

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF WYNGATE SUBDIVISION

96 OCT 24 PM 5:04

KENNETH C. WILKINS  
REGISTER OF DEEDS  
WAKE COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration"), made this 22<sup>nd</sup> day of October, 1996 by MACaroni Development Company, LLC, a North Carolina limited liability company, (hereinafter called "Declarant"), with its principal office in Raleigh, Wake County, North Carolina and consented to by Southland Associates, Inc. ("Trustee") and Central Carolina Bank and Trust Company, a North Carolina banking corporation, with its principle office in Durham, Durham County, North Carolina ("Lender").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in Wake County, North Carolina, more particularly described on attached Exhibit A which is being developed as a cluster unit development, which has been approved by the City of Raleigh, North Carolina and is now known as "Wyngate", in phases as a single family and multi family development.

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

WHEREAS, Declarant has incorporated or will incorporate under the laws of the State of North Carolina, as a non-profit corporation, Wyngate Homeowner's Association, for the purpose of exercising the functions aforesaid and which are hereinafter more fully set forth.

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

**ARTICLE I  
DEFINITIONS**

Section 1. The following words when used in this Declaration, or amendment thereto (unless the context shall prohibit), or any Declaration of Annexation, shall have the following meanings:

- 1.1. "Articles" means the Association's Articles of Incorporation.
- 1.2. "Association" means Wyngate Homeowner's Association, Inc., a North Carolina nonprofit corporation.
- 1.3. "Board of Directors" means the Board of Directors for the Association.
- 1.4. "Bylaws" means the Association's Bylaws.
- 1.5. "Common Area" shall mean and refer to all real property, including the lake, and improvements thereon or associated therewith, which is/are owned or leased by, or located in an easement granted to or reserved by, the Association and which has/have been designated by Declarant, record owner of newly annexed land, or the Association as "Common Area" or some other similarly descriptive term, on a recorded plat, in a Declaration of Annexation, or in a deed or other written instrument for the common use and enjoyment of the Members of the Association. Common Area shall also refer to all subdivision signage, water lines, sewer lines, sewer easements, storm water ponds, storm pipes, water retention and detention devices located within the Properties which are not otherwise dedicated to a governmental entity or serving only a single Lot and also shall refer to all personal property owned or leased by the Association and designated as Common Area by Declarant or the Association. All Common Area shall be subject to the terms and conditions of this Declaration.
- 1.6. "Declarant" means MACaroni Development Company, LLC, a North Carolina limited liability company, and its successors and assigns to whom the rights of Declarant hereunder may be transferred in whole or in part, and subject to such conditions as Declarant may impose, if such successors or assigns should acquire more than one undeveloped Lot or Living Unit location for the purpose of development. The development of a Lot shall mean and refer to the construction of a residence thereon, including an apartment complex.
- 1.7. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions applicable to the Properties, and amendments thereto which are recorded in the Office of the Register of Deeds, Wake County, North Carolina.
- 1.8. "Declaration of Annexation" means a declaration filed supplemental to this Declaration which is approved by the Raleigh City Attorney or his or her designee and, upon its filing with the office of the Wake County Register of Deeds, subjects additional property to the scheme of this Declaration.

1.9. "Improvements" means any structure of any type or kind, including, but not limited to buildings, outbuildings, parking areas, loading areas, screening walls, retaining walls, fences, hedges, mass plantings, lawns, sidewalks, poles, signs, and utility lines and facilities.

1.10. "Living Unit" means any structure or part of a structure built for occupancy as a single family residence and shall include single family residences, townhouses, villas, and any other single family dwelling unit located on the Properties, including attached or detached units.

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

1.12. "Member" shall mean and refer to an "Owner" subject to assessment as provided in this Declaration.

1.13. "Multiple-Family Lot" shall mean and refer to any Lot or improved or unimproved parcel of land located within the Properties, developed or to be developed as apartments. For the purpose of this Declaration, a parcel of land shall not be deemed a Multiple-Family Lot until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property for Multiple-Family use is recorded in the Register of Deeds of Wake County, North Carolina.

1.14. "Owner" shall mean and refer to the record owner, whether one or more Persons or entities, of a fee simple title to any Lot, Multiple-Family Lot or Living Unit which is part of the Properties, including contract sellers, but excluding those having such interest as security for the performances of an obligation.

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

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

1.17. "Properties" shall mean and refer to that certain real property described in Exhibit A attached hereto and incorporated herein by this reference; and any annexation thereto of the real property described in Article III, Section 2 hereof.

1.18. "Restricted Common Area" shall mean and refer to those tracts of land and any improvements thereon which are designated as "Common Area" in any map of a portion of the

Properties which is under the control and jurisdiction of a Sub-Association and which is reserved and restricted for the use of Members of said Sub-Association.

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

1.20. "Subdivision" means Wyngate subdivision as shown on the recorded subdivision plat(s) of the Properties.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Made Subject To Declaration. The real property described in Article III, Section 2 hereof may be made subject to this Declaration upon annexation in accordance with this Declaration. The Properties shall be owned, held, used, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the terms, covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration.

Section 2. Existing Property. The real property which hereby is, and shall be, held, used, transferred, sold, conveyed, and occupied subject to this Declaration is located in Wake County, North Carolina, and is more particularly described on attached Exhibit A.

Section 3. Mergers. Upon a merger or consolidation of the Association with another organization, as provided for in its Bylaws, the Association's properties, rights and obligations may be transferred to another surviving or consolidated homeowner's association or, alternatively, the properties, rights and obligations of another homeowner's corporation may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger; provided however, no such merger shall be effective until it is approved by the Raleigh City Attorney. The surviving or consolidated homeowner's corporation may administer the Covenants and Restrictions established by this Declaration, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocations, changes or additions to the Covenants and Restrictions, as the same may be amended, established by this Declaration within the Properties except as hereinafter provided.

