

RECORDED  
REGISTERED  
NORTH CAROLINA 9 5 88 PM 1988  
WAKE COUNTY  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SANDLIN BRANCH TOWNHOMES, PHASES ONE, TWO, AND THREE, RECORDED IN BOOK OF MAPS 1986, PAGES 1751, 1752, AND 1753, WAKE COUNTY REGISTRY

HOLD FOR: YEAGAN, THOMPSON & MITCHNER

THIS DECLARATION, made on the date hereinafter set forth by SANDLIN BRANCH LIMITED PARTNERSHIP, hereinafter referred to as the "Declarant;"

W I T N E S S E T H:

WHEREAS, the Declarant is the owner of certain property in St. Mary's Township, Wake County, North Carolina, which is more particularly described as:

Sandlin Branch Townhomes, Phases One, Two, and Three, as shown on maps recorded in Book of Maps 1986, Pages 1751, 1752, and 1753, Wake County Registry.

WHEREAS, Declarant will convey the said property, subject to certain protective covenants, conditions, restrictions, easements, liens and charges as hereinafter set forth;

NOW, THEREFORE, the Declarant hereby declares that all of the property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property. These easements, restrictions, covenants, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Sandlin Branch Homeowners Association, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 3. "Building" shall mean and refer to a multi-unit structure containing residential units constructed or erected on the Property.

Section 4. "Bylaws" means the bylaws of the Association as they now or hereafter exist.

Section 5. "Common expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance of the residential units as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair or replacement of the common areas;
- (d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability or such other insurance premiums as the Declaration or Bylaws may require the Association to purchase;
- (f) Expenses agreed by the members to be common expenses of the Association.
- (g) Expenses to own, maintain, and operate all water, sanitary sewer, and storm drainage lines and facilities, and other utilities located in all common areas.

Section 6. "Declarant" shall mean and refer to Sandlin Branch Limited Partnership, its successors and assigns to whom the rights of Declarant are expressly transferred or if such successors or assigns should acquire more than one undeveloped lot or undeveloped acreage for the purpose of development, or acquire title to the property under a deed in lieu of foreclosure, judicial foreclosure, or foreclosure under power of sale contained in any deed of trust, or one otherwise denominated a "Declarant" hereby.

Section 7. "Common area" shall mean and refer to all land within the Property owned by the Sandlin Branch Homeowners Association, along with facilities and improvements erected or constructed thereon, for the exclusive use and enjoyment of the members of the Sandlin Branch Homeowners Association as shown on the aforementioned recorded map and the maps of additional properties hereafter annexed as hereinafter provided. Said common area shall be maintained by the Association.

Section 8. "Lot" shall mean and refer to any plot of land, other than the common area, shown on a recorded subdivision map of the Property and upon which a residential unit has been or may be constructed.

Section 9. "Member" shall mean and refer to every person who is a member of the Association.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, including contract sellers, but excluding those who have such interests merely as security for the performance of an obligation.

Section 11. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 12. "Property" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the jurisdiction of the Association by annexation.

Section 13. "Residential Unit" or "Unit" shall mean and refer to a residential structure constructed upon a lot within the Property and constituting part of a building.

## ARTICLE II

### ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Additional properties and improvements, including common area, may be annexed in the manner provided in this Article to the Property herein described. Additional properties so annexed shall be merged with the Property herein described and any other previously annexed property, and shall be subject to the provisions of this Declaration and to the Articles of Incorporation and Bylaws of the Association.

Section 2. At any time within seven (7) years following the date of incorporation of the Association, the Declarant may annex additional residential properties to the Property herein described. The total number of lots within the Property herein described and that subsequently annexed shall not exceed two hundred fifty (250) lots.

Section 3. In addition to annexations as provided in Section 2 of this Article, other residential property may be annexed at any time with the express consent of two-thirds (2/3rds) of each class of members.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment, including the right of ingress and egress to the respective owner's lot, in and to the common areas which shall be appurtenant to and shall pass with the title to every assessed lot, subject to each of the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common area and facilities; however, no part of the common area may be encumbered or conveyed without the consent of at least two-thirds of the owners, except for such encumbrances as may be placed on the common area by the Declarant.

