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Drawn By: James B. Watkins
Recorded By: Moore & Alphin, PLLC
Hold for: Moore & Alphin, PLLC

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**DECLARATION OF
COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
SOUTHPOINT TERRACE**

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<u>Exhibit A</u>	Legal Description of the Project Land
<u>Exhibit B</u>	Development Plan of the Project
<u>Exhibit C</u>	Stormwater Maintenance Plan
<u>Exhibit D</u>	City Stormwater Agreements
<u>Exhibit E</u>	Lodge Agreement

**DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
FOR
SOUTHPOINT TERRACE**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR SOUTHPOINT TERRACE ("Declaration") is made this 27 day of April, 2004, by CENTEX HOMES, a Nevada general partnership ("Declarant").

OVERVIEW

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

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

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

ARTICLE 1
EXHIBITS

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

<u>Exhibit A</u>	Legal Description of the Project Land
<u>Exhibit B</u>	Development Plan for the Project
<u>Exhibit C</u>	Stormwater Maintenance Plan
<u>Exhibit D</u>	City Stormwater Agreements
<u>Exhibit E</u>	Lodge Easement

ARTICLE 2
DEFINITIONS

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

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

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

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

“Association” means Southpoint Terrace Owners Association, Inc., a North Carolina corporation not for profit.

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

“Association Property” means any portions of the Residential Streets not dedicated to a Governmental Authority for public use, the portions of the Project Drainage System owned by the Association, the Entrance Facilities, and any other lands, systems, facilities, personal property, equipment, rights and easements which may be deeded, leased, granted, reserved, assigned or transferred to the Association, as described in this Declaration, together with all improvements thereon and equipment, facilities and rights associated therewith.

“Board” means the Board of Directors of the Association.

“Bylaws” mean the Bylaws of the Association.

“City” means the City of Durham, Durham County, North Carolina.

“City Stormwater Agreement” or “City Stormwater Agreements” means the applicable agreement or agreements in effect from time to time and entered into between the fee simple owner of the Ponds and the City regarding the maintenance of the Ponds, the current versions of which are attached hereto as Exhibit “D”.

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

“County” means Durham County, North Carolina.

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

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

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

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

“Director” means a member of the Board.

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

“Final Plat” means a final record plat approved by the City for a portion of the Project Land and recorded in the Public Records.

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

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

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

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

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

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

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

“Member” means a member of the Association.

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

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

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

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

“Pond” means a portion of the Project Drainage System shown on the Site Plan or a Final Plat as a delineated parcel of real property that contains all or any portion of a stormwater constructed wetland, lake, pond, lagoon, retention or detention area, or similar body of water.

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

“Project Drainage System” means the system of storm water drainage for the Project, consisting of Ponds, detention areas, surface swales or ditches, underground piping, catch basins, and other related facilities to achieve proper drainage for the Project.

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

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

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

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

“Stormwater Maintenance Plan” means the maintenance plan and manual pursuant to which the Ponds and other applicable portions of the Project Drainage System are required to be maintained by the Association that is currently under preparation and is to be attached to this Declaration as Exhibit C pursuant to an Amendment.

“Total Planned Units” means the total number of Living Units planned for the Project by the Site Plan as may be modified from time to time with the approval of the City, which is currently 105 Living Units.

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

ARTICLE 3 PLAN OF DEVELOPMENT OF THE PROJECT

Declarant plans to develop the Project Land in multiple stages. Currently, Declarant plans to develop a total of 105 Living Units on the Project Land, which number is subject to change as development of the Project Land progresses. Declarant may add and develop Additional Land as part of the Project in accordance with Article 12.

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

ARTICLE 4 ASSOCIATION PROPERTY

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

B. Entrance Facilities. The Association shall maintain, at the Association's sole cost, the Entrance Facilities, including repair and replacement if any such Improvements are damaged or destroyed. The Association shall maintain such Improvements in a state of good repair and in conformity with the standards maintained in developments of a similar nature and quality as the Project and as provided in the Lodge Agreement referred to below. The Entrance Facilities are or will be located on real property currently owned by Lodge at Southpoint, L.P. ("Lodge") pursuant to an easement benefiting the Project Land that allows the installation, operation, maintenance, and repair of the Entrance Facilities by Declarant and the Association. A copy of the instrument in which Lodge granted such easement is attached as Exhibit D (the "Lodge Agreement"). Upon Declarant's completion of the Improvements for the Entrance Facilities, the Association shall assume the rights and obligations of Declarant in the Lodge Agreement with respect to the continuing maintenance, repair, operation, and insurance of the Entrance Facilities. The Association shall execute whatever additional documentation Declarant or Lodge may require as verification of the Association's assumption of such obligations.

THE LODGE AGREEMENT GIVES LODGE LIEN RIGHTS IN AND TO THE ASSOCIATION PROPERTY IF THE ASSOCIATION FAILS TO PERFORM ITS OBLIGATIONS UNDER THE LODGE AGREEMENT AFTER THE ASSOCIATION'S RECEIPT OF WRITTEN NOTICE FROM LODGE AND THE EXPIRATION OF A CURE PERIOD, AS MORE PARTICULARLY SET FORTH IN THE LODGE AGREEMENT.

C. Residential Streets. Any portion of the Project Land shown on a Final Plat as a right of way for vehicular access, and all Improvements thereon (the "Residential Streets") shall be dedicated to the City or other applicable governmental agency as a public right-of-way for ingress and egress to and from all portions of the Project Land. The Association shall have no responsibility for the maintenance thereof, but shall have the right, to provide supplemental maintenance together with the City or other governmental agency, as the Board may determine in its sole discretion. The cost of such maintenance performed by the Association shall be an Operating Expense of the Association and payable out of the funds collected as Base Assessments from the Residential Owners.

D. Project Drainage System. The Association shall own and maintain the Ponds and any other portions of the Project Drainage System not maintained by a Governmental Authority or a Residential Owner, in good working order and in accordance with the Stormwater Maintenance Plan, the City Stormwater Agreements, and all applicable governmental requirements and regulations, so that the Project Drainage System continues to function properly in controlling storm water runoff and drainage from the Project.

Upon the conveyance of the Ponds to the Association, the Association as the fee simple owner of the Ponds, shall be obligated to comply with all applicable requirements of the City and other applicable Governmental Authorities having jurisdiction over the Ponds, including the obligation to enter into a City Stormwater Agreement or multiple City Stormwater Agreements with the City, or other agreement in use by the City at the time of conveyance of the Ponds to the Association. Such City Stormwater Agreement(s) or other agreement between the Association and the City shall replace the previous City Stormwater Agreements between Declarant and the City. If required by the City in order to release the letter of credit posted by Declarant pursuant to the agreements attached as Exhibit D, the Association, at its sole expense, shall provide acceptable security in the form and amounts required by the City for the benefit of the City, in satisfaction of the applicable terms of the new City Stormwater Agreement(s) or other similar agreement required by the City and entered into by the Association.

Pursuant to the City Stormwater Agreements, the City has the right to inspect the Ponds and, to notify the responsible party (Declarant or the Association, whoever owns the Ponds at the time) of any maintenance or repair that the City reasonably determines to be necessary or required for the Ponds. If the responsible party fails to perform the required maintenance or work within 30 days following the responsible party's receipt of the City's notice of the required maintenance or work, the City has the right to perform the work and recover the City's costs for doing the work from the responsible party. If the Association is the responsible party, and if the Board determines that there is a lack or shortage of

available funds to cover the cost to repay the City, the Board shall impose a Special Assessment pursuant to Section D.2 of Article 6. The estimated costs for routine maintenance of the Ponds shall be an Operating Expense and included in the Budget for each fiscal year of the Association. The Association shall also maintain a separate reserve account for the funds necessary for the reconstruction, replacement, or major repair of the Ponds as provided in Section _ of Article 6.

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

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

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

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

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

J. Conveyance of Association Property. The Association Property shall be conveyed to the Association for ownership. All real property designated as Association Property on a Final Plat or otherwise identified herein or by Declarant as Association Property, will be conveyed to the Association by deed or by easement. All personal property or interests in personal property shall be conveyed to the Association by bill of sale or by delivery of possession to the Association. Declarant shall have the right to convey Association Property to the Association at any time following Declarant’s completion of any Improvements to be constructed or installed upon such Association Property. Upon completion of any Improvements thereon or thereto by the Declarant, the Association will immediately become responsible for all maintenance, repair and replacements therefore, the operation thereof and such additional construction of Improvements as may be authorized by the Board. It is the intent of this provision to provide that the Association will be responsible for all maintenance of Association Property when Improvements thereto have been completed, notwithstanding that Declarant has not conveyed such properties to the Association but continues to hold title thereto. Any such conveyance by the Declarant will be conveyed subject to all restrictive covenants filed in the Public Records at the time of conveyance, and the following:

1. The right of access of the Declarant, its successors and assigns, over and across such property; and
2. The right of the Declarant, the Committee, and the Association, as applicable, to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Association Property prior to the commencement of such activities or location of any object therein;
3. All utilities and drainage easements, including but not limited to, the easement referred to in Section B.10 of Article 8; and
4. All reserved rights set forth in this Declaration.

The Declarant will not be required to so convey the Association Property where such conveyance would be prohibited under agreements to which the Declarant is a party on the date of establishment of such Association Property, but, in such case, Declarant will be allowed to postpone such conveyance, without a penalty, until such time as said prohibition terminates, is released or is nullified.

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

The Association shall not mortgage or convey the Association Property without compliance with and satisfaction of the applicable provisions of the Planned Community Act (if any). All rights of the mortgagee shall be subordinate to the rights of the Association and its Members. Easements granted or permitted in the Association Property and conveyances for the purpose of making minor or necessary boundary adjustments between the Living Units and the Association Property, shall not be considered to be a conveyance of such Association Property and shall not require the approval or consent of the Residential Owners or any other party or Person.

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

ARTICLE 5 ASSOCIATION MEMBERSHIP AND GOVERNANCE

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

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

1. "Class A Members" will be Owners (including Declarant) of Lots and Living Units. A Class A Member will be entitled to one (1) vote for each Lot or Living Unit owned.

2. "Class B Members" shall be Declarant or its designated assign. The Class B Member will be entitled to two times the total number of votes of the Class A Members, plus one (1) vote until the Turnover Date. Thereafter, Declarant will exercise votes only as to its Class A Memberships.

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

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

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

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

ARTICLE 6 ASSESSMENTS AND OPERATING EXPENSES:

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

B. Establishment of Liens. Any and all Assessments made by the Association in accordance with the Association Documents with Interest thereon and costs of collection (including, but not limited to, Legal Fees), are declared to be a charge and continuing lien upon each Lot and Living Unit against which each such Assessment is made. Each

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

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

Within 30 days after adoption of a Budget, the Board shall provide to all Residential Owners, a summary of the Budget and a notice of the meeting to consider ratification of the Budget, such meeting to be held not less than 10 nor more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The Budget is ratified unless at that meeting, ninety percent (90%) or more of the Residential Owners present in person or by proxy at the meeting, reject the Budget. If the Budget is rejected, the Budget last ratified by the Residential Owners or in effect for the preceding fiscal year of the Association, shall be continued until such time as the Residential Owners ratify a subsequent Budget adopted by the Board.