Section 4. Density Transfers. The Properties are part of a cluster unit development approved by the Raleigh City Council in which residential density transfers are permitted. Therefore, even though some Lots may appear to contain sufficient land area to construct additional Living Units and/ or apartments, prior approved density transfers within the cluster unit development may in fact preclude City of Raleigh approval of additional Living Units and/or apartments.

ARTICLE III  
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members: Except as provided in Section 2, and subject to the approval of the City of Raleigh, additional properties may be added and annexed to the Properties only if two-thirds (2/3) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Members comprising no less than two-thirds (2/3) of each class of Members entitled to cast votes in favor of annexation describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary.

For the purpose of such meeting, the presence of Members or authorizing proxies entitled to cast sixty percent (60%) of the votes of each class of Members, shall constitute a quorum.

If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which said Member is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

Section 2. Annexation by Declarant. If within ten (10) years from the date of incorporation of the Association, Declarant should develop additional land within the boundaries of all or any of the following seven (7) tracts of real property set forth below, such real property, subject to the approval of the City of Raleigh, may be annexed by Declarant without the consent of Members by the recordation of a Declaration of Annexation for such purpose:

Tract 1: Parcel 1, containing 22.925 acres, as shown on map recorded in Book of Maps 1996, Page 142, Wake County Registry;

Tract 2: Parcel 2, containing 10.713 acres, as shown on map recorded in Book of Maps 1996, Page 142, Wake County Registry;

Tract 3: ~~Parcel 3, containing 43.403 acres, as shown on map recorded in Book of Maps~~

~~1996, Page 142, Wake County Registry;~~

Tract 4: Parcel 4, containing 11.697 acres as shown on map recorded in Book of Maps 1996, Page 142, Wake County Registry;

Tract 5: Parcel 5, containing 12.495 acres as shown on map recorded in Book of Maps 1996, Page 142, Wake County Registry;

Tract 6: Parcel 6, containing 24.283 acres as shown on map recorded in Book of Maps 1996, Page 142, Wake County Registry; and

Tract 7: Parcel 1B, containing 24.221 acres, as more particularly described on Exhibit "C" attached hereto and incorporated herein by this reference.

Section 3. Reserved Declarant Rights. Declarant reserves the following development rights: (i) to add real estate to the Properties in accordance with Section 2 above; (ii) to add Common Areas; (iii) to recombine Lots within the Properties; (iv) prior to a conveyance of real estate to an Owner, to withdraw said real estate from the Properties, subject to the approval of the City of Raleigh; (v) to create Living Units and Multiple-Family Lots; (vi) to impose supplemental conditions, restrictions and changes upon the Properties; and (vii) to reallocate Living Units or Lots or Multiple Family Lots within the Properties.

Section 4. Density Limits. The maximum number of dwelling units that can be contained in this cluster unit development without rezoning the Properties to another zoning classification shall not exceed nine hundred (900) and the density per acre shall not exceed fifteen (15) units per acre on any portion of the Properties.

Section 5. Conveyance of Common Area Properties. Subsequent to recordation of the Declaration of Annexation, but prior to conveyance of the first Lot, Living Unit or Multiple-Family Lot within the newly annexed property, whichever shall first occur, Declarant or any other record Owner of newly annexed land shall deliver to the Association, in accordance with Article VI, Section 3, one or more deeds conveying any property that will be designated as Common Area within the annexed property as such designated property is platted.

#### ARTICLE IV MEMBERSHIP

Section 1. Those Entitled to Membership. Every Person which is a record owner of a fee or undivided interest in any Lot, Multiple-Family Lot or Living Unit which is, pursuant to this Declaration, subject to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include Persons who held an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot, Living Unit or Multiple-Family Lot which is subject to assessment by the Association. Ownership of such Lot, Living

Unit or Multiple-Family Lot shall be the sole qualification for membership.

## ARTICLE V VOTING RIGHTS

Section 1. Classes of Voting Membership. The Association shall have three classes of voting membership:

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

Class B. "Class B Members" shall be all Owners, including Declarant, its successors and assigns, of a Multiple-Family Lot. Until such time as apartments are constructed on any Multiple-Family Lot, Class B Members shall be entitled to one vote for each vacant Multiple-Family Lot in which they hold the interest required for membership under Article IV. Following the construction of apartments on any Multiple-Family Lot, Class B Members shall be entitled to that number of votes which shall be equal to (i) the number of apartment units approved for occupancy by the City of Raleigh which are located on each Multiple-Family Lot in which they hold the interest required for membership under Article IV, (ii) multiplied by eight percent (8%). When more than one Person holds such interest in any Multiple-Family Lot, all such Persons shall be Members, and the vote for such Multiple-Family Lot shall be exercised as the majority of such Persons among themselves determine; however, in no event may more than one vote be cast with respect to any one Multiple-Family Lot. Fractional voting shall be prohibited. At any meeting of the Members, a representation by any of such Persons that a majority of such Persons have agreed as to the vote for such Multiple-Family Lot shall be conclusive unless another of such Persons contests such representation at such meeting prior to the casting of such vote.

Class C. The "Class C Member" shall be the Declarant. The Class C member shall be entitled to three (3) votes for each Lot or Living Unit owned. The Class C membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) Declarant's written consent to termination; or
- (b) Declarant's conveyance of seventy-five percent (75%) of the Lots and

Multiple-Family Lots; or

- (c) Ten (10) years following the date of incorporation of the Association.

Notwithstanding anything contained in sub-paragraphs (a) and (b) above to the contrary, the Class C membership shall be reinstated if after termination by written consent or conveyance of Lots and Multiple-Family Lots, as provided in this Section 1, and before the time stated in sub-paragraph (c) above, such additional lands are annexed to the Properties without the assent of Class A Members because of development of such additional lands by Declarant, as provided for in Article III, Section 2 herein.

