

(SEAL)

Notary Public

My Commission Expires: _____

EXHIBIT "D"
CITY AGREEMENT

EXHIBIT "A"

Legal Description of the Phase 1 Property

LYING and being in the City of Raleigh, Wake County, North Carolina, and being more particularly described as follows:

BEING all of the real property shown on that certain plat entitled "SUBDIVISION PLAT, HARRINGTON POINTE, PHASE ONE", recorded in **Plat Book 2004, Pages 2062-2064**, inclusive, in the Wake County Register of Deeds Office, which includes **Lots 1-32, inclusive, Lots 241-266, inclusive, and Lots 1000-1008, inclusive, in HARRINGTON POINTE PHASE ONE**, as shown on the aforementioned recorded plat, to which plat reference is hereby made for a more particular description of same.

EXHIBIT "D"
CITY AGREEMENT

EXHIBIT "A-1"

Description of the Phase 2-4 Property

Parcel 1

Lying and being in Leesville Township, Wake County, North Carolina and being more particularly described as follows:

Beginning at an iron pipe at the southwestern corner of property belonging now or formerly to Larry Phillips Bridges as described in Book 6423, Page 20, Wake County Registry; thence from said point of beginning along and with the northerly line of property belonging now or formerly to Satterwhite Construction, Inc. North 58 degrees 05' 39" West 703.20 feet to an iron pipe; thence along and with the eastern line of Dominion Park, Phase 1, North 00 degrees 29' 42" East 956.30 feet to an iron pipe; thence along and with the eastern line of property belonging to the Roman Catholic Diocese North 00 degrees 29' 27" East 605.43 feet to an iron pipe in the southern right-of-way of Leesville Road (60 foot right-of-way); thence along the southern right-of-way of said Leesville Road the following distance and calls:

following the arc of a circle to the right having a radius of 1841.88 feet (chord bearing and distance North 87 degrees 08' 16" East 85.91 feet) and an arc length of 85.92 feet to a point; North 85 degrees 48' 06" East 263.74 feet to a point; following the arc of a circle to the right having a radius of 2169.26 feet (chord bearing and distance North 87 degrees 08' 32" East 101.51 feet) and an arc length of 101.52 feet to a point; following the arc of a circle to the right having a radius of 1199.37 feet (chord bearing and distance South 88 degrees 48' 57" East 113.05 feet) and an arc length of 113.09 feet to a point; thence south 86 degrees 06' 52" East 39.35 feet to a bent iron pipe;

thence along and with the western line of property belonging to Linwood C. Barlow South 00 degrees 33' 22" West 720.27 feet to an iron pipe; thence along and with the western line of property belonging to Lois Spikes Berry South 00 degrees 33' 22" West 840.52 feet to a bent iron pipe; thence along and with the western line of property belonging to Larry Phillips Bridges South 00 degrees 33' 22" West 396.29 feet to the **POINT AND PLACE OF BEGINNING**; being that certain tract of land identified as "Tract Three" containing 1,061,504 square feet or 24.37 acres, more or less, as shown on a plat prepared by Priest, Craven & Associates, Inc., dated June 1-June 15, 2003, and entitled "Boundary Survey Satterwhite Construction, Inc. (Tracts One & Two) Lois Spikes Berry (Tract Three)" to which plat reference is hereby made for a more particular description of same.

EXHIBIT "A-1"

Description of the Phase 2-4 Property

Parcel 2

Lying and being in Leesville Township, Wake County, North Carolina and being more particularly described as follows:

Beginning at an iron pipe at the southwestern corner of property belonging now or formerly to Larry Phillips Bridges as described in Book 6423, Page 20, Wake County Registry; thence from said point of beginning along and with the southerly line of Farmbridge Subdivision South 58 degrees 06' 48" East 847.74 feet to an iron pipe; thence along and with the southerly line of property belonging now or formerly to Lois Spikes Berry South 58 degrees 17' 47" East 646.33 feet to a loose angle iron found in the northerly right-of-way of the Northern Wake Expressway I-540 (NCDOT Project Ref. #R-2000CA); thence along said Northern Wake Expressway I-540 the following courses and distances:

South 56 degrees 03' 12" West 42.36 feet to a right-of-way marker; South 53 degrees 56' 34" West 99.50 feet to a right-of-way marker; South 55 degrees 53' 59" West 289.50 feet to a right-of-way marker; South 66 degrees 06' 36" West 284.95 feet to a right-of-way marker; South 73 degrees 06' 40" West 290.55 feet to a right-of-way marker; South 83 degrees 01' 17" West 48.47 feet to a right-of-way marker;

thence leaving the northerly right of way of the Northern Wake Expressway I-540 North 56 degrees 24' 51" West 148.91 feet to a point; thence South 17 degrees 19' 35" West 106.25 feet to a point; thence along the northerly right-of-way of the Northern Wake Expressway I-540 the following courses and distances:

South 83 degrees 01' 17" West 396.32 feet to a right-of-way marker; South 65 degrees 47' 00" West 230.47 feet to a right-of-way marker; South 83 degrees 24' 35" West 276.13 feet to a right-of-way marker; South 78 degrees 10' 05" West 119.73 feet to an iron pipe;

thence along and with the eastern line of Dominion Park, Phase I, North 00 degrees 36' 58" East 998.01 feet to an iron pipe; thence along and with the southern line of Dominion Park, Phase I, South 52 degrees 18' 59" East 264.02 feet to an iron pipe; thence along and with the eastern line of Dominion Park, Phase I, North 00 degrees 22' 13" East 990.80 feet to an iron pipe; thence along and with the southern line of Lois Spikes Berry South 58 degrees 05' 39" East 703.20 feet to the POINT AND PLACE OF BEGINNING; being those certain tracts of land identified as "Tract One" containing 1,471,461 square feet or 33.78 acres, more or less, and "Tract Two" containing 544,817 square feet or 12.51 acres, more or less, as shown on a plat prepared by Priest, Craven & Associates, Inc., dated June 1-June 15, 2003, and entitled "Boundary Survey Satterwhite Construction, Inc. (Tracts One & Two) Lois Spikes Berry (Tract Three)" to which plat reference is hereby made for a more particular description of same.