D. Special Assessment.

1. General. "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Association Documents, those Assessments which are levied for capital improvements which include the costs of constructing or acquiring Improvements on or for the Association Property or the costs of reconstructing or replacing such Improvements. Special Assessments shall be in addition to, and are not part of, any "Base Assessment". Any such Special Assessments assessed against Lots and Living Units shall be paid by the Residential Owners in addition to any other Assessments. Special Assessments shall be assessed in the same manner as the Base Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. In any fiscal year of the Association after the Turnover Date, the levying of any Special Assessment shall require the affirmative assent of at least two-thirds (2/3) of the votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Except as provided in Section D.2 below, in any fiscal year of the Association prior to the Turnover Date, the levying of any Special Assessment which exceeds five percent (5%) of the budgeted Operating Expenses of the Association for that fiscal year, shall require the affirmative assent of at least two-thirds

(2/3) of all votes held by each class of Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Any Special Assessment levied prior to the Turnover Date n an amount equal to 5% or less of the budgeted Operating Expenses of the Association for a fiscal year may be levied by the Board without the approval or consent of the Residential Owners or any other party.

2. City Stormwater Agreement Special Assessment. Notwithstanding the requirements of Section D.1 of this Article 6, the Association, acting by and through the Board, shall levy a Special Assessment for the purpose of funding any monetary obligations that the Association may have to repay the City in accordance with the applicable provisions of the City Stormwater Agreement(s) or other agreement(s) between the Association and the City in accordance with Section D of Article 4. The Board may levy any such Special Assessment without the approval or consent of any Residential Owner, Member, or any other Person or party. The right of the Association to enforce its lien for payment of such Special Assessment may be exercised by either the Association or the City. The Association hereby assigns to the City, its rights to claim and enforce the lien for any Special Assessment levied pursuant to this Section D. 2 of Article 6, who may act on behalf of the Association and shall have all of the rights of the Association, including those rights in this Article 6, with respect to the collection or enforcement of any Special Assessment levied pursuant to this Section D.2 of Article 6.

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

F. Deficit Funding Period. Declarant covenants and agrees with the Association and the Residential Owners that for the period ("Deficit Funding Period") commencing with the date of recordation of this Declaration and ending upon the sooner to occur of the following: (i) the date upon which seventy five (75) Living Units have become certified for occupancy by the applicable Governmental Authorities, or (ii) the date that is three (3) years after the date this Declaration is originally recorded in the Public Records, that (a) the Base Assessment will be determined by spreading the total anticipated Operating Expenses projected at full build-out of the Project as set forth in the Budget, by a number equal to 75% of the Total Planned Units (plus any increase approved according to Section C above); and (b) Declarant will pay the "Deficit," being the difference, if any, between the Operating Expenses incurred by the Association during the Deficit Funding Period, and the Assessments paid by other Residential Owners. During the Deficit Funding Period, Declarant shall not be obligated to pay any Assessments with respect to any Lots or Living Units owned by Declarant. Declarant hereby reserves the right to extend the Deficit Funding Period to a date ending not later than the Turnover Date at Declarant's sole election by providing written notice to the Association of such election at least thirty (30) days prior to the expiration of the current Deficit Funding Period. After the Deficit Funding Period terminates, Declarant shall pay Base Assessments for any Lots or Living Units owned by Declarant at a rate equal to ten percent (10%) of the full amount of the applicable Base Assessments charged for Lots or Living Units that are not owned by Declarant.

Declarant's obligation to fund the Deficit during the Deficit Funding Period as set forth above is hereby declared to be a charge and continuing lien upon each Lot and Living Unit owned by Declarant. Said lien shall be effective only from and after the time of the recordation in the Public Records of a written, acknowledged statement by the

Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, Declarant shall be entitled to a satisfaction of the statement of lien in recordable form.

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

H. Collection of Assessments. If any Residential Owner shall fail to pay any Assessment (or installment thereof) charged to such Residential Owner within fifteen (15) days after the same becomes due, then the Association shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

1. To accelerate the entire amount of any Assessments levied on the applicable Living Unit or Lot for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.
2. To advance on behalf of the Residential Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Residential Owner(s) is liable to the Association. The amount of any funds so advanced, together with Interest and all costs of collection thereof (including, but not limited to, Legal Fees), may be collected by the Association and such advance by the Association shall not waive the Residential Owner's default.
3. To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes, or as otherwise provided in the Planned Community Act.
4. To file an action at law to collect said Assessment plus Interest and Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.
5. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five Dollars (\$25.00) by the Association to defray additional collection costs.

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

J. Payments by Declarant and Institutional Mortgagees. Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singly, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Living Units or Lots. Declarant and any Institutional Mortgagees shall also have the right, but not the obligation, jointly or singly, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association when

overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagees paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection. The Association shall execute an instrument in recordable form evidencing the Association's obligation to make such immediate reimbursement and deliver the original of such instrument to each party who is so entitled to reimbursement.

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

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

M. Certificate of Payment. Within fifteen (15) days after written request by any Residential Owner or any Institutional Mortgagee, the Association shall provide the requesting party a written certificate as to whether or not the Residential Owner of the Living Unit or Lot is in default with respect to the payment of Assessments or with respect to compliance with the terms and provisions of this Declaration. Any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any Living Unit or Lot shall be protected thereby.

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

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

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

Q. Operating Expenses. The Assessments for Operating Expenses are payable by each Residential Owner to the Association notwithstanding the fact that Declarant may not have yet conveyed title to the Association Property to the Association. Operating Expenses shall include the cost of all items or expenses benefiting the Association, the Association

Project Land, the Project , the Lots and Living Units, and the Residential Owners, as determined to be an appropriate item of Operating Expense by the Board. Operating Expenses include, but are not limited to, the following expenses, costs, fees and charges:

1. Taxes. Any and all taxes levied or assessed at any and all times by any and all taxing authorities against the Association Property and against any and all personal property and Improvements, which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue thereon.
2. Utility Charges. All charges levied for utilities providing services for the Association Property whether supplied by a private or public firm, including (but not limited to) all charges for water, gas, electricity, telephone, sewer and any other type of utility or any other type of service charge.
3. Insurance. The premiums on any policy or policies of insurance required to be maintained by the Association under this Declaration and the premiums on any policy or policies the Association determines to maintain even if not required to be maintained by the specific terms of this Declaration.
4. Destruction of Buildings or Improvements on the Association Property. Any sums necessary to repair or replace, construct or reconstruct damages caused by the destruction of any building upon the Association Property by fire, windstorm, flood or other casualty regardless of whether or not the same is covered in whole or in part by insurance shall be Operating Expenses. In the event insurance money shall be payable, such insurance money shall be paid to the Association who shall open an account with a banking institution doing business in the County, for the purpose of providing a fund for the repair and reconstruction of the damage and the procedures for disbursement of any such insurance proceeds or funds shall be in accordance with the applicable and/or additional provisions of the Planned Community Act (if any). The Association shall pay into such account, either in addition to the insurance proceeds or in the event there are no insurance proceeds, such sums as may be necessary so that the funds on deposit will equal the costs of repair and reconstruction of the damage or destruction. The sums necessary to pay for the damage or destruction as herein contemplated shall be considered Operating Expenses but shall be raised by the Association under the provisions for Special Assessments and subject to the limitations therein set forth with respect to Special Assessments. The Association agrees that it will commence the Special Assessments process to provide the funds for the cost of reconstruction or construction within ninety (90) days from the date the destruction takes place and shall go forward with all deliberate speed so that the construction or reconstruction, repair or replacement, shall be completed within a reasonable period of time from the date of damage.
5. Maintenance, Repair and Replacements. Operating Expenses shall include all expenses necessary to keep and maintain, repair and replace any and all buildings, other Improvements, the Ponds and other portions of the Project Drainage System, personal property and furniture, fixtures and equipment upon the Association Property, including landscaping, lawn and sprinkler service, in a manner consistent with the development of the Project and in accordance with the covenants and restrictions contained herein, and in conformity with all orders, ordinances, rulings and regulations of any and all federal, state, County and City governments having jurisdiction over the Project Land as well as the statutes and laws of the State of North Carolina and the United States. This shall include any expense attributable to the maintenance and repair and replacement of pumps or other equipment, if any, located upon or servicing the Project pursuant to agreements with utility corporations. Except for any annual contributions to Reserves (specifically including but not limited to, the Reserve for the Ponds referred to below), any expenses for replacements which would not be in the nature of normal repair and maintenance shall be the subject of a Special Assessment as provided in Section D.1 of Article 6 and subject to the limitations thereon set forth with respect to Special Assessments. If the Association is permitted by the owner of property in close proximity to the Property or the governmental authority responsible for maintaining same to provide additional maintenance for such property, and the Board elects to do so in order to enhance the overall appearance of the Property, then the expense thereof shall be an Operating Expense.

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

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

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

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

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

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

12. City Stormwater Agreements. The scheduled annual expenses for the normal and routine operation, maintenance and repair of the Ponds shall be an Operating Expense of the Association. Such expenses and the associated Reserve account shall be attributed the highest priority for the allocation of Operation Expense, except for taxes, assessments, insurance and other expenses required by applicable law to have a higher priority. Unless sufficient funds are available through the Base Assessments, any expenses incurred by the Association as a result of the obligation to repay the City as a result of the City performing any of the Association's obligation as permitted by the City Stormwater Agreement(s) or other applicable agreement between the Association and the City and in effect at the time, shall be the subject of a Special Assessment as provided in Section D.2 of Article 6.

13. Costs of Reserves. The funds necessary to establish an adequate reserve fund ("Reserve") for periodic maintenance, repair, and replacement of the Association Property and the facilities and Improvements thereupon in amounts determined sufficient and appropriate by the Board from time to time. Reserves shall be deposited in a separate account to provide such funds and reserves. The monies collected by the Association on account of Reserves shall be and shall remain the exclusive property of the Association and no Residential Owner shall have any interest, claim or right to such Reserves. The Association shall establish a separate Reserve for the reconstruction, replacement, and major repair of the Ponds, separate from the funds for the routine maintenance, operation and repair of the Ponds. The Reserve for the Ponds shall contain funds sufficient to pay the probable cost of reconstruction, replacement and major repair for at least a 3-year period (as determined by the City) and the account for this Reserve shall be insured the FDIC or another entity acceptable to the City.

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

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

ARTICLE 7
INSURANCE AND CONDEMNATION

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

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

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

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

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

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

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

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

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

ARTICLE 8 EASEMENTS

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

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

1. Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any Governmental Authority or private utility company or other Person, upon, over, under, and across all of the Association Property in accordance with this Declaration; as shown on the Site Plan or a Final Plat; and other such easement areas recited in any Supplement for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, the Project Drainage System, and electrical, gas, telephone, water, and sewer lines. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board, provided, however, that for as long as the Declarant owns any of the Project Land primarily for the purpose of development and sale, the Board must obtain the written approval of Declarant prior to granting and accepting any such easements. To the extent practical, in Declarant's sole discretion, all utility lines and facilities serving the Project and located therein will be located underground. By virtue of any such easement and facilities, it will be expressly permissible for the providing utility company or other supplier or Person, with respect to the portions of the Project Land so encumbered, to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, to cut and remove any trees, bushes, or shrubbery, to grade, excavate, or fill, or to take any other similar action reasonable necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

2. Easement for Encroachment. If (i) any Improvements which are constructed as Association Property or upon Association Property, or (ii) any Improvements which are specifically constructed upon a Lot (subject to the limitation describe below), encroach upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of such Improvements, and such Improvements have been constructed, reconstructed or repaired in accordance with

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

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

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

- i. the right of the Association to suspend the voting rights and rights to use the Association Property of any Residential Owner for any period during which Assessments against his Living Unit or Lot remain unpaid;
- ii. the right of the Association to grant permits, licenses and easements over the Association Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project;
- iii. all provisions set forth in the Association Documents, including the easements granted and reserved in this Declaration.
- iv. Declarant's right to add Additional Land to this Declaration and the rights to grant easements for the benefit of any such Additional Land added to this Declaration.
- v. All existing easements of record.