Section 2. Membership Sub-Classes. Declarant shall have authority, and is hereby authorized at its discretion, to create membership sub-classes of those who are Class A or Class B Members and to designate and to delineate sub-membership areas within the Project, each such sub-membership classification and area delineation shall consist of Owners of like or similar type dwelling units, such as, Owners of all townhouses, or a particular group of townhouses, Owners of all apartment complexes or a particular group of apartment complexes and so forth for each type of dwelling unit. Notwithstanding anything which may be contained hereinabove to the contrary, Lot Owners shall not be responsible for any costs or fees assessed for amenities provided for the exclusive use of the Owners of Living Units located on Multiple-Family Lots, and any such costs or fees shall be expressly excluded from the expenses included in determining the annual assessments referred to in Section 3 of Article VII hereof, or the special assessments referred to in Section 5 of Article VII hereof.

Section 3. Purpose of Sub-Classes. Sub-classes of Class A and Class B membership may and/or shall be designated by Declarant in accordance with Section 2 above for the purpose of establishing special assessment districts among similar class members because of a need, or obligation of any such designated membership sub-classification to pay assessments which may differ from those required of other sub-classifications based on the obligation upon the Association to provide differing degrees of care and maintenance to the Restricted Common Areas held by such Sub-Association.

## ARTICLE VI PROPERTY RIGHTS IN THE COMMON AREA

### Section 1. Owners' Easements of Use and Enjoyment.

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

- (a) the right of the Association to charge reasonable admission and other fees for the



use of any recreational or other facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use the recreational or other Common Area facilities by an Owner for any period during which any assessment against said Owner's Lot, Living Unit or Multiple-Family Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

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

(d) the Association, acting through its Board of Directors, may, from time to time, exchange with Declarant or any Member a portion of the Common Area for real property owned by Declarant or such Member, provided that (1) the exchange is approved by the vote of fifty-one (51%) percent of each class of Members at a meeting of the Members duly held in accordance with the Bylaws; (2) the property received by the Association shall be of approximately the same size as the portion of Common Area exchanged; (3) the property conveyed to the Association is free and clear of all encumbrances except the Declaration and easements for green way, drainage, utility, and sewer; and (4) the exchange has been approved by the Planning Director of the City of Raleigh. Provided, however, where the exchange is done to eliminate an encroachment of a structure into the Common Area, or to allow the necessary setback between the structure and the property line, the notice and consent provisions hereinabove shall not be required and only the approval of the Board of Directors of the Association shall be necessary. The real property so acquired by the Association shall be a part of the Common Area. The portion of the Common Area so acquired by Declarant or a Member, shall cease to be Common Area and shall be subject to those provisions of the Declaration that were applicable to such property at the time of the original conveyance to the Association by the Declarant or Member.

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

(f) the right of Members to use parking spaces as may be provided by the Board of Directors;

(g) the right of the Association in accordance with its Articles and Bylaws to impose rules and regulations for the use and enjoyment of the Common Area and Improvements related

*unpaid  
assessment*

*Lake rules*

thereto, which rules and regulations may further restrict the use of the Common Area.

1.2. Each Owner's use and enjoyment of the lake located on the Common Area shall be subject to the following provisions:

- (a) no motorized boats shall be allowed or permitted except for use by the Association for maintenance, care and repair of the lake or facilities attendant thereto;
- (b) no boat may be stored or left unattended on the lake or upon any other Common Area;
- (c) no net fishing shall be allowed or permitted;
- (d) no dumping or discharge of any substance into the lake shall be allowed or permitted, other than ordinary stormwater management and/or compounds necessary for the proper maintenance of the lake.
- (e) the Association shall not be responsible for supervision of any activities or uses of or on the lake;
- (f) at all times when the lake is being utilized for any purpose by a family, guest, invitee or licensee, the Owner shall be responsible for supervising such use; and
- (g) except in cases of emergency, no spot light or search light shall be shown over or across the lake.

Section 2. Delegation of Use. Except as specifically limited hereinbelow, any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and Improvements related thereto to the members of his family, his tenants, or contract purchasers who reside on said Owner's property.

Section 3. Title to the Common Area Properties. Declarant shall dedicate and convey to the Association (by deed without warranty at Declarant's option) fee simple title to all real property portions of the Common Area to the Association, free and clear of all encumbrances and liens, other than the lien of: (i) current taxes and assessments not in default; (ii) utility, drainage and greenway easements, and other easements and encumbrances not constituting a lien to secure the payment of money; (iii) and mineral interests outstanding and of record in Wake County, North Carolina, and (iv) the terms and conditions of this Declaration, including an amendment thereto, and any applicable supplemental Declaration of Annexation, prior to the conveyance of the first Lot, Living Unit, or Multiple-Family Lot, whichever shall first occur, of that portion of the Project of which said property forms a part.

ARTICLE VII  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot, Living Unit and Multiple-Family Lot owned within the Properties, hereby covenants, and each Owner of any Lot, Living Unit and Multiple-Family Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for extraordinary maintenance and capital improvements, and (3) to the appropriate governmental taxing authority, a pro rata share of assessments against the Common Area and for improvement and maintenance of public roads if the Association shall default in payment thereof, all as hereinafter provided. The annual and special assessments, together with interest, late fees, and costs, and reasonable attorneys' fees for collection, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, late fees and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to said Owner's successors in title unless expressly assumed by them.

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

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

*10 days  
30 days  
late*

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the beautification of the Property, the health, safety and welfare of the Owners, the maintenance, care and repair of the lake or the facilities attendant thereto; and the improvement and maintenance of the Common Area. Expenses to be funded with the assessments shall include, but not be limited to, taxes and assessments, all insurance premiums required hereunder (including but not limited to casualty, liability and fidelity bond premiums), Association operational costs, management fees, and landscaping, repair and maintenance of the Common Areas, including the lake, the landscape easement area(s) and street landscaped islands and the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise. The Association shall maintain a reserve fund for periodic maintenance, repair, and replacement of improvements to the Common Area, including the lake.

Section 3. Maximum Annual Assessment and Annual Assessment: Lots. Through and including January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred Forty Dollars (\$240.00) per developed Lot. No sums shall be assessed against a vacant Lot.