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EXHIBIT "A-1"
Description of the Phase 2-4 Property

Parcel 3

BEGINNING at the southwestern most boundary of Department of Transportation (formerly David Talton) as shown on a sketch provided to the Department by the Grantee and now being on file in the Offices of the Department of Transportation in Raleigh, North Carolina being further described with NC GRID COORDS - NAD 83 N 786487.4911 E 2078692.4209; thence North 17°19'35" East 106.25 feet to a point; thence South 56°24'51" East 149.91 to a point; thence South 83°01'17" West 601.65 feet to the point and place of BEGINNING and containing 0.17 acre more or less.

This description was taken from a sketch

on file in the Offices of the Department of Transportation in Raleigh, North Carolina and from the Master Plans for State Highway Project 8.U401703, Wake County with the aforesaid Master Plans, also, being on file in the Offices of the Department of Transportation in Raleigh, North Carolina.

**LESS AND EXCEPT THE PHASE 1
PROPERTY DESCRIBED ON EXHIBIT A**

EXHIBIT "B"

Description of the Stormwater Areas

That certain property lying and being in Raleigh, Wake County, North Carolina and more particularly described as follows:

BEING those portions of the real property shown on that certain plat entitled "SUBDIVISION PLAT, HARRINGTON POINTE, PHASE ONE", recorded in Plat Book 2004, Pages 2062-2064 inclusive, in the Wake County Register of Deeds Office, and designated as a "Private Drainage Easement", in Harrington Pointe Phase One, as shown on the referenced recorded plat, to which plat reference is hereby made for a more particular description of same. Stormwater Areas are located by private drainage easement on all or a portion of the following lots: Lots 1000-1004, inclusive, Lots 1006-1008, inclusive, Lots 3-4, inclusive, Lots 6-7, inclusive, Lots 9-11, inclusive, Lot 23, Lots 27-28, inclusive, Lots 248-251, inclusive, and Lots 256-258, inclusive, as shown on the referenced recorded plat.

**EXHIBIT "D"
CITY AGREEMENT**

EXHIBIT "D"

SCHEDULE OF ESCROW PAYMENTS

PHASE ONE

These numbers are based on initial construction costs. For years 1-5, the annual escrow payment is calculated as total construction cost minus 15% multiplied by .67 percent divided by five, with year 1 equal to year 2 escrow payment plus 15% of total construction cost.

Year 1	\$ 31,405.00
Year 2	\$ 13,555.00
Year 3	\$ 13,555.00
Year 4	\$ 13,555.00
Year 5	\$ 13,555.00
Year 6	\$ 6,675.00
Year 7	\$ 6,675.00
Year 8	\$ 6,675.00
Year 9	\$ 6,675.00
Year 10	\$ 6,675.00

Total Escrow \$119,000.00
Equals the Initial Construction Cost of Phase One

PHASES ONE AND TWO

These numbers are based on initial construction costs. For years 1-5, the annual escrow payment is calculated as total construction cost minus 15% multiplied by .67 percent divided by five, with year 1 equal to year 2 escrow payment plus 15% of total construction cost.

Year 1	\$ 44,070.00
Year 2	\$ 19,020.00
Year 3	\$ 19,020.00
Year 4	\$ 19,020.00
Year 5	\$ 19,020.00
Year 6	\$ 9,370.00
Year 7	\$ 9,370.00
Year 8	\$ 9,370.00
Year 9	\$ 9,370.00
Year 10	\$ 9,370.00

Total Escrow \$167,000.00
Equals the Combined Initial Construction Cost of Phases One and Two

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PHASES ONE, TWO AND THREE

These numbers are based on initial construction costs. For years 1-5, the annual escrow payment is calculated as total construction cost minus 15% multiplied by .67 percent divided by five, with year 1 equal to year 2 escrow payment plus 15% of total construction cost.

Year 1	\$ 70,460.00
Year 2	\$ 30,410.00
Year 3	\$ 30,410.00
Year 4	\$ 30,410.00
Year 5	\$ 30,410.00
Year 6	\$ 14,980.00
Year 7	\$ 14,980.00
Year 8	\$ 14,980.00
Year 9	\$ 14,980.00
Year 10	\$ 14,980.00

Total Escrow \$267,000.00

PHASES ONE, TWO, THREE AND FOUR

These numbers are based on initial construction costs. For years 1-5, the annual escrow payment is calculated as total construction cost minus 15% multiplied by .67 percent divided by five, with year 1 equal to year 2 escrow payment plus 15% of total construction cost.

Year 1	\$114,800.00
Year 2	\$ 49,550.00
Year 3	\$ 49,550.00
Year 4	\$ 49,550.00
Year 5	\$ 49,550.00
Year 6	\$ 24,400.00
Year 7	\$ 24,400.00
Year 8	\$ 24,400.00
Year 9	\$ 24,400.00
Year 10	\$ 24,400.00

Total Escrow \$435,000.00

Equals the Combined Initial Construction Cost of Phases One, Two, Three and Four

EXHIBIT "D"
CITY AGREEMENT