5. Project Drainage Easement. An easement is hereby established over, under, across and upon the Project Land for the benefit of the Project Land (the "Project Drainage Easement"). The Project Drainage Easement shall be for the purpose of installing, constructing, maintaining, using, operating, repairing and replacing so much of the Project Drainage System as may be within the burdened property as may be required to provide storm water control for the benefited property in accordance with the approved development plans for the Project. The Project Drainage Easement shall burden and benefit all portions of the Project Land, and shall be appurtenant to the Project Land. The location of the Project Drainage Easement on such burdened property shall be as reflected on the Final Plat of the applicable property. The Project Drainage Easement also includes reasonable rights to enter upon the burdened property in order to access the locations, facilities, and installations of the Project Drainage System thereon. Such rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action that Declarant or the Association deem reasonably necessary or appropriate. After such action has been completed, Declarant or the Association (as applicable) shall grade and seed the affected property and otherwise restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant and the Association shall give reasonable notice of its intent to take such action to all affected Residential Owners.

6. Sale and Development Easement. An easement in favor of Declarant over, upon, across and under the Project Land as may be reasonably required in connection with the development, construction, sale and promotion, or

leasing, of any Lot or Living Unit within the Project or within any other property owned by Declarant, provided that no such easement shall be located within or upon any Living Unit and shall not materially adversely impair or diminish any Residential Owner's use or enjoyment of such Residential Owner's Lot or Living Unit.

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

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

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

10. PSNC Easement. A portion of the Project Land is subject to a thirty five foot (35') easement recorded in Book 199, Page 318 to Public Service Company of North Carolina, Inc. ("PSNC") pursuant to which PSNC has the right to keep the area encumbered by the easement clear of all trees, undergrowth and other obstructions interfering with PSNC's use of the easement for the installation and maintenance of a gas pipeline and related facilities. The PSNC easement is located primarily on Association Property as shown on the Site Plan. No trees, shrubbery, fences, walls or other structures shall be installed or erected on any portion of the Project Land encumbered by the PSNC easement, including any applicable portions of the Association Property or ant Lots.

11. Stormwater Agreement Easement. The City shall have the same rights as the Association over, under and upon the portions of the Project Land that provide access to and from the Ponds, for reasonable rights of access for persons and equipment to monitor, construct, install, maintain, alter, inspect, remove, relocate, replace, and repair the Ponds and to maintain and correct drainage or surface water runoff in accordance with the provisions of the City Stormwater Agreement(s) or other agreement benefiting the City and in effect at the time. Such rights expressly include the right of the City to perform the obligations of the Association if the Association fails to adequately operate, maintain, keep, repair, replace and reconstruct all or any portion of the Ponds, in accordance with and as provided in the City Stormwater Agreements or other agreement benefiting the City and in effect at the time.

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

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

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

ARTICLE 9 MAINTENANCE AND REPAIR

A. By the Association.

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

2. Services Provided for the Lots and Living Units. The Association shall be responsible for maintaining the grass, plants, shrubs, trees, and landscaping, (hereinafter the "Yard Improvements") on the Lots installed by the Declarant or the Association. The Association shall also maintain any Yard Improvements installed by a Residential Owner with prior approval by affirmative vote of a majority of the Members of each Class, and prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping), provided, however, that: (i) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (ii) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Residential Owner or any utility company or Governmental Authority.

Following the expiration of Declarant's warranty period for a Living Unit, the Association shall also be obligated to make annual inspections of the exterior walls and siding of the Living Units conveyed by Declarant and to compile a report of such inspection regarding any portions of the Living Units in need of power-washing or re-caulking. The Association shall provide a copy of the inspection report to each of the Residential Owners, and if the inspection report indicates the need to power-wash or re-caulk any portions of a Living Unit, the Residential Owner of the applicable Living Unit shall thereafter as soon as reasonably possible, power-wash and re-caulk the applicable portions of such Living Unit as recommended by the inspection report.

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

limited to, a special assessment or increased annual assessment for that Living Unit, as the Association might establish in such written acceptance.

B. By the Residential Owners.

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

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

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

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

2. The following provisions shall apply to all party walls constructed in the Project: (i) The cost of reasonable repair and maintenance of a party wall shall be shared by the Residential Owners who make use of the wall in proportion to such use; (ii) If a party wall is destroyed or damaged by fire or other casualty, any Residential Owner who has used the wall may restore it. If other Residential Owners make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; subject, however, to the right of any Residential Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions; (iii) The Residential Owner may construct or reconstruct a party wall subject to and within the limitations of architectural control and other limitations of this Declaration with the right to go upon the adjoining Lot to the extent reasonably necessary to perform the construction. The construction shall be done expeditiously. Upon completion of the construction, the Residential Owner shall restore, as is reasonably practicable, the adjoining Lot to as near the same condition which prevailed on or before the commencement of the construction; (iv) The right of any Residential Owner to contribution from any other Residential Owner under this Section C.2 shall be appurtenant to the land and shall pass to the Residential Owner's successors in title; and (v) If any Residential Owner desires to sell his Living Unit, he may, in order to assure a prospective purchaser that no adjoining Residential Owner(s) has a right of contribution as provided in this Article, request that the adjoining Residential Owner(s) provide a certification that no

right of contribution exists. It shall be the duty of each adjoining Residential Owner to make a certification as to whether there is any pending claim of contribution immediately upon request and without charge.

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

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

D. Inspections by Declarant.

1. Structural. Declarant shall have the right to perform periodic inspections of the structural Improvements located upon each Lot, including but not limited to, the roof, foundation, and exterior wall of the Living Unit situated on the Lot. Declarant shall provide a Residential Owner with reasonable advance notice of Declarant's intent to perform such inspection. Each Residential Owner shall cooperate with Declarant as is reasonably necessary for Declarant to be able to complete an accurate and thorough inspection of the structural components of such Residential Owner's Living Unit. No Residential Owner shall take any action that would disrupt, prevent or limit Declarant's ability to perform such inspection(s).

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

ARTICLE 10
ARCHITECTURAL CONTROL

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

B. Purpose. The Committee is established to provide a system of review for the construction or modification of all Improvements within the Project. No Improvement shall be commenced, improved or altered, nor shall any grading,

excavation or change of exterior color or other work which in any way alters the exterior appearance of an Improvement be done without the prior written approval of the Committee.

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

D. Requirement of Committee Approval. No Improvement of any kind shall be erected, placed or maintained on the Project Land, and no addition, alteration, modification or change to any Improvement on the Project Land shall be made without the prior written approval of the Committee. For purposes of this Declaration, Declarant Improvements means any Improvement erected, placed, or maintained with the approval of Declarant, including, without limitation, any building, wall, fence, swimming pool, or screened enclosure, constructed, installed or placed by or with the approval of Declarant prior to the Termination of Declarant Control (collectively, "Declarant Improvements"). Declarant Improvements are not subject to the approval of the Committee and are deemed to conform to the plan of development for the Project Land.

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

F. Scope of Review. The Committee shall review and approve or disapprove all Plans and Submissions solely on the basis of aesthetic standards as to the aesthetic quality of materials and workmanship to be used, suitability and harmony of location, structure and external design in relation to surrounding topography and structures and the overall benefit or detriment which would result to the immediate vicinity and to the Project as a whole and any other factors deemed relevant to the review by the Committee in its opinion, reasonably exercised. The Committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, color schemes, exterior finishes and

materials and similar features, and shall not be responsible for reviewing, nor shall its approval of any Plans be deemed approval of, any design or plan from the standpoint of structural safety or conformance with building or other codes.

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

H. Enforcement. There is specifically reserved unto the Committee the right of entry and inspection upon any Lot or other portion of the Project Land for the purpose of determination by the Committee whether there exists any Improvement which violates the terms of any approval by the Committee or the terms of this Declaration. Except in emergencies, any exercise of the right of entry and inspection by the Committee hereunder should be made only upon reasonable notice given to the Residential Owner of record at least twenty-four (24) hours in advance of such entry. The Association, acting pursuant to the direction of the Committee, is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any Improvement, or to remove any unapproved Improvements, the prevailing party in such litigation shall be entitled to recover all Legal Fees incurred in connection therewith. The Association shall indemnify and hold harmless any member of the Committee from all costs, expenses and liabilities, including attorneys fees incurred by virtue of any member's service as a member of the Committee, provided such member acted in good faith and without malice.

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

ARTICLE 11 USE RESTRICTIONS

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

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

B. Non-Residential Activities or Uses. No trade, business, profession or commercial activity, or any other non residential use shall be conducted on the Property or within any Lot or Living Unit without the consent of the Board except that a Residential Owner or occupant residing in a Living Unit may conduct business activities within the Living Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Living Unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve door-to-door solicitation of residents noticeably greater than that which is typical of Living Units in which no business activity is being conducted; and (v) the business activity is consistent with the character of the Project, and does not constitute a nuisance, a hazardous or offensive use, or a threat to the security or safety of others, (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Project which is beyond the level of traffic and vehicular parking that occurs in residential developments similar to the Project, as the Board determines in its sole discretion. The foregoing limitations shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities, provided that such activities may not be held on any one Lot more than once in any three-month period and, when held, may not exceed two (2) consecutive days in duration. The foregoing shall not prohibit a Residential Owner from leasing his Living Unit.

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

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

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

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

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

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

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

H. Leases. No portion of a Living Unit (other than an entire Living Unit) may be rented. All leases must be in writing and shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles, Bylaws, of applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Living Units. No lease shall be for a period of less than six (6) months without the approval of the Board. A copy of the proposed lease must be delivered to the Association prior to occupancy by the tenant. The Residential Owner of a leased Living Unit shall be jointly and severally liable with his tenant to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association whether before or after such lease was entered into.

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

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

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

L. Additions and Alterations. No Living Unit shall be enlarged by any addition thereto or to any part thereof, and no Residential Owner shall make any improvement, addition, or alteration to the exterior of his Living Unit, including,

without limitation, the painting, staining, or varnishing of the exterior of the Living Unit or re-roofing with shingles of a different color or material, without the prior written approval of the Committee, which approval may be withheld for purely aesthetic reasons.

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

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

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

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

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

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

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

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

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

U. Ponds. The rules and regulations of the Association, as published and amended from time to time, may contain rules, regulations and requirements concerning the use of the Ponds and any open space or other areas surrounding the Ponds, which shall be in addition to any provisions of this Declaration. There shall be no swimming, use of personal flotation devices, or boating of any type (whether powered or not) on the Ponds. No Residential Owner shall construct or install any piers or docks on any portion of the Ponds, or on any portion of a Lot which abuts a Pond, provided, however, that the Declarant or the Association may construct a pier or dock on or adjacent to a Pond for the use and enjoyment of the Residential Owners and their family members, guests and invitees. No Residential Owner shall be permitted to use water from the Ponds for irrigation or for any other purpose whatsoever. Neither the Declarant nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the Ponds.

V. Swimming Pools. No swimming pools, spas, or the like, shall be permitted in the Project, except that small, inflatable wading pools shall be permitted.