(b) The right of the Association to suspend the voting rights of a member, or any person to whom he has delegated his voting right, for any period during which any assessment against his 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 owners to the exclusive use of parking spaces as provided in this Article.

(d) The right of the Association to formulate, publish, and enforce rules and regulations as provided in Article X.

(e) Any encumbrance or conveyance of the common area shall be subject to these owners' easements.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common areas and facilities to his tenants, guests, invitees, or contract purchasers.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title, to the common areas located as shown upon the recorded map referred to in the premises of this Declaration, to the Sandlin Branch Homeowners Association, free and clear of all liens and encumbrances, at the time or prior to the conveyance of the first lot in each respective Parcel, except utility and drainage easements and easements to governmental authorities.

Section 4. Parking Rights. The owner or owners of each lot shall be entitled to the use of not more than two (2) automobile parking spaces for each lot. The Association, in its discretion, may designate the spaces for the use of each member. The parking space shall be as near and convenient

to said lot as reasonably possible, together with the right of ingress and egress in and upon said parking spaces. The Association, in its discretion, may designate any additional spaces for the use of each member. No boats, trailers, campers or recreational vehicles shall be parked within the common area, greenways or rights of way of any public or private street in or adjacent to the Property.

Section 5. Antennas and Cablevision. The Association may provide cablevision or central antennas, and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of antennas on individual lots; and television satellite dishes shall not be permitted on any lot or unit or on the common area.

ARTICLE IV

MEMBERSHIP

Each person who is a record owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, but excluding persons who hold an interest merely as security for the performance of any obligations, shall be a member of the Sandlin Branch Homeowners Association. Ownership of such interest shall be the sole qualification for such membership. No owner shall have more than one membership in the Association, and there shall be only one vote per lot in such Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. The Board of Directors may make reasonable rules regarding proof of ownership.

ARTICLE V

VOTING RIGHTS

Section 1. Classes. The Association shall have the following two classes of voting membership:

(a) Class A. Class A members shall be all owners, other than Declarant; however, Declarant shall be a Class A member to the extent provided in (b) hereinafter. Class A members shall be entitled to one vote for each lot owned. When more than one person hold an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as the owners thereof determine; but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

(b) Class B. The Class B member shall be the Declarant, and it shall be entitled to three (3) votes for each lot in which it holds a fee or undivided fee interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, however, that the Class B membership shall be reinstated with all rights, privileges, and responsibilities if, after conversion of the Class B membership to Class A membership as herein provided, additional lands are annexed to the Property by the Declarant in the manner provided in Article II of this Declaration, or upon reconveyance of a lot or lots to Declarant; or

(2) On December 31, 1991.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation For Assessments. The Declarant, for each lot owned within the Property, hereby covenants, and every other owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments and charges; and
- (b) Special assessments for capital improvements and maintenance.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with interest thereon and costs of collection thereof and reasonable attorney fees as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person (or persons) who was the owner of the lot at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them and then

only with the consent of the Association. All assessments shall be shared equally by the owners of each lot.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the owners and the Property and for the improvement and maintenance of the common area and units, including any private roads or streets; for utilities utilized in the common areas; for the establishment of adequate reserves for the replacement of capital improvements, if any, located within the common area; for payment of insurance premiums for contracts of hazard and liability insurance on the common area; for payment of insurance premiums as the Board shall consider appropriate for coverages, including contracts of flood insurance for such of the lots as is necessary and required by the Federal Housing Administration or any other governmental agency or institutional lender; for payment of local ad valorem taxes on the common area; and for providing the services and facilities for purposes of and related to the use and enjoyment of the common area and facilities.

Section 3. Amount of Assessment.