(a) The maximum annual assessment for the calendar year beginning January 1, 1997, and for successive calendar years thereafter, shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the Members by an amount per year not to exceed ten (10%) of the amount of the maximum annual assessment of the immediately preceding calendar year.

(b) The maximum annual assessment for the calendar year beginning January 1, 1997, and for each successive calendar year thereafter, may be increased without limit by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws.

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

Section 4. Maximum Annual Assessment and Annual Assessment: Multiple-Family Lots. Through and including January 1 of the year immediately following the conveyance of the first Multiple-Family Lot to an Owner, the maximum annual assessment shall be a total of Twenty Dollars (\$20.00) per dwelling unit on each such Multiple-Family Lot. No sums shall be assessed against a vacant Multiple-Family Lot.

(a) The maximum annual assessment for the calendar year beginning January 1, 1997, and for successive calendar years thereafter, shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the Members by an amount per year not to exceed twenty (20%) of the amount of the maximum annual assessment of the immediately preceding calendar year.

(b) The maximum annual assessment for the calendar year beginning January 1, 1997, and for each successive calendar year thereafter, may be increased without limit by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws.

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

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Area, or any other unexpected expense for which the Association is responsible, provided that, any such assessment shall have the assent of sixty-seven percent (67%) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3, 4, and 5. Written notice of any meeting called for the purpose of taking any action authorized under this Article VII shall be delivered to all Members entitled to vote not less than ten (10) days nor more than sixty (60) days in advance of the meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Association, with postage thereon prepaid. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. It is anticipated that the different classes of Members may incur additional expenses attributable to the maintenance of Restricted Common Areas and/or other matters than other classes of Members. Both annual and special assessments must be fixed at a uniform rate for all Lots and Living Units and at a uniform rate for all Multiple-Family Lots, and may be collected on a monthly basis. However, if sub-classes of membership are created by Declarant such assessments shall be fixed at uniform rates for all Multiple-Family Lots or Living Units within any sub-class. Assessments may differ between areas having different sub-classes of membership. Assessments with respect to a sub-class of membership shall be determined by the cost to the Association, experienced or reasonably anticipated, of carrying out the purposes of assessments, as applied to the sub-classes of memberships. Provided, however, that the assessment for Lots, Living Units and Multiple-Family Lots for which a certificate of occupancy for Improvements located thereon has not yet been issued shall be one-third (1/3) of the regular assessment for Lots, Living Units or Multiple-Family Lots.

Section 8. Date of Commencement of Annual Assessments: Due Dates.

(a) The annual assessments provided for herein shall commence as to all Lots and Living Units the day upon which a certificate of occupancy for Improvements upon said Lot or

Living Unit has been issued.

(b) The annual assessments provided for herein shall commence as to each Multiple-Family Lot on the day a certificate of occupancy is issued stating that the multiple dwelling unit constructed on the Multiple-Family Lot is substantially complete and available for occupancy.

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

The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Multiple-Family Lot or Living Unit have been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any assessment as to third parties acting in reliance on the statement.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof becomes delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late charge of \$25.00 and bear interest from the date of delinquency at the rate of twelve percent (12.0%) per annum or the highest rate allowed by law, whichever is less, and the Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable property. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of the delinquent assessment. Each Owner, by the acceptance of a deed to a Lot, Living Unit or Multiple-Family Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property. Each Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article VII shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed property. No Owner may waive or otherwise escape liability for assessments by non-use of the Common Area or abandonment of said Owner's property.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage (or deed of trust) and ad valorem taxes. Sale or transfer of any Lot or Living Unit shall not affect the assessment lien. However, the sale or transfer of any Lot, Multiple Family Lot or Living Unit pursuant to such mortgage or tax foreclosure or any proceeding in lieu thereof, shall

extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Living Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All properties dedicated to and accepted by, a local public authority, the Common Area and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE VIII ARCHITECTURAL CONTROL AND USE RESTRICTIONS

Section 1. Building Sites. Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for single-family or multi-family residential purposes only. The lay of each Lot as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant (as long as Class C Membership exists), or the Board of Directors or the Architectural Committee and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one Lot may be used as one Building Site. In no event, however, shall a Lot or group of Lots be resubdivided or recombined in violation of any applicable zoning or other laws in force at the time of the change. Declarant reserves the right to utilize any Lot for purposes of constructing a road to access adjacent property, subject to approval by all necessary governmental authorities.

Section 2. Setbacks. Building setbacks of all structures on any Lot shall be as set forth on any recorded plat of the Properties. For the purposes of this covenant, eaves, steps, carports, decks and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Building Site to encroach upon another Lot. Provided it otherwise complies with the applicable zoning ordinances and setback requirements, Declarant and/or the Architectural Committee may approve by written waiver a violation of these requirements.

Section 3. Structures. Improvements on any Lot other than a Multiple-Family Lot shall be limited to a single-family, residential structure. No residential structure, which has a minimum area of less than \_\_\_\_\_ square feet of heated area for a one story residence and \_\_\_\_\_ square feet for a one and one-half or two story residence exclusive of porches, basement and garage, shall be erected or placed on any Lot other than a Multiple-Family Lot. All buildings and structures erected upon Lots shall be of new construction. No structures of a temporary character, manufactured home, modular home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Properties at any time as a residence, either temporarily or permanently.

Section 4. Declarant Facilities. Notwithstanding any provision in this Article VIII to the contrary, for ten (10) years following the date of incorporation of the Association, Declarant

may, subject to all applicable laws of the City of Raleigh, maintain such facilities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots. These facilities shall include but not be limited to a business/sales office, storage area, construction yards and signs.

Section 5. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Lots, except that a reasonable number of domesticated, household pets may be kept, provided they are not maintained for commercial purposes.

Section 6. Screening. All clothes line, equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate Improvements so as to screen them from view from the street and adjoining property. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate.