W. Fences and Walls. No fence or wall shall be erected on any Lot within the Project except the fences originally installed by Declarant and fences that are identical to the fences installed by Declaration in size, materials, design and location, and are approved in writing by the Committee. Nothing in this Section shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot or Lots, nor shall anything in this Section apply to any fence installed by the Declarant at any entrance to or along any street within the Project.

X. Mailboxes. No mailboxes are permitted to be installed on any Lot. All mailboxes for the Dwelling Units shall be located in mail kiosks on Association Property, as indicated on the Site Plan.

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

Z. Wetland Areas. No Residential Owner shall remove native vegetation that becomes established within any wetland areas located on or adjacent to any portion of the Project Land. Removal includes dredging, the application of herbicide, and cutting. No Residential Owner shall add or introduce additional vegetation or other forms of plantlife or landscaping within any wetland areas located on or adjacent to any portion of the Project Land. Residential Owners should address any question regarding authorized activities within any wetland areas to the applicable Governmental Authorities. No Residential Owner may construct or maintain any building, residence, or structure, or undertake or perform any activity in any wetland areas without the prior approval of the Association and the applicable Governmental Authorities and utility providers.

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

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

CC. Subdivision and Partition. No Lot on the Residential Land shall be subdivided without the Committee's prior written consent except by Declarant.

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

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

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

ARTICLE 12 ADDITIONAL LAND; WITHDRAWAL; BOUNDARY ADJUSTMENTS

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

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

any contiguous property approved for annexation by the Members after the Turnover Date is thereafter made part of the Project, reference herein to the Project Land shall be deemed to include such property.

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

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

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

ARTICLE 13

ENFORCEMENT; NON-MONETARY DEFAULTS; ASSOCIATION REMEDIES

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

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

1. Impose a fine against the Residential Owner or tenant as provided in this Article; and/or
2. Commence an action to enforce the performance on the part of the Residential Owner or tenant, or for such equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

3. Commence an action to recover damages; and/or

4. Take any and all actions reasonably necessary to correct such failure, which action may include, where applicable, but is not limited to, removing any addition, alteration, Improvement or change which has not been approved by the "Committee" or erected in accordance with the Committee's approval (as herein defined), or performing any maintenance required to be performed by this Declaration.

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

C. Fines. The amount of any fine shall be determined by the Board, and shall not exceed any amount mandated by applicable law, if any. Prior to imposing any fine, the Residential Owner or tenant shall be afforded an opportunity for a hearing after reasonable notice to the Residential Owner or tenant of not less than fourteen (14) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of this Declaration, Bylaws or rules and regulations which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association. The Residential Owner of a leased Living Unit shall have the right to participate in any hearing involving the tenant of such Living Unit, and the Association shall provide notice to the Residential Owner of such Living Unit concurrently with the Association's notice to the tenant of the subject Living Unit. The Residential Owner or tenant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Residential Owner or tenant. If the Residential Owner or tenant fails to attend the hearing as set by the Board, the Residential Owner or tenant shall be deemed to have admitted the allegations contained in the notice to the Residential Owner or tenant. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the Board's decision at the hearing. Any fine levied against a Residential Owner shall be deemed an Individual Expense Assessment, and if not paid when due all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant as hereinafter provided.

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

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

Owner or any resident of a Living Unit, shall also be deemed a violation by the Residential Owner, and shall subject the Residential Owner to the same liability as if the violation was that of the Residential Owner.

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

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

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

ARTICLE 14 AMENDMENT

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

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

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

Members at any regular or special meeting of the Association called and held in accordance with the Bylaws evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

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

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

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

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

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

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

ARTICLE 15
GENERAL PROVISIONS

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

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

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

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

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

F. Certain Rights of Declarant. Improvements constructed or installed by Declarant shall not be subject to the approval of the Association or the Committee. During the period that Improvements constructed by Declarant are owned by Declarant, Declarant's Improvements shall not be subject to the provisions and requirements of this Declaration. Declarant reserves the right for Declarant and its nominees, to enter into and transact on the Project Land any business necessary to consummate the sale, lease or encumbrance of Lots and Living Units or real property including, but not limited to, the right to maintain models and a sales and/or leasing office, place signs, employ sales and leasing personnel, use the Association Property and show Living Units. Declarant reserves the right to make repairs to the Association Property and to carry on construction activity for the benefit of the Project Land, and its nominees may exercise the foregoing rights applicable to each without notifying the Association. Any such models, sales and/or leasing office, signs and any other items pertaining to such sales or leasing efforts shall not be considered a part of the Association Property and shall remain the property of Declarant, or its nominees, as applicable. This Section may not be suspended, superseded or

modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Association Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Project Land or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Project Land as a result of the foreclosure of any mortgage encumbering any portion of the Project Land securing any such loan to Declarant or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Association Documents, shall terminate upon Declarant no longer owning any portion of the Project Land (and having any equitable or legal interest therein) or upon such earlier date as Declarant shall notify the Association in writing of such party's voluntary election to relinquish the aforesaid rights and privileges.

G. Association's Indemnification. The Association covenants and agrees that it will indemnify and save harmless Declarant and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Project Land or the appurtenances thereto from and against all costs, Legal Fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. Included in the foregoing provisions of indemnification are any expenses that Declarant may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the Association. The indemnification provisions of this Section shall not apply to any expenses which may be incurred by Declarant to avoid the performance of any of the obligations to be kept and performed by Declarant, or any liability which may be incurred by a Residential Owner as a result of ownership of a Lot or a Living Unit.

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

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

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

K. Rights of Mortgagees.

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

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

- i. Any condemnation, loss or casualty loss which affects any material portion of the Association Property;
- ii. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- iii. Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Living Unit or Lot; and
- iv. Any failure by a Residential Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his obligations under the Association Documents, where such failure has continued for a period of sixty (60) days.

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

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

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

M. Rights and Requirements of Governmental Authorities. Any Governmental Authority or agency, including, but not limited to the City or the County, their agents, and employees, shall have the right of immediate access to the Project Land at all times if necessary for the preservation of public health, safety and welfare. Should the Association

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

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

DECLARANT:

CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation,
a Nevada corporation

Its: Managing General Partner

(SEAL)

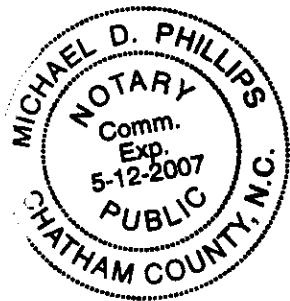
By: *W. Hampton Phillips*
Division President

STATE OF NORTH CAROLINA §

COUNTY OF Chatham §

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

WITNESS my hand and official seal, this the 29 day of April, 2004.



Michael D. Phillips
Notary Public

Michael D. Phillips
Typed, Printed or Stamped Name of Notary
My Commission Expires: 5.12.2007

I:\DIVISION\RALEIGH\LDavis Estate-Southpoint Terrace\Association\southpterrac-declaration-2.doc

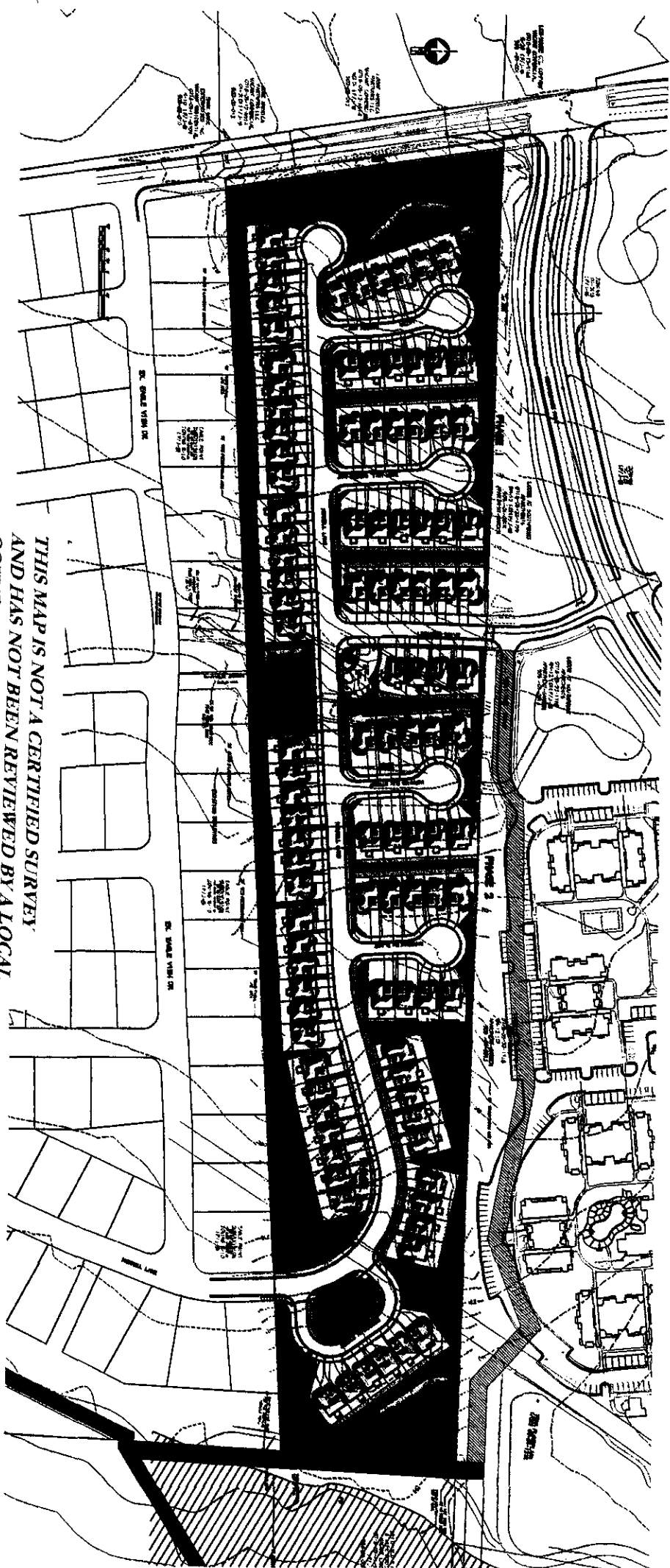
EXHIBIT A

Legal Description of Project Land

Lying and being in Triangle Township, Durham County, North Carolina and being more particularly described as follows:

Beginning at an iron pipe found in the southeast line of property now or formerly owned by The Lodge at Southpoint as shown on a plat recorded in Plat Book 148, Page 27, Durham County Registry, said iron pipe being the northwest corner of property belonging now or formerly to R.F. Whitfield as said property is described in Book 396, Page 778, Durham County Registry; thence from said point of beginning along and with the western line of property belonging now or formerly to R. F. Whitfield South 03 degrees 12' 04" West 305.01 feet to an iron pipe; thence along and with the northern line of Eagles Pointe Subdivision South 86 degrees 46' 28" West 2222.42 feet to a point in the eastern right-of-way of NC Highway 751 (80 foot public right-of-way); thence along and with the eastern right-of-way of said NC Highway 751 North 08 degrees 39' 24" West 489.11 feet to a point; thence along and with the southern line of The Lodge at Southpoint South 88 degrees 39' 43" East 2310.18 feet to the POINT AND PLACE OF BEGINNING; containing 893,193 square feet or 20.50 acres, more or less, as shown on a plat entitled "Boundary Survey Property of Lizzie T. Davis Heirs," dated August 7-27, 2002 (Revised September 16, 2003) and prepared by Priest, Craven & Associates, Inc. (Drawing No. 2002-43), to which survey reference is hereby made for a more particular description.