(a) Maximum Annual Assessment. To and including December 31, 1986, the maximum annual assessment shall not be in excess of an annual rate of Three Hundred Sixty Dollars (\$360.00) per lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 1986, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the percentage increase reflected in the U.S. City Average, Consumer Price Index - United States and selected areas for urban wage earners and clerical workers, all items most recent index and percentage changes from selected dates (published by the U.S. Bureau of Labor Statistics, Washington, D.C.), or such other index as may succeed the Consumer Price Index, for the twelve-month period ending the immediately preceding July 1.

(c) Increase by Members. From and after December 31, 1986, the annual assessment may be increased by a percentage greater than that

established by the Consumer Price Index formula by an affirmative vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Article.

(e) Lots Owned by Declarant. Notwithstanding anything in this Article to the contrary, any unoccupied lots owned by Declarant and held for lease or for sale shall be assessed at an amount equal to 25% of the actual monthly assessments paid by owners.

Section 4. Special Assessments for Capital Improvements and Maintenance. 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 construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common area or for maintenance of units as required of the Association by these Declarations, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than ten (10) days nor more than sixty (60) days in advance of the meeting.



Section 5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots, on a per lot basis, and may be collected on a monthly basis.

Section 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein may be paid in equal monthly installments, and the payment of such shall commence as to each lot on the first day of the month following the issuance of a Certificate of Occupancy by the Town of Garner for the unit constructed on such lot. The first annual assessment for each lot 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 at least thirty (30) 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, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments or portion thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of twelve (12) percent per annum

or the maximum lawful rate, whichever is less. The Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property; and, in either event, interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common areas or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein on any lot shall be subordinate to the lien of the first mortgage and ad valorem taxes on such lot. Sale or transfer of any lot shall not affect the assessment lien; however, the sale or transfer of any lot pursuant to mortgage 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 from liability for any assessments thereafter becoming due or from the lien thereof. The holder of a mortgage shall not be required to collect assessments; and failure to pay an assessment shall not constitute a default under an insured mortgage.

ARTICLE VII

EXTERIOR MAINTENANCE

In addition to maintenance of the common area, the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder, as follows: Stain and/or paint the exterior of the residential units; and repair, replace and care for roofs, decks, gutters, downspouts, and exterior building surfaces. Such exterior maintenance shall not include glass surfaces, doors and door frames, exterior lighting or fixtures, and outlets attached to the units.

Any owner who fences or encloses any portion of his lot or the area adjoining his lot (which fence or enclosure shall require the prior approval of the Association) may plant trees, shrubs, flowers, and grass in the fenced or enclosed portion as he elects and shall maintain the fenced or enclosed portion at his own expense, provided that such maintenance does not hinder the Association in performing its maintenance duties as to the unit, the remaining yard spaces, or the common area. No such maintenance by an owner shall reduce the assessment payable by him to the Association.

If, in the opinion of the Association, any such owner fails to maintain his area in a neat and orderly manner, the Association may revoke the owner's maintenance rights for a period not to exceed one year; and the Association shall perform maintenance during the revocation period. The owner shall not plant any vegetation in front of his unit except with the prior written approval of the Association.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the wilful or negligent acts of its owner or his tenants, contract purchasers, guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, or smoke, as the foregoing are defined and explained in North Carolina standard fire and extended coverage insurance policies, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such lot is subject.

#### ARTICLE VIII

##### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the residential units upon the property and placed on the dividing line between the lots shall constitute a party wall; and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or wilful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it; and, if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any

such owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or wilful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an owner who by his negligent or wilful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs With Land. The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owner's successors in title.

Section 6. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every owner shall have an easement and right of entry upon the lot of any other owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously; and, upon completion of the work, the owner shall restore the adjoining lot or lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 7. Certification With Respect to Contribution. If any owner desires to sell his lot, he may, in order to assure a prospective purchaser that no adjoining owner has a right of contribution as provided in this Article, request of the adjoining owner or owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining owner to make such certification immediately upon request and without charge. If the adjoining owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, such dispute shall be settled by arbitration as provided under the laws of the State of North Carolina as they now exist or are hereafter amended.