Section 7. Leasing. No Lot or any portion of the Improvements thereon, Living Unit or Multiple-Family Lot shall be leased for transient or hotel purposes, except that an Owner may lease not less than the entire residential structure on its Lot; provided that each lease must be in writing, must be for a period of not less than ninety (90) days, and must provide that it is subject to this Declaration and the Bylaws and that any failure by a tenant to comply with such shall be a default under the lease.

Section 8. Utility Devices. Without the prior written approval and the authorization of Declarant (as long as Class C Membership exists), the Board of Directors or the Architectural Committee, no exterior television or radio antennas, satellite dishes or solar panels or other utility devices, of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Improvements to be located upon the Properties; provided, however, television satellite dish antennae less than 24" in diameter may be approved subject to the provision of Articles VII, Section 7 hereinabove.

Section 9. Business/Obnoxious Activity. No business activity of any kind or any obnoxious or offensive activity shall be conducted on the Properties or Improvements located thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall the Properties be used in any way or for any purpose which may endanger the health of or unreasonably disturb an Owner or his tenants or invitees. No "For Sale" signs (exceeding four (4) square feet in dimension), advertising signs or rent signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Properties, and in no event in the Common Area. The foregoing covenants shall not, however, apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agent and assigns, for ten (10) years following the date of incorporation of the Association.

Section 10. Vehicles. No boats, recreation vehicles, or trailers (the "Vehicles") of any Owner or member of his family, his tenants, or contract purchasers shall be parked within the Common Area, or within the right-of-way of any street in or adjacent to the Properties. All Vehicles shall be stored either within the Owner's garage or other facilities not located on the



Properties or screened from public view from the street and adjoining properties. No Vehicle may be located closer to the street than the front foundation of the house, the exact location to be approved by the Board of Directors or Architectural Committee. No Owner shall park or store an inoperative or abandoned Vehicle or automobile on any Lot, Living Unit or on the streets in the Properties.

Section 11. Above-Ground Tanks. No exposed above-ground tanks (except for approved recreational swimming pools) will be permitted for the storage of fuel or water or any other substance. Notwithstanding such, tanks may be placed above-ground provided they are kept in a screened enclosure which must exceed in height by at least one (1) foot any such tank as may be placed therein. The screened enclosure shall be subject to the Architectural Committee's prior approval.

Section 12. Lawn Ornaments. Decorative lawn ornaments shall be approved in writing by the Architectural Committee prior to installation or placement on any Lot or Living Unit.

Section 13. Window Treatments. No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

Section 14. Fences.

(a) Fences in general. No fence or wall shall be erected or maintained on the side yard of any Lot nearer to the street than the front building line of the house. No fences or walls shall be constructed in the front yard of any Lot, except for fences erected in conjunction with model homes or sales offices. All fences constructed require prior written consent of the Declarant (as long as Class C membership exists), or the Board of Directors or the Architectural Committee. Chain link or other similar metal fencing is expressly prohibited, except that colored, plastic coated 2" x 4" mesh may be used with split rail fencing to contain authorized animals within the yard, and except as otherwise expressly authorized in writing by Declarant (as long as Class C membership exists), or the Board of Directors or the Architectural Committee. Perimeter fencing and privacy fencing around patios, decks or pools may not exceed six (6) feet in height.

(b) Pool fences. It shall be a requirement within the Properties that any pool constructed within the Properties, whether above-ground or in-ground shall be surrounded by a non-climbable perimeter fence of a least five (5) feet in height and equipped with a self-closing mechanism on all gates. The design for swimming pool and fence construction must be submitted to Declarant (as long as Class C membership exists), or the Board of Directors or the Architectural Committee for prior written approval, and said approval will not be given unless the plans therefore include a perimeter fence in compliance with this sub-paragraph (b). The minimum fence requirements contained in sub-paragraph (a) above shall apply to any pool fences constructed within the Properties.

Section 15. Parking Right. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles and Vehicles owned by that Owner. Owners shall not

be permitted to park their automobiles and Vehicles on the streets in the subdivision.

Section 16. Maintenance. Each Owner shall keep his property free of grass taller than eight (8) inches, undergrowth, dead trees, trash and rubbish and shall otherwise properly maintain said property and the Improvements located thereon so as to present a pleasing appearance. In the event an Owner does not, in the reasonable opinion of the Architectural Committee, properly maintain the same, Declarant and/or Association may have the required work done and the costs incurred shall be assessed against the Owner.

Section 17. Governmental Regulations. Each Owner shall comply with all laws, ordinances, governmental building codes, health regulations, zoning restrictions and the like applicable to its Lot, Living Unit or Multiple-Family Unit and/or Common Areas. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 18. Additional Restrictions. The Association, the Board of Directors, or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Properties.

Section 19. Anti-Discrimination. No action shall at any time be taken by the Association, the Board of Directors, or the Architectural Committee in the enforcement or interpretation of these Covenants and Restrictions which in any manner would unfairly discriminate against any Owner in favor of any of the other Owners.

Section 20. Waiver. Notwithstanding anything above to the contrary, Declarant (as long as Class C Membership exists), the Board of Directors, or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article VIII. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot, Living Unit or Multiple-Family Lot in question or any other Properties subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon or the Living Unit or the Multiple-Family Lot to be in non-conformance with any applicable governmental ordinances.

## ARTICLE IX EASEMENTS

Section 1. Blanket Utility Easement. A blanket easement upon, across, over, and under all of the Properties, including Lots, Multiple-Family Lots, Living Units and Common Area, is reserved for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, and electricity. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated (i) in the Common Area except as approved by Declarant or the Association (after the termination of Class C membership), (ii) under any Living Unit, or (iii) on the Properties in a manner which would have a material negative impact on the value of the Properties or any portion thereof and the improvements located thereon. Should any utility

furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant or the Association (after the termination of Class C membership) will have the right and authority to grant such easement. The easement provided for in this Article IX shall in no way affect other recorded easements on the Properties.