EXHIBIT B



**THIS MAP IS NOT A CERTIFIED SURVEY
AND HAS NOT BEEN REVIEWED BY A LOCAL
GOVERNMENT AGENCY FOR COMPLIANCE
WITH ANY APPLICABLE LAND
DEVELOPMENT REGULATIONS**

<p>A MULTI-FAMILY ATTACHED RESIDENTIAL DEVELOPMENT SOUTHPPOINT TERRACE DURHAM, NORTH CAROLINA</p>		<p>SCALE: NTS DATE: FEBRUARY 27, 2009 PROJECT: 2009-008 (00)</p>		<p>PRELIMINARY SITE LAYOUT</p>		<p>DATE: FEBRUARY 27, 2009 TIME: 10:00 AM BY: [Signature]</p>		<p>PRIEST CRAVEN & ASSOCIATES, INC. LAND USE CONSULTANTS / PLANNERS / ARCHITECTS / SURVEYORS / ENGINEERS 300 S. Cooper Street, Suite 200, Durham, NC 27609 Phone: 919.286.1100 Fax: 919.286.1101</p>		<p>2 OF 3</p>	
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2004013613

FOR REGISTRATION REGISTER OF DEEDS
Willie L. Govington
DURHAM COUNTY, NC
2004 MAR 17 01:08:01 PM
BK: 4315 PG: 328-336 FEE: \$35.00

INSTRUMENT # 2004013613

Prepared by City of Durham Department of Public Works, 101 City Hall Plaza, 3rd Floor, Durham, NC, 27701
Return to Department of Public Works - Storm Water Services Division

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

STORMWATER FACILITY AGREEMENT
AND COVENANT VERSION 082203

THIS AGREEMENT ("Agreement") is made and entered into this 3rd day of March, 2004 by and between Centex Homes, a Nevada General Partnership ("Permittee") and the City of Durham, a North Carolina municipal corporation ("City").

1. Background

a. This Agreement concerns the perpetual maintenance of a stormwater facility ("the Facility") on property owned by the Permittee, and related requirements regarding the Facility. The City has adopted, and from time to time will adopt, stormwater management regulations applicable to certain real property in which Permittee holds an interest. That property is generally located **southeast of the intersection of NC 751 and Renaissance Parkway, and is commonly known as the Southpoint Terrace** and is described in the deeds recorded with the Durham County Register of Deeds at the following book and page numbers: **Deed Book 164, Page 15**. This development hereafter is referred to as "the Property". Within the Property may be a particular tract or group of tracts owned by the Permittee upon which the Facility is located. That property is found at **Plat Book 15, Page 38** and is referred to in this Agreement as "the Site". Within the Site is the Facility which is a **Stormwater Constructed Wetland (DP 1.1) designed to have a 10-year, 24-hour storm event surface area of 7,725 square feet. It is located on the northwest side of the Property. The Site and the Property may be the same (see definition of Site in c. below).**

b. The City's ordinances require that stormwater facilities be created and maintained on some properties. The ordinances further require that, before an occupancy permit may be issued for any structure constructed within a property which includes a stormwater facility, the owner must enter into an Agreement with the City to provide for the operation and maintenance of the Facility. This Agreement is intended to comply with that requirement.

c. **Definitions.** The terms defined above are supplemented by the following terms, which, as used in this Agreement, are defined as follows:

"Director of Public Works" means the City's Director of Public Works or his or her designee.

"City Manager" means the Durham City Manager or an Assistant City Manager.

"Facility" means the privately-owned stormwater control facility that is the subject of this Agreement, and that satisfies the requirements of the City's ordinances and regulations for such facilities.

"Permittee" means the party executing this Agreement with the City and successor owners of the Site.

"Person" includes natural persons, business trusts, joint ventures, governments, governmental subdivisions, governmental agencies, firms, corporations, associations, partnerships, and other legal entities.

"Property" means the larger development that, when developed, requires a stormwater Facility to serve it.

"Site" means the one or more lots or tracts within the Property, one of which contains the stormwater Facility. In a residential development, such lots will be those that are intended to be owned by all residents, through a homeowners' association. In nonresidential developments and apartments, the Site will generally be the same as the Property.

"Transfer" includes sell, convey, assign or alienate all or a portion of an interest in the Site or Property. Transfers do not include acquisitions of mortgages or similar encumbrances.

2. Fees: Title Opinion: Construction Inspections and Maintenance.

The Permittee shall cause the following to be done:

a. At the time of delivering this Agreement executed by the Permittee to the City, pay the stormwater permit fee in the amount determined by the Director of Public Works:

b. Provide to the City an opinion of title of the Property or the Site, as directed by the City, by an attorney licensed to practice law in North Carolina and update that opinion to the time of recording this Agreement. The opinion(s) shall show that the party or parties executing this Agreement have title, in fee, to the Property, or to the Site. The Director of Public Works shall indicate whether the opinion shall pertain to the Property or the Site, if such are different. The opinion shall indicate no liens or encumbrances that the Director of Public Works deems to interfere with the City's having adequate security in accordance with Section 6.

c. Construct the Facility in accordance with the plans approved by the Director of Public Works before applying for a certificate of compliance for any structure on the Property, it being agreed that no building on the Property is eligible for a certificate of compliance until the Facility has been so constructed;

d. Inspect the Facility, perform routine maintenance on the Facility, and make all necessary repairs to the Facility, all as directed by the Director of Public Works. This shall include the following work:

i. Grass and Vegetative Cover.

A. Design, install and maintain landscaping around the Facility so that it will not reduce the capacity or hinder the operation and maintenance of the Facility.

B. Maintain the vegetative cover of the Facility to prevent erosion.

C. Except as provided in 2 (d) (i) (D) below, mow the area as needed to prevent the grass and other plants (other than maintained shrubs and trees) from exceeding a height of fifteen (15) inches.

D. Keep open channels free of undesirable growth and maintained to the design cross-section and area as shown on the Plans, and keep the height of the vegetation on the slopes and bottom from exceeding eight (8) inches.

- E. Replace landscape materials that fail to live and prosper, as required by the Director of Public Works.
- ii. Embankments, Slopes, and Dams. Inspect and repair embankments, slopes, and dams for damage from erosion, sloughing, animal burrows, and woody vegetation.
- iii. Removal and Disposal of Trash, Debris, and Sediment.
A. Keep the Facility's outlet structure cleared of all blockages.
B. Clean the channels and pipes as necessary to provide for the free conveyance of stormwater as designed.
C. Remove debris and sediment as needed to maintain the primary outlet capacity and Facility storage volume when the depth of the Facility has been reduced by more than one (1) foot from the design depth, or when the Facility's storage volume has been reduced by twenty percent (20%) from the design volume.
D. Remove all sediment from sediment forebays, traps, and basins.
- iv. Insects, Odors, and Algae.
A. Maintain the Facility in a manner to control odors and algae to the extent that the Director of Public Works determines to be necessary.
B. Apply, when and as directed by the Director of Public Works, a larvicide approved by the Durham County Health Department for insect control, and take other measures to control insects as directed by the Director of Public Works.
- v. Fencing. Nothing in this Agreement is intended to prevent the Permittee from placing fencing and other security measures near or around the Facility, provided that the Permittee shall first submit information on the proposed construction to the Director of Public Works and obtain her consent. The Director of Public Works shall grant permission if she finds that the fencing and other measures will not interfere with the Facility. Nothing in this Agreement is intended to affect the Permittee's obligation, if any, to exercise care with respect to persons who may enter the Site.
- e. Cause the Facility to be inspected, by a registered professional engineer or a registered landscape architect, on an annual basis beginning one year after the Facility is accepted by the Director of Public Works and, after each inspection, without specific request by the City, provide the Director of Public Works with two copies of such report. The Facility is accepted upon the Director of Public Works acceptance of the as-built plans of the Facility.
- f. If the Director of Public Works reasonably determines that the Facility is in need of maintenance or repair or other work, she shall so notify the Permittee, who shall promptly take necessary actions to maintain or repair the Facility, including doing any work specified by the Director of Public Works.

3. Transfer of the Property. If the Permittee proposes to Transfer any interest in the Site, the Permittee shall, prior to transfer:

a. Notify the intended Transferee that it is required to execute an Agreement, in a form approved by the Director of Public Works, and deliver the appropriately executed Agreement to the City, along with title opinions regarding the ownership by the Transferee; and

b. If the intended Transferee is an owners' association, unit owner's association, or homeowners' association, provide the Director of Public Works a copy of the association's recorded declaration. In addition, Permittee must ensure that the declaration provides:

- i. That the Facility is a part of the common elements and shall be subject to the Agreement;
- ii. That the requirements of this Agreement shall receive the highest priority for expenditures by the association except for City and County assessments, ad valorem property taxes, insurance, and any other expenditures which are required by law to have a higher priority;
- iii. That a separate fund shall be maintained by the association for the reconstruction and repair of the Facility, separate from the fund(s) for routine maintenance of the Facility and from all other funds;
- iv. That the reconstruction and repair fund shall contain at all times the dollar amount reasonably determined from time to time by the Director of Public Works to be adequate to pay for the probable reconstruction and repair cost for a three-year period; that the fund shall be listed as a separate line in the association's budget; and it shall be kept in an account insured by the FDIC or by another entity acceptable to the Director of Public Works;
- v. Upon the vote of 2/3 of the members of the association, special assessments shall be charged to each member of the association, to pay for the obligations under this Agreement;
- vi. That, to the extent permitted by law, the association shall not enter into voluntary dissolution unless the Facility is transferred to a Person who has executed an Agreement.

If the Permittee Transfers, or permits the Transfer of, an interest without complying with this Section 3, that failure to comply shall not invalidate the Transfer, but Transferee shall remain obligated under this Agreement. In addition, the City may in its discretion require the surety referred to in Section 4 to pay the City some or all of the Face Amount (defined in Section 4).

4. Bond/Security. In order to secure the Permittee's obligations under this Agreement, the Permittee shall immediately deliver to the City one or more bonds, sureties, or similar instruments which are acceptable to the City in substance, form, and guarantor, in the amount of **seventy eight thousand, six hundred and nine dollars (\$78,609.00)** ("the Face Amount"), which is twenty (20) times the average annual maintenance cost estimated by the Director of Public Works. The bond or other instrument shall remain in effect permanently unless the City of Durham (by its City Manager) and the Permittee execute an Agreement, under the official seal of the City of Durham, stating that "the Permittee's obligation under Section 4 of the Stormwater Facility Agreement and Covenant made on [date] between the City of Durham and [name of Permittee] to provide a bond or other instrument has been changed as follows [stating the new requirement or that it has been eliminated]." If the Director of Public Works notifies the Permittee that an instrument, surety, or other guarantor is unacceptable to the Director of Public Works, the Permittee shall, within thirty (30) days substitute an acceptable instrument, surety, or other guarantor or pay the City the Face Amount.

5. Right of Entry on Site. The Permittee hereby grants to the City the right of ingress, egress, and regress over and across the Property and the Site for the purpose of inspecting the Facility and for the purpose of correcting, repairing, replacing, and maintaining the Facility and exercising the other rights of the City that are provided for by this Agreement.