#### ARTICLE IX

##### ARCHITECTURAL CONTROL

Except for the initial residential structure constructed on a lot by Declarant in accordance with Declarant's general plan of development, which

initial residential structure shall be exempt from the following approval process, no building, fence, walk, antenna, sign, or other structure shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the said improvements or alterations shall have been submitted to and approved in writing, as to harmony of external design and location in relation to surrounding structures and topography, by the Board of Directors of the Association or by its Architectural Committee. In the event that the Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to them, approval will not be required and this Article will be deemed to have been fully complied with; provided, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data or fail to present accurate information upon which the Board or its committees can arrive at a decision.

The said Board or its committees shall have the right, at their election, to enter upon any lot during construction, erection, or installation of improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE X

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of each lot and the common areas. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

Section 2. Use of Property. No portion of the Property shall be used except for residential purposes incidental or accessory thereto (except the Declarant may use one or more lots for temporary office space and as a model for lease or sales purposes).

(a) Outside clothes lines shall not be permitted upon any lot at locations where they can be viewed from any street.

(b) No commercial signs, with the exception of a "For Sale" or "For Rent" sign no more than two feet in width and two feet in height, shall be erected or maintained on any lot.

(c) No lumber, brick, stone, cinderblock, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any lot in an exposed location except for the purpose of construction on such lot and shall not be stored on such lot for longer than the length of time reasonably necessary for the construction for which same is to be used.

(d) No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance, except that such tanks may be placed above-ground provided they are kept in a screened enclosure which must be compatible in appearance and locale with the previously constructed residential structure. Any such screened enclosure must exceed in height by at least one (1) foot any such tank as may be placed therein.

(e) Nothing shall be kept and no activity shall be carried on in any building or dwelling unit on a lot or on the common area and facilities which will increase the rate of insurance, applicable to residential use, for the property involved or the contents thereof. No owner shall do or keep anything, nor cause or allow anything to be done or kept, in his dwelling structure or on the common area which will result in the cancellation of insurance on any portion of the property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the common area and facilities. All garbage receptacles, containers and enclosures shall be located at the rear of the dwelling structure on a lot; and each owner shall be responsible for compliance with Chapter 5 of the Code of the Town of Garner, North Carolina, as now enacted and as may be amended from time to time, regarding the handling and disposal of all garbage, refuse, rubbish, and waste materials of that owner and/or from that owner's unit.

(f) Each owner shall, during periods of dry weather or when requested by the Association, water the grassed portions of the common area adjoining such owner's lot from the front of the lot to the paved area,

from the rear of the lot a distance of fifty feet, and from the side (where applicable) of the lot a distance of fifty feet.

Section 3. Hobbies and Activities. The pursuit of hobbies or other activities, including specifically without limiting the generality of the foregoing the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkempt conditions, shall not be permitted or undertaken on any part of any lot or common area.

Section 4. Required Land Area. No lot may be subdivided by sale or otherwise so as to reduce the total area thereof below that as shown upon any recorded subdivision map of the property.

Section 5. Animals and Pets. No stable, poultry house or yard or other similar structure shall be constructed or allowed to remain on any lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any lot without the express written permission of the Association first had and obtained. However, a reasonable number of household pets as determined by the Board of Directors of the Association shall be permitted, provided they are not raised for commercial purposes.

Section 6. Prohibited Activities. No immoral, improper, offensive, loud, or unlawful use or activity shall be carried on upon any lot or the common area. Each Owner shall refrain from any act or use of his lot or the common area which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Each owner shall keep and maintain his lot in a neat and orderly manner.

Section 7. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the property shall be observed. 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.

#### ARTICLE XI

##### EASEMENTS

Section 1. General Easements and Associated Undertaking. All of the Property, including lots and common area, shall be subject to such easements for private road or drives, public streets, water lines, sanitary sewers, storm drainage facilities, gas lines, cable communication transmission, telephone and electric power lines and other public utilities



as shall be established by the Declarant or by its predecessor in title, prior to the subjecting of Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the common area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property. Sight easements, if any, as may be shown upon any recorded subdivision map of the Property, are hereby reserved by the Declarant.