Section 2. Association Easement. An easement is granted to the Association, its officers, agents, employees, and to any management company retained by the Association to enter in or to cross over the Common Area, including the lake. Every Lot, Living Unit or Multiple-Family Lot shall be subject to an easement for entry by the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or Living Unit and that endangers any improvement or portion of the Common Area, including the lake. The Association shall have the power and authority to grant and establish upon, over, under and across the Common Area, such further easements as are requisite for the convenient use and enjoyment of the Properties without approval of the membership as provided in the Articles.

Section 3. Unintentional Encroachment. In the event that any Lot, Multiple-Family Lot or Living Unit shall encroach upon any Common Area or Restricted Common Area or upon any other Lot, Multiple-Family Lot or Living Unit for any reason not caused by the purposeful or negligent act of the Owner, then an easement appurtenant to such Lot, Multiple-Family Lot or Living Units shall exist for the continuance and maintenance of such encroachment upon the Common Area, Restricted Common Area or other Lot, Multiple-Family Lot or Living Units for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Area or Restricted Common Area shall encroach upon any Lot, Multiple-Family Lot or Living Unit, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Area or Restricted Common Area onto any such Lot, Multiple-Family Lot or Living Unit for so long as such encroachment shall naturally exist.

Section 4. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Area and the Restricted Common Area is reserved and established in favor of Declarant and all Owners for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth, in harmony with surrounding areas and, if applicable, landscaped in a manner substantially similar to any previous landscaping. Should that Person fail to restore the disturbed land as required, the Association may restore the land to the required condition and that Person shall indemnify the Association for the reasonable expense incurred in performing that restoration. This easement shall be restricted to that Common Area or Restricted Common Area which shall be reasonably servient and proximate to the property upon which the construction is taking place.

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

Section 6. Drainage Easement. For a period of eighteen (18) months following the initial conveyance of a Lot to an Owner by Declarant, that Lot shall be subject to an easement for entry and encroachment by Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

Section 7. Easement for Underground Utilities and Street Lighting. Declarant reserves the right to subject the Properties to a contract with Carolina Power & Light Company for the installation of underground electric cables and the installation of street lighting, either or both of which may require a continuous monthly charge to the Owner of each Lot or Living Unit.

Section 8. Governmental Easements.

8.1. Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Area and Restricted Common Area and over an area five (5) feet behind the curb line of any street or roadway in the Properties existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

8.2. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the streets and Common Area and Restricted Common Area in the performance of their duties.

Section 9. Landscape Easement. An easement is granted to the Association, its officers, agents, employees, and to any management company retained by the Association to enter in or to cross over any portion of a Lot denoted as "Landscape Easement" on any recorded plat of the Properties. The Association shall be solely obligated and responsible to maintain such landscape easement area, including but not limited to planting, watering, pruning, weeding, spraying, maintaining and replacing any shrubbery, trees, fences, signage, and other landscape material which shall be placed thereon. The Owner of any Lot encumbered by a landscape easement area agrees not to remove, injure or otherwise destroy the landscape material placed within such landscape easement area; provided, further, the Owner of said Lot shall in all respects remain the fee owner of the property subject to this easement, and make available uses of such

property not inconsistent with these terms and conditions.

Section 10. Street Landscaped Traffic Islands. Street landscaping of traffic island(s) within the right(s)-of-way of public street(s) shall be the sole responsibility of the Association. Such street landscaped islands shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants shall be removed by the Association. Neither the City nor the State will be liable for any accidents or damage caused by such encroachment within the right(s)-of-way and the Association shall hold harmless the public and indemnify the City and State from such liability.

Section 11. Pedestrian Easement. Any area denoted as a pedestrian easement area on a plat of the Properties, or any portion thereof, which is recorded in the Register of Deeds of Wake County, North Carolina may be used by Declarant and the Association, and their agents, employees and representatives, and all Owners, and their family members, tenants, guests, and contract purchasers for purposes of ingress, egress and regress to the Common Area. Declarant and the Association may also use this easement for the purpose of moving machines and equipment when needed to construct, install, repair or maintain facilities and landscaping located in the Common Area. No landscaping, buildings, fences or other structures shall be located on this easement which interferes with the rights granted under this Article IX, Section 11 to the above said Persons.

Section 12. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Area, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Properties or any portion thereof.

## ARTICLE X INSURANCE

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

Section 2. Ownership/Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive any proceeds as are paid and to hold them in trust for the purposes stated in these Covenants and Restrictions. The proceeds received by the insurance trustee shall be distributed

to or for the benefit of the appropriate beneficiary(ies).

Section 3. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 4. Prohibited Acts. No Owner shall do or keep anything on the Property which shall cause an increase in the premiums for or the cancellation of any insurance maintained by the Association.

## ARTICLE XI ARCHITECTURAL CONTROL AND INSPECTION

Section 1. Members. The Architectural Committee shall consist of one (1) or more persons designated by Declarant. On August 1, 2006 or at such time as Declarant no longer owns any real property within the Properties (or earlier if Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), whichever is earlier, Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Committee. Upon this assignment, the Board of Directors shall appoint three (3) or more persons as the members of the Architectural Committee.

Section 2. Powers. The Architectural Committee shall have the right to refuse approval of any plans and specifications for Improvements proposed to be constructed on a Lot or Multiple-Family Lot (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider the suitability of the proposed Improvements and materials to be used in those Improvements, the site upon which they are proposed to be erected, and the effect of the Improvements on adjacent or neighboring property. There is specifically reserved unto the Architectural Committee the right of entry and inspection upon any Lot or Multiple-Family Lot for the purpose of determining whether there exists any construction of any Improvements which violates the terms of any approval by the Architectural Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. The Architectural Committee and the Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvements, or to remove any unapproved Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorneys' fees).