6. Remedies for Violations; Lien on Property; Future Obligations Secured.

a. If the Permittee fails to perform its obligations under this Agreement, the City may send notice to the Permittee to demand that it so perform. If the Permittee fails to comply with such demand within thirty (30) days from the date of mailing thereof, the City may enter the Property and the Site and perform some or all of the work that the Permittee was required to do in carrying out its obligations under this Agreement, and the City may do any of such work as the Director of Public Works deems appropriate to place the Facility in proper working condition. The Permittee shall pay the City for the cost incurred by the City to do that work, including reasonable amounts, calculated under procedures established by the Director of Public Works, for the City's overhead and use of City employees, equipment, and property. Interest shall accrue on those monetary obligations of the Permittee at the rate of one and one-half percent (1 - ½%) per month until paid. Without limiting other remedies available to the City, including recourse to the bond or other instrument referred to in Section 4, it is agreed that those monetary obligations shall be a lien on the Site and may be collected as unpaid taxes in accordance with N.C.G.S. 160A-193. If the City collects on the bond, letter of credit, or other instrument furnished pursuant to this Agreement the proceeds shall be applied to the amounts due under this paragraph and the Permittee shall replace the bond/security to the full face amount in Section 4.

b. This Agreement may be enforced by any remedy available in law or in equity, including but not limited to injunctive relief. The remedies provided by this Section 6 are cumulative, and are in addition to any other remedies available to the City.

c. The Permittee shall pay an attorney's fee of fifteen percent (15%) of the outstanding balance of the amount owed to the City under Section 6(a) of this Agreement if the balance is collected by or through an attorney at law. The liability of a surety or other Person guaranteeing the Permittee's obligations under this Agreement shall include said attorney's fees.

d. The City may withhold any or all permits or other approvals necessary to complete the development of the Property if the Permittee has failed to perform its obligations under this Agreement.

7. Release of Lien by Certificate.

a. Duty to Furnish a Certificate -- On the request of any of the Persons prescribed in subdivision (a) (i) below, and upon the condition prescribed by subsection (a) (ii) below, the Director of Public Works shall furnish a written certificate stating the amount of any monetary liabilities owed by the Permittee to the City pursuant to this Agreement (together with any interest and costs accrued thereon) that are a lien on the Property or the Site.

- i. **Who May Make Request** -- Any of the following Persons shall be entitled to request the certificate:
 - A. An owner of the Property;
 - B. An occupant of the Property;
 - C. A Person having a lien on the Property;
 - D. A Person having a legal interest or estate in the Property;
 - E. A Person having a contract to purchase or lease the Property or a Person having contracted to make a loan secured by the Property;
 - F. The authorized agent or attorney of any Person described in subdivisions (a) (i) (A) through (E) above.

- ii. **Duty of Person Making Request** -- The Director of Public Works shall not be required to furnish a certificate unless the Person making the request specifies the name of the Permittee, specifies the Book and Page in the office of Register of Deeds where this Agreement or a memorandum thereof is recorded, and provides a copy of the first page of this Agreement.

- b. **Reliance on the Certificate** -- When a certificate has been issued as provided in Section 7(a) above, all monetary liabilities owed pursuant to this Agreement that have accrued against the Site or the Property for the period covered by the certificate shall cease to be a lien against the Property, except to the extent of monetary liabilities stated to be due in the certificate, as to all Persons obtaining such a certificate and their successors in interest who rely on the certificate:

- i. By paying the amount of monetary liabilities stated therein to be a lien on the Property;
- ii. By purchasing or leasing the Property; or
- iii. By lending money secured by the Property.

- c. Without limiting the effect of this Section 7, it is agreed that no oral statement made by any City employee as to the amount of monetary liabilities that are a lien on the Property pursuant to this Agreement shall bind the City.

8. **Warranty.** The Permittee covenants with the City, that Permittee is seized of the Property and the Site in fee simple, has the right to convey the same in fee simple, that title is free and clear of all encumbrances, and that Permittee will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions stated in the attorney's opinion of title provided in accordance with Section 2 (b) above.

9. **Notice.** When a notice is required or permitted by this Agreement, it shall be given in writing to the City delivered to the Director of Public Works, 101 City Hall Plaza, Durham, NC 27701, or upon the Permittee, at **Centex Homes, a Nevada General Partnership, 2301 Sugar Bush Road, Suite 400, Raleigh, NC 27612, Attention: Hampton Pitts (919) 760-1110.** If mailed, the notice shall be by certified mail, return receipt requested. These addresses may be changed by sending a notice of the new address attached to a copy of this Agreement.

10. **No Waiver of Breach.** If the City waives any breach of any obligation or covenant in this Agreement, that waiver shall not constitute a waiver of any other or future breach of the same or any other obligation or covenant. The City's failure to exercise any right under this Agreement shall not constitute a waiver of that right.

11a. Agreement Binding until City Waives Agreement. This Agreement and all the covenants in it shall bind Permittee until the City releases Permittee in writing, signed by the Director of Public Works, from the obligations of this Agreement. The City shall release Permittee from the obligations of this Agreement when a responsible and financially capable successor has signed an Agreement with the City. The responsibility and financial capacity of any successor shall be determined solely by the City in its reasonable discretion.

11b. Covenants Herein to Run with the Land. The obligations of this Agreement run with the Property and with the Site and shall bind all owners of any interest in the Property and the Site. However, where the City has, by written release described in 11a above, accepted an owner of the Site as being responsible and financially capable, and such successor owner owns the Site, but not the Property, then this Agreement shall thereafter run solely with the Site and not with the Property. By way of example and not limitation, all owners of any interest in the Site shall be jointly and severally liable to fulfill the Permittee's obligations under this Agreement as if each of them were the Permittee. Unless the context otherwise requires, the term "Permittee" in this Agreement includes all such owners.

12. Benefit of this Agreement.

a. The approval by the City or any employee of the City of any plans or of any work referred to in this Agreement shall not create any liability in the City or its officers, officials, or employees for the plans or the work; but nothing herein is intended to release any other Person for any liability for those plans or work.

b. The performance by the City or any employee of the City of any work referred to in this Agreement shall not create any liability in the City or its officers, officials, or employees for the work; but nothing herein is intended to release any other Person for any liability for that work.

c. Except to the extent otherwise explicitly provided in this Agreement, this Agreement is not intended to be for the benefit of any Person other than the parties hereto and their heirs, successors, and assigns.

13. Interpretation of this Agreement. Unless the context requires otherwise, the singular includes the plural, the plural includes the singular, and the neuter includes the masculine and feminine. The captions and titles are for convenience only, and are not to be used to interpret the Agreement. The words "include" and "including" mean, respectively, "include but not limited to", and "including but not limited to".

14. Nondiscrimination Policy. The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.

15. Severability. Invalidation of any term or provision in this Agreement by a court of competent jurisdiction shall not invalidate the remaining terms and provisions.

IN WITNESS WHEREOF, the parties hereto have respectively set their hands and seals, or if corporate, have executed this under seal by their proper officers, the date first above written.

Centex Homes, a Nevada General Partnership

By: [Signature]
General Partner

STATE OF NORTH CAROLINA

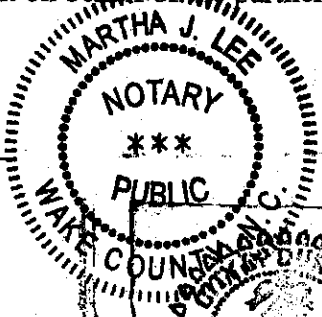
COUNTY OF DURHAM

State of NORTH CAROLINA

County of WAKE

I, a notary public in and for said county and state, certify that W. HAMPTON Potts personally (1) appeared before me this day, (2) stated that he or she is a general partner in **Centex Homes, a Nevada General Partnership**, (3) acknowledged that the foregoing agreement with the City of Durham carries on in the usual way the partnership's business, and (4) acknowledged the due execution of the agreement on behalf of the partnership. This the 18th day of FEBRUARY, 2004.

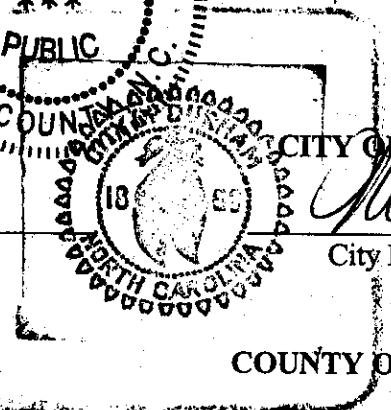
My commission expires: My Commission Expires 4-18-2006



[Signature]
Notary Public

ATTEST:

By: [Signature]
City Clerk
[Affix Municipal Seal]



[Signature]
City Manager

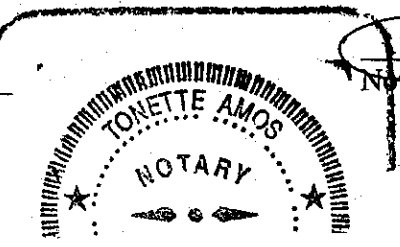
STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Tonette Amos, a notary public in and for the County of Durham, North Carolina certify that D. Amos personally appeared before me this day and acknowledged that he/she is City Clerk of the **CITY OF DURHAM**, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its name by its City Manager, sealed with its corporate seal, and attested by himself/herself as its said City Clerk or Deputy City Clerk.

Witness my hand and notarial seal, the 3rd day of March, 2004.

My commission expires: 07-17-07



[Signature]
Notary Public

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act. [Signature] 2/20/04
FINANCE OFFICER DATE

EXHIBIT D

Existing City Stormwater Agreements



2004013614

FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2004 MAR 17 01:08:01 PM
BK:4315 PG:337-345 FEE:\$35.00

INSTRUMENT # 2004013614

*Prepared by City of Durham Department of Public Works, 101 City Hall Plaza, 3rd Floor, Durham, NC, 27701
Return to Department of Public Works - Storm Water Services Division*

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

STORMWATER FACILITY AGREEMENT
AND COVENANT VERSION 082203

THIS AGREEMENT ("Agreement") is made and entered into this 3rd day of March, 2004 by and between Centex Homes, a Nevada General Partnership ("Permittee") and the City of Durham, a North Carolina municipal corporation ("City").

1. Background

a. This Agreement concerns the perpetual maintenance of a stormwater facility ("the Facility") on property owned by the Permittee, and related requirements regarding the Facility. The City has adopted, and from time to time will adopt, stormwater management regulations applicable to certain real property in which Permittee holds an interest. That property is generally located **southeast of the intersection of NC 751 and Renaissance Parkway, and is commonly known as the Southpoint Terrace** and is described in the deeds recorded with the Durham County Register of Deeds at the following book and page numbers: **Deed Book 164, Page 15**. This development hereafter is referred to as "the Property". Within the Property may be a particular tract or group of tracts owned by the Permittee upon which the Facility is located. That property is found at **Plat Book 15, Page 38** and is referred to in this Agreement as "the Site". Within the Site is the Facility which is a **Stormwater Constructed Wetland (DP 2.1) designed to have a 10-year, 24-hour storm event surface area of 8810 square feet. It is located on the south central side of the Property. The Site and the Property may be the same (see definition of Site in c. below).**

b. The City's ordinances require that stormwater facilities be created and maintained on some properties. The ordinances further require that, before an occupancy permit may be issued for any structure constructed within a property which includes a stormwater facility, the owner must enter into an Agreement with the City to provide for the operation and maintenance of the Facility. This Agreement is intended to comply with that requirement.

EXHIBIT D
Existing City Stormwater Agreements

c. Definitions. The terms defined above are supplemented by the following terms, which, as used in this Agreement, are defined as follows:

"Director of Public Works" means the City's Director of Public Works or his or her designee.