An easement is hereby established for the benefit of the Town of Garner and other appropriate entities, over all common areas and lots hereby or hereafter established, for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewer and drainage facilities, the fighting of fires, the collection of garbage and police protection.

Section 2. Temporary Construction Access and Disturbance Easement.

An easement over, through and to the common area is hereby reserved, conveyed and established in favor of Declarant and all Owners of any lot to be used for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any lot, and installation of driveways, sidewalks, underground drainage and utility conduits and hookups. 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 using and taking the benefits of said easement, Declarant or its designate and Owners shall use their best efforts to minimize any soil or land disturbance activities and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should Declarant, its designate or an Owner fail to restore the disturbed land as required above, the Association may restore the land to the required condition and Declarant or its designate or Owner, as the case may be, shall indemnify the Association for the reasonable expense incurred in performing such restoration. Where any Owner shall seek to take advantage of the easement herein conveyed,



such Owner's rights of use shall be restricted to that common area which shall be reasonably servient and proximate to his lot.

Section 3. Easement for Minor Encroachments. All lots and the common area shall be subject to an easement for the encroachment of initial improvements constructed on lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, privacy fences, bay windows, steps and walls. If any encroachment shall occur subsequent to subjecting the property to this Declaration as a result of settling or shifting of any improvement or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected lot or lots to as near the original condition as practicable.

Section 4. Structural Support. The dwelling structures constructed upon each lot are constructed such that they comprise a portion of a building and adjoin dwelling structures on adjacent lots by virtue of a party wall. Every portion of a dwelling structure on a lot which contributes to the structural support of the building of which it is a portion shall be burdened with an easement of structural support for the benefit of all other dwelling structures which comprise such building.

Section 5. Emergencies. Every lot and dwelling structure thereon shall be subject to an easement for entry by the Association for the purpose of correcting, repairing or alleviating any emergency condition which arises upon any lot or within any dwelling structure and that endangers any building or any portion of the common area.

Section 6. Utility Charges for Water and Street Lights. As consideration for the conveyance of the common area and as consideration for the rights, entitlements and benefits granted to and conferred upon the Association under and by virtue of this Declaration, the Association

covenants and agrees to accept the responsibility for payment of any and all fees, charges and expenses arising by virtue of the use of water provided to and used in connection with any of the common area and by virtue of the use and operation of the street and sign lights installed and erected within the common area from and after the date of such acceptance. Such cost of fees, charges and expenses paid by the Association shall be charged ratably to the Owners as an assessment according to the provisions of Article VI above.

Section 7. Water Metering to Lots. The Association may have a central metering system for water provided to the lots by the Town of Garner or its successor. The Association shall have the right to allocate charges for such water to all lots which are so served by such common water meter or meters. In addition, the Association shall have the right to install individual meters (if not installed by Declarant) on each lot or the common area adjacent thereto and assess each lot for actual water usage. The charges for the water usage and installation of individual meters, if installed by the Association, may be included in an annual or special assessment.

ARTICLE XII

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. The prior written approval of each institutional holder of a first deed of trust on lots in the Property will be required for the following:

- (a) The abandonment or termination of the residential unit property except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;
- (b) Any material amendment to the Declaration or to the By-Laws of the Association; and
- (c) The effectuation of any decision by the Association to terminate professional management, if any, and assume self management of the property.

Section 2. No unit may be partitioned or subdivided without the prior written approval of the first lien holder of the unit.

Section 3. Upon written request, any institutional holder of a first lien on a unit will be entitled to:

- (a) inspect the books and records of the Association during normal business hours;
- (b) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year; and
- (c) receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

Section 4. In the event of substantial damage to or destruction of any unit or any part of the common area, the institutional holder of any first mortgage on a unit shall be entitled to timely written notice of any such damage or destruction.

Section 5. If any unit or portion thereof or the common area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage on a unit will be entitled to timely written notice of any such proceeding or proposed acquisition.