Section 3. Approval of Plans & Specifications. No Improvement shall be commenced, erected, or maintained upon the Properties, nor shall any Improvement be repaired or rebuilt after destruction by any hazard until completed Plans & Specifications, showing the nature, kind, space, height, materials, and location of the Improvement, shall have been submitted to and approved in writing by the Architectural Committee. A failure to approve or disapprove completed Plans & Specifications within thirty (30) days after they have been submitted shall be deemed to be an approval of those Plans & Specifications. Neither the Association, the

Association's Board of Directors, Declarant, the Architectural Committee or any officer, employee, director or members thereof shall be liable for damages to any persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications. Every person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages.

## ARTICLE XII EXTERIOR MAINTENANCE

Section 1. Duty to Maintain. It shall be the duty of each Owner to properly maintain his Lot or his Living Unit or his Multiple-Family Lot and all improvements constructed on such Lot or Living Unit or Multiple-Family Lot.

Section 2. Remedies of Association. If, in the opinion of the Association, as Owner shall fail to maintain his property owned by him in a manner which is reasonably neat and orderly, or shall fail to keep the Improvements constructed thereon in a state of repair so as not to be unsightly, the Association in its discretion, by the affirmative vote of two-thirds of the members of the Board of Directors, and following ten (10) days written notice to said Owner, may enter upon and make, or cause to be made, repairs to such improvements and perform such maintenance on such property as the removal of trash, cutting of grass, pruning of shrubbery, and seeding and correction of items of erosion control. The Association shall have an easement for the purpose of accomplishing the foregoing. All costs incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such costs, shall be added to and become a part of the assessment to which such property is subject.

## ARTICLE XIII GENERAL PROVISIONS

Section 1. Enforcement. Declarant (as long as Class C membership exists), the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions, of this Declaration. Failure by the Declarant (as long as Class C membership exists), Association or by any Owner to enforce any covenant or restriction hereby contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses or phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 3. Duration and Amendments.

(a) The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefits of and be enforceable by the Association, Declarant (so long as Class C membership exists) or the Owner of any property subject to this Declaration, their respective legal representative, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless the Association approves a change in the Covenants and Restrictions. The Covenants and Restrictions of this Declaration may be amended at any time if seventy-five percent (75%) of the vote of each class of Members at a duly called meeting of the Association at which a quorum is present approves the amendment; provided that prior to the sale of the first Lot, Multiple-Family Lot or Living Unit, this Declaration may be amended by Declarant without consent of the Members.

No amendment shall become effective until submitted to and approved by the Raleigh City Attorney; provided, however, if the Raleigh City Attorney fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with. Any amendment must be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

(b) Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Properties or to qualify the Properties or any Lots or Multiple-Family Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a government agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency, shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

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

(d) As long as there is a Class C membership, and if Declarant determines to qualify



the Properties for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: annexation of additional property, dedication of Common Area, and amendment of this Declaration.

Section 4. Recreational Facilities. The original plan of Wyngate Subdivision may provide for recreational amenities upon a Multiple-Family Lot so long as such amenities are not located on the Common Area or any City of Raleigh greenway. These amenities are provided for the exclusive benefit of the Owner of the Multiple-family Lot and his guests, tenants and invitees, and shall be maintained exclusively by the Owner of the Multiple-Family Lot. Such Owner may charge dues or membership fees sufficient to defray operating costs and require that current payment be made in order for any person to enjoy the use of the facilities, which dues and membership fees shall be in accordance with ordinances of the City of Raleigh. The Owner may also permit the use of the facilities by non-owners and non-residents of the Multiple-Family Lot, upon payment of required dues or membership fees. The Owner of the Multiple-Family Lot may impose reasonable regulations regarding the use of the facilities to insure accessibility, safety, harmony, and preservation of the facilities.

Section 5. Availability of Documents. The Association will have current copies of the Declaration, Bylaws, and other rules concerning Wyngate Subdivision as well as the Association's own books, records and financial statements available for inspection during normal business hours by Owners and by holders, insurers and guarantors of first mortgages that are secured by Living Units in Wyngate Subdivision.

Section 6. Rights of Eligible Mortgage Holders. "Eligible Mortgage Holders" shall mean those holders of a first mortgage or deed of trust on a Living Unit ("Eligible Mortgages") who have requested the Association to notify them of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. Amendments of a material nature to this Declaration or the Bylaws require the approval of Eligible Mortgage Holders representing at least fifty-one percent (51%) of the holders of Eligible Mortgages. Any action to terminate this Declaration or the legal status of the Association for reasons other than substantial destruction or condemnation of the Properties, shall require the approval of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the holders of Eligible Mortgages. The holder, insurer, or guarantor of a mortgage or deed of trust on any Living Unit in Wyngate Subdivision is entitled to timely written notice of:

(a) Any condemnation or casualty loss that affects a material portion of Wyngate Subdivision.

(b) Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Living Unit on which it hold the mortgage or deed of trust.

(c) A lapse, cancellation or material modification of an insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action that requires the consent of a specified percentage of Eligible

Mortgage Holders. To obtain this information, the Eligible Mortgage Holder, insurer, or guarantor should send a written request to the Association, stating both its name and the address and the Living Unit number or address of the Living Unit covered by its mortgage or deed of trust.

Section 7. Condemnation. Whenever all or any part of the Common Area shall be taken by an entity having the power of condemnation or eminent domain, the award made for such taking shall be payable to the Association. Unless otherwise required by law at the time of such taking, any award made therefore, shall be disbursed by the Association as hereinafter provided. If at least sixty-seven percent (67%) of the Members shall decide within sixty (60) days after such taking to replace any condemned Improvements, or any part thereof on the remaining lands which are part of the Common Area, then the Board of Directors of the Association shall arrange for such replacements, and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the property is to be repaired or reconstructed; subject, however to the right hereby reserved to the Association, which may be exercised by a majority of the votes of the Members thereof, to provide for the disbursement by the Association of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the Members, or any one or more of them, in amounts disproportionate to their voting rights, which disproportionate amounts shall correspond with the disproportionate damages sustained by the Members, or any one or more of them, as the Association may determine. If at least sixty-seven percent (67%) of the Members shall not decide within sixty (60) days after such taking to replace such Improvements, or if the taking is confined to Common Area on which no Improvements have been constructed, then the Association shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of Improvements.