"City Manager" means the Durham City Manager or an Assistant City Manager.

"Facility" means the privately-owned stormwater control facility that is the subject of this Agreement, and that satisfies the requirements of the City's ordinances and regulations for such facilities.

"Permittee" means the party executing this Agreement with the City and successor owners of the Site.

"Person" includes natural persons, business trusts, joint ventures, governments, governmental subdivisions, governmental agencies, firms, corporations, associations, partnerships, and other legal entities.

"Property" means the larger development that, when developed, requires a stormwater Facility to serve it.

"Site" means the one or more lots or tracts within the Property, one of which contains the stormwater Facility. In a residential development, such lots will be those that are intended to be owned by all residents, through a homeowners' association. In nonresidential developments and apartments, the Site will generally be the same as the Property.

"Transfer" includes sell, convey, assign or alienate all or a portion of an interest in the Site or Property. Transfers do not include acquisitions of mortgages or similar encumbrances.

2. Fees: Title Opinion: Construction Inspections and Maintenance.

The Permittee shall cause the following to be done:

a. At the time of delivering this Agreement executed by the Permittee to the City, pay the stormwater permit fee in the amount determined by the Director of Public Works:

b. Provide to the City an opinion of title of the Property or the Site, as directed by the City, by an attorney licensed to practice law in North Carolina and update that opinion to the time of recording this Agreement. The opinion(s) shall show that the party or parties executing this Agreement have title, in fee, to the Property, or to the Site. The Director of Public Works shall indicate whether the opinion shall pertain to the Property or the Site, if such are different. The opinion shall indicate no liens or encumbrances that the Director of Public Works deems to interfere with the City's having adequate security in accordance with Section 6.

c. Construct the Facility in accordance with the plans approved by the Director of Public Works before applying for a certificate of compliance for any structure on the Property, it being agreed that no building on the Property is eligible for a certificate of compliance until the Facility has been so constructed;

d. Inspect the Facility, perform routine maintenance on the Facility, and make all necessary repairs to the Facility, all as directed by the Director of Public Works. This shall include the following work:

i. Grass and Vegetative Cover.

A. Design, install and maintain landscaping around the Facility so that it will not reduce the capacity or hinder the operation and maintenance of the Facility.

B. Maintain the vegetative cover of the Facility to prevent erosion.

C. Except as provided in 2 (d) (i) (D) below, mow the area as needed to prevent the grass and other plants (other than maintained shrubs and trees) from exceeding a height of fifteen (15) inches.

D. Keep open channels free of undesirable growth and maintained to the design cross-section and area as shown on the Plans, and keep the height of the vegetation on the slopes and bottom from exceeding eight (8) inches.

5. Right of Entry on Site. The Permittee hereby grants to the City the right of ingress, egress, and regress over and across the Property and the Site for the purpose of inspecting the Facility and for the purpose of correcting, repairing, replacing, and maintaining the Facility and exercising the other rights of the City that are provided for by this Agreement.

6. Remedies for Violations; Lien on Property; Future Obligations Secured.

a. If the Permittee fails to perform its obligations under this Agreement, the City may send notice to the Permittee to demand that it so perform. If the Permittee fails to comply with such demand within thirty (30) days from the date of mailing thereof, the City may enter the Property and the Site and perform some or all of the work that the Permittee was required to do in carrying out its obligations under this Agreement, and the City may do any of such work as the Director of Public Works deems appropriate to place the Facility in proper working condition. The Permittee shall pay the City for the cost incurred by the City to do that work, including reasonable amounts, calculated under procedures established by the Director of Public Works, for the City's overhead and use of City employees, equipment, and property. Interest shall accrue on those monetary obligations of the Permittee at the rate of one and one-half percent (1 - ½%) per month until paid. Without limiting other remedies available to the City, including recourse to the bond or other instrument referred to in Section 4, it is agreed that those monetary obligations shall be a lien on the Site and may be collected as unpaid taxes in accordance with N.C.G.S. 160A-193. If the City collects on the bond, letter of credit, or other instrument furnished pursuant to this Agreement the proceeds shall be applied to the amounts due under this paragraph and the Permittee shall replace the bond/security to the full face amount in Section 4.

b. This Agreement may be enforced by any remedy available in law or in equity, including but not limited to injunctive relief. The remedies provided by this Section 6 are cumulative, and are in addition to any other remedies available to the City.

c. The Permittee shall pay an attorney's fee of fifteen percent (15%) of the outstanding balance of the amount owed to the City under Section 6(a) of this Agreement if the balance is collected by or through an attorney at law. The liability of a surety or other Person guaranteeing the Permittee's obligations under this Agreement shall include said attorney's fees.

d. The City may withhold any or all permits or other approvals necessary to complete the development of the Property if the Permittee has failed to perform its obligations under this Agreement.

7. Release of Lien by Certificate.

a. Duty to Furnish a Certificate -- On the request of any of the Persons prescribed in subdivision (a) (i) below, and upon the condition prescribed by subsection (a) (ii) below, the Director of Public Works shall furnish a written certificate stating the amount of any monetary liabilities owed by the Permittee to the City pursuant to this Agreement (together with any interest and costs accrued thereon) that are a lien on the Property or the Site.

EXHIBIT D
Existing City Stormwater Agreements

- i. **Who May Make Request** -- Any of the following Persons shall be entitled to request the certificate:
 - A. An owner of the Property;
 - B. An occupant of the Property;
 - C. A Person having a lien on the Property;
 - D. A Person having a legal interest or estate in the Property;
 - E. A Person having a contract to purchase or lease the Property or a Person having contracted to make a loan secured by the Property;
 - F. The authorized agent or attorney of any Person described in subdivisions (a) (i) (A) through (E) above.

- ii. **Duty of Person Making Request** -- The Director of Public Works shall not be required to furnish a certificate unless the Person making the request specifies the name of the Permittee, specifies the Book and Page in the office of Register of Deeds where this Agreement or a memorandum thereof is recorded, and provides a copy of the first page of this Agreement.

- b. **Reliance on the Certificate** -- When a certificate has been issued as provided in Section 7(a) above, all monetary liabilities owed pursuant to this Agreement that have accrued against the Site or the Property for the period covered by the certificate shall cease to be a lien against the Property, except to the extent of monetary liabilities stated to be due in the certificate, as to all Persons obtaining such a certificate and their successors in interest who rely on the certificate:

- i. By paying the amount of monetary liabilities stated therein to be a lien on the Property;
- ii. By purchasing or leasing the Property; or
- iii. By lending money secured by the Property.

- c. Without limiting the effect of this Section 7, it is agreed that no oral statement made by any City employee as to the amount of monetary liabilities that are a lien on the Property pursuant to this Agreement shall bind the City.

8. **Warranty.** The Permittee covenants with the City, that Permittee is seized of the Property and the Site in fee simple, has the right to convey the same in fee simple, that title is free and clear of all encumbrances, and that Permittee will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions stated in the attorney's opinion of title provided in accordance with Section 2 (b) above.

9. **Notice.** When a notice is required or permitted by this Agreement, it shall be given in writing to the City delivered to the Director of Public Works, 101 City Hall Plaza, Durham, NC 27701, or upon the Permittee, at **Centex Homes, a Nevada General Partnership, 2301 Sugar Bush Road, Suite 400, Raleigh, NC 27612, Attention: Hampton Pitts (919) 760-1110.** If mailed, the notice shall be by certified mail, return receipt requested. These addresses may be changed by sending a notice of the new address attached to a copy of this Agreement.

10. **No Waiver of Breach.** If the City waives any breach of any obligation or covenant in this Agreement, that waiver shall not constitute a waiver of any other or future breach of the same or any other obligation or covenant. The City's failure to exercise any right under this Agreement shall not constitute a waiver of that right.

11a. Agreement Binding until City Waives Agreement. This Agreement and all the covenants in it shall bind Permittee until the City releases Permittee in writing, signed by the Director of Public Works, from the obligations of this Agreement. The City shall release Permittee from the obligations of this Agreement when a responsible and financially capable successor has signed an Agreement with the City. The responsibility and financial capacity of any successor shall be determined solely by the City in its reasonable discretion.

11b. Covenants Herein to Run with the Land. The obligations of this Agreement run with the Property and with the Site and shall bind all owners of any interest in the Property and the Site. However, where the City has, by written release described in 11a above, accepted an owner of the Site as being responsible and financially capable, and such successor owner owns the Site, but not the Property, then this Agreement shall thereafter run solely with the Site and not with the Property. By way of example and not limitation, all owners of any interest in the Site shall be jointly and severally liable to fulfill the Permittee's obligations under this Agreement as if each of them were the Permittee. Unless the context otherwise requires, the term "Permittee" in this Agreement includes all such owners.

12. Benefit of this Agreement.

a. The approval by the City or any employee of the City of any plans or of any work referred to in this Agreement shall not create any liability in the City or its officers, officials, or employees for the plans or the work; but nothing herein is intended to release any other Person for any liability for those plans or work.

b. The performance by the City or any employee of the City of any work referred to in this Agreement shall not create any liability in the City or its officers, officials, or employees for the work; but nothing herein is intended to release any other Person for any liability for that work.

c. Except to the extent otherwise explicitly provided in this Agreement, this Agreement is not intended to be for the benefit of any Person other than the parties hereto and their heirs, successors, and assigns.

13. Interpretation of this Agreement. Unless the context requires otherwise, the singular includes the plural, the plural includes the singular, and the neuter includes the masculine and feminine. The captions and titles are for convenience only, and are not to be used to interpret the Agreement. The words "include" and "including" mean, respectively, "include but not limited to", and "including but not limited to".

14. Nondiscrimination Policy. The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.

15. Severability. Invalidation of any term or provision in this Agreement by a court of competent jurisdiction shall not invalidate the remaining terms and provisions.

IN WITNESS WHEREOF, the parties hereto have respectively set their hands and seals, or if corporate, have executed this under seal by their proper officers, the date first above written.

EXHIBIT D

Existing City Stormwater Agreements

Centex Homes, a Nevada General Partnership

By: W. Hampton Pitts
General Partner

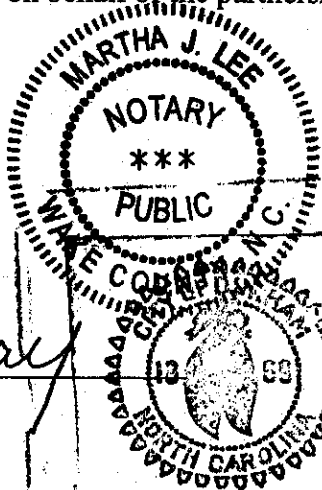
STATE OF NORTH CAROLINA

COUNTY OF DURHAM

State of NORTH CAROLINA
County of WAKE

I, a notary public in and for said county and state, certify that W. HAMPTON PITTS personally (1) appeared before me this day, (2) stated that he or she is a general partner in **Centex Homes, a Nevada General Partnership**, (3) acknowledged that the foregoing agreement with the City of Durham carries on in the usual way the partnership's business, and (4) acknowledged the due execution of the agreement on behalf of the partnership. This the 18th day of FEBRUARY, 2004.