Section 6. The holder of a first deed of trust on any unit shall be given prompt notice of any default by the unit mortgagor's obligations hereunder not cured within thirty (30) days of said default.

#### ARTICLE XIII

##### INSURANCE

Section 1. Ownership of Policies. Contracts of insurance upon the common area shall be purchased by the Association for the benefit of the Association and its mortgagees, if any, as their interests may appear. The Association may re-evaluate its coverage from time to time and may provide, subject to Section 2 of this Article, for such insurance coverage as it deems appropriate. In addition, contracts of flood insurance for such of the lots as is necessary and required by the Federal Housing Administration or any other governmental agency or institutional lender shall be purchased by the Association for the benefit of Owners of such lots and their mortgagees, if any, as their interests may appear.

Section 2. Coverage. All improvements and personal property included in the common area shall be insured in an amount equal to at least one hundred percent (100%) of its insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect thereto. In addition, the Association shall acquire and maintain in full force and effect a policy of insurance which insures against any public liability arising out of its ownership of the common area and the use and operation thereof with limits of liability therefor of not less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Administration. Such policies shall contain clauses providing for waiver of subrogation, if possible.

Section 3. Fidelity Insurance or Bond. All persons, responsible for or authorized to expend funds or otherwise deal in the assets of the Association, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to at least six (6) months' assessments plus reserve accumulated.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association, including contracts of flood insurance for such of the lots as is necessary and required by the Federal Housing Administration or any governmental agency or institutional lender, shall be paid by the Association and charged ratably to all Owners as an assessment according to the provisions of Article VI above, whether or not such Owner's lot required flood insurance.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear and the Owners, and shall

provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

- a. The proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered;
- b. Any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability; and
- c. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

#### ARTICLE XIV

##### GENERAL PROVISIONS

Section 1. Enforcement. 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 Association or by any owner to enforce any such provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants, conditions, and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than ninety percent (90%) of the lots, and thereafter by an instrument signed by the owners of not less than seventy-five percent (75%) of the lots; provided, however, that the



Board of Directors may amend this Declaration, without the consent of owners, to correct any obvious error or inconsistency in drafting, typing, or reproduction. All amendments shall be certified by the Association as an official act of the Association and shall forthwith be recorded in the Wake County Registry. All amendments shall become effective upon recordation.

Section 4. Lease of Residential Unit. No residential unit shall be leased for transient or hotel purposes, nor may any owner lease less than the entire unit, nor shall any such lease be for any period of less than thirty (30) days. Any lease must be in writing and provide that the terms of the lease and the occupancy of the unit shall be subject in all respects to the provisions of the Declaration of Covenants, Conditions and Restrictions and By-Laws of Sandlin Branch Subdivision and that any failure by any lessee to comply with the terms of such documents shall be a default under the lease. No lessee shall be obligated to pay Assessments due to the Association.

Section 5. FHA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration: Annexation of additional properties, dedication of the common area, and amendment of this Declaration.

Section 6. Conflicts. In the event of any irreconcilable conflict between this Declaration and the By-Laws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the By-Laws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed in its Partnership name by a General Partner by authority duly given, this 8<sup>th</sup> day of October, 1986.

SANDLIN BRANCH LIMITED PARTNERSHIP  
Declarant

By: Donald F. Iniede (SEAL)  
Donald F. Iniede, General Partner

NORTH CAROLINA  
WAKE COUNTY

I, the undersigned, a Notary Public for the said County and State, do hereby certify that Donald F. Thiede, General Partner, SANDLIN BRANCH LIMITED PARTNERSHIP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.



This 8<sup>th</sup> day of October, 1986.

Jamice C. Cox  
Notary Public

My commission expires: 11-27-89

NORTH CAROLINA - WAKE COUNTY

The foregoing certificate \_\_\_\_\_ of \_\_\_\_\_

Jamice C. Cox

\_\_\_\_\_  
Notary Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the last page hereof.

KENNETH C. WILKINS, Register of Deeds

Reginald R. Cooke  
By \_\_\_\_\_  
Asst. Deputy Register of Deeds