Section 8. Disputes. In the event of any dispute arising concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

Section 9. Voting. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Association's Bylaws.

Section 10. Member Addresses. Each Member agrees to keep the Association informed of his address at any time and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of his ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the ownership of each Lot.

Section 11. Owner Responsibility. Notwithstanding anything in this Declaration to the contrary, an Owner shall be responsible for any and all violations of these Declarations by his employees, agents, subcontractors, tenants, guests and invitees. When a party to this Declaration consists of more than one individual or entity, such party's liability hereunder shall be joint and several.

Section 12. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 13. Number and Gender. Whenever the context of this Declaration requires, the singular shall include the plural and one gender shall include all.

Section 14. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Owner's Multiple-Family Lot, Lot or the Common Area.

Section 15. Subdivision Covenants. It is contemplated by Declarant that within the Properties there may be a number of separate, distinct residential subdivisions or sections that will be subjected to this Declaration. It is further contemplated by Declarant that, because of varying lot sizes, marketing considerations and other factors, it may be necessary or desirable to impose additional and different covenants, conditions and restrictions on such subdivisions or sections which are applicable solely to such subdivisions or section. Accordingly, in addition to any other rights reserved to Declarant herein, Declarant further reserves the right to subject such subdivisions and sections to additional and different subdivision restrictive covenants as Declarant, in its discretion, may from time to time determine. This right also includes the right to subject more than one subdivision or section to the same subdivision restrictive covenants.

Section 16. Subdivision. Combination of Multiple-Family Lot(s). No Multiple-Family Lot shall be subdivided without the written consent of Declarant (as long as Class C membership exists). One or more Multiple-Family Lots or Lot may be combined into a single Lot or Multiple-Family Lot with the written consent of Declarant and, upon such combination and consent of Declarant (as long as Class C membership exists), the resulting Lot or Multiple-Family Lot shall be considered as one Lot or Multiple-Family Lot for the purposes of this Declaration. Provided, the foregoing shall not prohibit or restrict the right (which is hereby reserved) of Declarant to subdivide, combine, re-subdivide, recombine, or re-record maps relating to, any Lot or Multiple-Family Lots subject to this Declaration.

Section 17. Conflict Between Declaration and Articles of Incorporation. Whenever there exists a conflict between the provisions of this Declaration and the Articles or Bylaws, the provisions of this Declaration shall control, and whenever there is a conflict between the provisions of the Articles and Bylaws, the Articles shall control.

Section 18. Laws of North Carolina. This Declaration shall be subject to and construed in accordance with the laws of the State of North Carolina and all applicable laws and regulations of the United States of America.

Section 19. Assignment. Declarant specifically reserves the right, in its sole discretion, at any time and from time to time, to assign (temporarily or permanently) any or all of its rights, privileges and powers under this Declaration or under any amendment thereto.

Section 20. Driveway Installation. No driveways shall be installed or authorized to be

installed on Ebenezer Church Road by Declarant, the Association or any Owner.

IN WITNESS WHEREOF, the undersigned, being the Declarant, Trustee and Lender have caused this instrument to be executed as of the 22 day of Oct 1996.

DECLARANT:

MACaroni Development Company, LLC, a North Carolina limited liability company

By: [Signature] (SEAL)  
Michael G. Sandman, Manager

Trustee and Lender, as beneficiary of that certain Deed of Trust recorded in Book 6873, Page 293, Wake County Registry, hereby join in the execution of this Declaration and hereby subordinate the lien of said Deed of Trust to this Declaration.

TRUSTEE:

Southland Associates, Inc.

ATTEST:

[Signature]  
Assoc. Secretary  
(Corporate Seal)  
CORPORATE SEAL  
S. INC.

By: [Signature]  
[Name], President

LENDER:

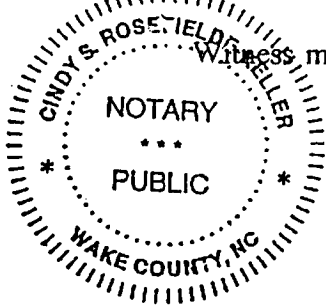
Central Carolina Bank and Trust Company

ATTEST:  
[Signature]  
Secretary  
(Corporate Seal)  
CENTRAL CAROLINA BANK AND TRUST COMPANY  
SHAM

By: [Signature]  
[Name], President

STATE OF NORTH CAROLINA  
WAKE COUNTY

I, Cindy S. Roxfielde-Keller, a Notary Public of the County and State aforesaid, certify that Michael G. Sandman, a Manager of MACaroni Development Company, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.



Witness my hand and official seal or stamp, this the 22nd day of Oct, 1996.

Cindy S. Roxfielde-Keller  
Notary Public

My Commission Expires: \_\_\_\_\_ My Commission Expires: 1-31-99

STATE OF NORTH CAROLINA  
WAKE COUNTY

I, Jean Telep, a Notary Public of the County and State aforesaid, certify that C.N. Bophms personally appeared before me this day and acknowledged that (s)he is ASST. Secretary of Southland Associates, Inc., a corporation, Trustee and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by him/her as its ASST. Secretary.



Witness my hand and official seal or stamp, this the 22nd day of Oct, 1996.

Jean Telep  
Notary Public

My Commission Expires: 12-21-1997

STATE OF NORTH CAROLINA  
WAKE COUNTY

I, Jean Telep, a Notary Public of the County and State aforesaid, certify that PICK MERRILL personally appeared before me this day and acknowledged that (s)he is \_\_\_\_\_ Secretary of Central Carolina Bank and Trust

BK 7197PG0519  
EXHIBIT A

[Property now subject to Declaration]

BEING all of Tract 3, containing 43.403 acres, as shown on map entitled, "Survey For MACaroni Development Company, LLC", prepared by Smith and Smith Surveyors, dated November 28, 1995, and recorded in Book of Maps 1996, Page 142, Wake County Registry.