My commission expires: My Commission Expires 4-18-2008



Martha J. Lee
Notary Public

ATTEST:

By: D. Ann Gray
City Clerk
[Affix Municipal Seal]

[Signature]
City Manager

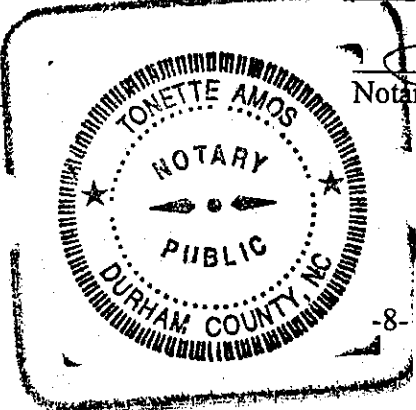
STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Tonette Amos, a notary public in and for the County of Durham, North Carolina certify that D. Ann Gray personally appeared before me this day and acknowledged that he/she is City Clerk of the **CITY OF DURHAM**, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its name by its — City Manager, sealed with its corporate seal, and attested by himself/herself as its said City Clerk or Deputy City Clerk.

Witness my hand and notarial seal, the 3rd day of March, 2004

My commission expires: 07-17-07



Tonette Amos
Notary Public

This instrument has been preaudited in the manner required by the Local Government

EXHIBIT D
Existing City Stormwater Agreements



FOR REGISTRATION REGISTER OF DEEDS
 Willie L. Covington
 DURHAM COUNTY, NC
 2004 MAR 17 01:08:01 PM
 BK: 4315 PG: 346-354 FEE: \$35.00

INSTRUMENT # 2004013615

*Prepared by City of Durham Department of Public Works, 101 City Hall Plaza, 3rd Floor, Durham, NC, 27701
 Return to Department of Public Works - Storm Water Services Division*

STATE OF NORTH CAROLINA
 COUNTY OF DURHAM

STORMWATER FACILITY AGREEMENT
 AND COVENANT VERSION 082203

THIS AGREEMENT ("Agreement") is made and entered into this 3^{ed} day of March, 2004 by and between **Centex Homes, a Nevada General Partnership ("Permittee")** and the City of Durham, a North Carolina municipal corporation ("City").

1. Background

a. This Agreement concerns the perpetual maintenance of a stormwater facility ("the Facility") on property owned by the Permittee, and related requirements regarding the Facility. The City has adopted, and from time to time will adopt, stormwater management regulations applicable to certain real property in which Permittee holds an interest. That property is generally located **southeast of the intersection of NC 751 and Renaissance Parkway, and is commonly known as the Southpoint Terrace** and is described in the deeds recorded with the Durham County Register of Deeds at the following book and page numbers: **Deed Book 164, Page 15**. This development hereafter is referred to as "the Property". Within the Property may be a particular tract or group of tracts owned by the Permittee upon which the Facility is located. That property is found at **Plat Book 15, Page 38** and is referred to in this Agreement as "the Site". Within the Site is the Facility which is a **Stormwater Constructed Wetland (DP 4)** designed to have a 10-year, 24-hour storm event surface area of 7,129 square feet. It is located on the northeast side of the Property. The Site and the Property may be the same (see definition of Site in c. below).

b. The City's ordinances require that stormwater facilities be created and maintained on some properties. The ordinances further require that, before an occupancy permit may be issued for any structure constructed within a property which includes a stormwater facility, the owner must enter into an Agreement with the City to provide for the operation and maintenance of the Facility. This Agreement is intended to comply with that requirement.

c. Definitions. The terms defined above are supplemented by the following terms, which, as used in this Agreement, are defined as follows:

"Director of Public Works" means the City's Director of Public Works or his or her designee.

"City Manager" means the Durham City Manager or an Assistant City Manager.

"Facility" means the privately-owned stormwater control facility that is the subject of this Agreement, and that satisfies the requirements of the City's ordinances and regulations for such facilities.

"Permittee" means the party executing this Agreement with the City and successor owners of the Site.

"Person" includes natural persons, business trusts, joint ventures, governments, governmental subdivisions, governmental agencies, firms, corporations, associations, partnerships, and other legal entities.

"Property" means the larger development that, when developed, requires a stormwater Facility to serve it.

"Site" means the one or more lots or tracts within the Property, one of which contains the stormwater Facility. In a residential development, such lots will be those that are intended to be owned by all residents, through a homeowners' association. In nonresidential developments and apartments, the Site will generally be the same as the Property.

"Transfer" includes sell, convey, assign or alienate all or a portion of an interest in the Site or Property. Transfers do not include acquisitions of mortgages or similar encumbrances.

2. Fees: Title Opinion: Construction Inspections and Maintenance.

The Permittee shall cause the following to be done:

a. At the time of delivering this Agreement executed by the Permittee to the City, pay the stormwater permit fee in the amount determined by the Director of Public Works:

b. Provide to the City an opinion of title of the Property or the Site, as directed by the City, by an attorney licensed to practice law in North Carolina and update that opinion to the time of recording this Agreement. The opinion(s) shall show that the party or parties executing this Agreement have title, in fee, to the Property, or to the Site. The Director of Public Works shall indicate whether the opinion shall pertain to the Property or the Site, if such are different. The opinion shall indicate no liens or encumbrances that the Director of Public Works deems to interfere with the City's having adequate security in accordance with Section 6.

c. Construct the Facility in accordance with the plans approved by the Director of Public Works before applying for a certificate of compliance for any structure on the Property, it being agreed that no building on the Property is eligible for a certificate of compliance until the Facility has been so constructed;

d. Inspect the Facility, perform routine maintenance on the Facility, and make all necessary repairs to the Facility, all as directed by the Director of Public Works. This shall include the following work:

i. Grass and Vegetative Cover.

A. Design, install and maintain landscaping around the Facility so that it will not reduce the capacity or hinder the operation and maintenance of the Facility.

B. Maintain the vegetative cover of the Facility to prevent erosion.

C. Except as provided in 2 (d) (i) (D) below, mow the area as needed to prevent the grass and other plants (other than maintained shrubs and trees) from exceeding a height of fifteen (15) inches.

D. Keep open channels free of undesirable growth and maintained to the design cross-section and area as shown on the Plans, and keep the height of the vegetation on the slopes and bottom from exceeding eight (8) inches.

- E. Replace landscape materials that fail to live and prosper, as required by the Director of Public Works.
- ii. Embankments, Slopes, and Dams. Inspect and repair embankments, slopes, and dams for damage from erosion, sloughing, animal burrows, and woody vegetation.
- iii. Removal and Disposal of Trash, Debris, and Sediment.
 - A. Keep the Facility's outlet structure cleared of all blockages.
 - B. Clean the channels and pipes as necessary to provide for the free conveyance of stormwater as designed.
 - C. Remove debris and sediment as needed to maintain the primary outlet capacity and Facility storage volume when the depth of the Facility has been reduced by more than one (1) foot from the design depth, or when the Facility's storage volume has been reduced by twenty percent (20%) from the design volume.
 - D. Remove all sediment from sediment forebays, traps, and basins.
- iv. Insects, Odors, and Algae.
 - A. Maintain the Facility in a manner to control odors and algae to the extent that the Director of Public Works determines to be necessary.
 - B. Apply, when and as directed by the Director of Public Works, a larvicide approved by the Durham County Health Department for insect control, and take other measures to control insects as directed by the Director of Public Works.
- v. Fencing. Nothing in this Agreement is intended to prevent the Permittee from placing fencing and other security measures near or around the Facility, provided that the Permittee shall first submit information on the proposed construction to the Director of Public Works and obtain her consent. The Director of Public Works shall grant permission if she finds that the fencing and other measures will not interfere with the Facility. Nothing in this Agreement is intended to affect the Permittee's obligation, if any, to exercise care with respect to persons who may enter the Site.
- e. Cause the Facility to be inspected, by a registered professional engineer or a registered landscape architect, on an annual basis beginning one year after the Facility is accepted by the Director of Public Works and, after each inspection, without specific request by the City, provide the Director of Public Works with two copies of such report. The Facility is accepted upon the Director of Public Works acceptance of the as-built plans of the Facility.
- f. If the Director of Public Works reasonably determines that the Facility is in need of maintenance or repair or other work, she shall so notify the Permittee, who shall promptly take necessary actions to maintain or repair the Facility, including doing any work specified by the Director of Public Works.

3. Transfer of the Property. If the Permittee proposes to Transfer any interest in the Site, the Permittee shall, prior to transfer:

a. Notify the intended Transferee that it is required to execute an Agreement, in a form approved by the Director of Public Works, and deliver the appropriately executed Agreement to the City, along with title opinions regarding the ownership by the Transferee; and

b. If the intended Transferee is an owners' association, unit owner's association, or homeowners' association, provide the Director of Public Works a copy of the association's recorded declaration. In addition, Permittee must ensure that the declaration provides:

- i. That the Facility is a part of the common elements and shall be subject to the Agreement;
- ii. That the requirements of this Agreement shall receive the highest priority for expenditures by the association except for City and County assessments, ad valorem property taxes, insurance, and any other expenditures which are required by law to have a higher priority;
- iii. That a separate fund shall be maintained by the association for the reconstruction and repair of the Facility, separate from the fund(s) for routine maintenance of the Facility and from all other funds;
- iv. That the reconstruction and repair fund shall contain at all times the dollar amount reasonably determined from time to time by the Director of Public Works to be adequate to pay for the probable reconstruction and repair cost for a three-year period; that the fund shall be listed as a separate line in the association's budget; and it shall be kept in an account insured by the FDIC or by another entity acceptable to the Director of Public Works;
- v. Upon the vote of 2/3 of the members of the association, special assessments shall be charged to each member of the association, to pay for the obligations under this Agreement;
- vi. That, to the extent permitted by law, the association shall not enter into voluntary dissolution unless the Facility is transferred to a Person who has executed an Agreement.

If the Permittee Transfers, or permits the Transfer of, an interest without complying with this Section 3, that failure to comply shall not invalidate the Transfer, but Transferee shall remain obligated under this Agreement. In addition, the City may in its discretion require the surety referred to in Section 4 to pay the City some or all of the Face Amount (defined in Section 4).

4. Bond/Security. In order to secure the Permittee's obligations under this Agreement, the Permittee shall immediately deliver to the City one or more bonds, sureties, or similar instruments which are acceptable to the City in substance, form, and guarantor, in the amount of **forty two thousand, three hundred and seventy four dollars (\$42,374.00)** ("the Face Amount"), which is twenty (20) times the average annual maintenance cost estimated by the Director of Public Works. The bond or other instrument shall remain in effect permanently unless the City of Durham (by its City Manager) and the Permittee execute an Agreement, under the official seal of the City of Durham, stating that "the Permittee's obligation under Section 4 of the Stormwater Facility Agreement and Covenant made on [date] between the City of Durham and [name of Permittee] to provide a bond or other instrument has been changed as follows [stating the new requirement or that it has been eliminated]." If the Director of Public Works notifies the Permittee that an instrument, surety, or other guarantor is unacceptable to the Director of Public Works, the Permittee shall, within thirty (30) days substitute an acceptable instrument, surety, or other guarantor or pay the City the Face Amount.

5. Right of Entry on Site. The Permittee hereby grants to the City the right of ingress, egress, and regress over and across the Property and the Site for the purpose of inspecting the Facility and for the purpose of correcting, repairing, replacing, and maintaining the Facility and exercising the other rights of the City that are provided for by this Agreement.

6. Remedies for Violations; Lien on Property; Future Obligations Secured.

a. If the Permittee fails to perform its obligations under this Agreement, the City may send notice to the Permittee to demand that it so perform. If the Permittee fails to comply with such demand within thirty (30) days from the date of mailing thereof, the City may enter the Property and the Site and perform some or all of the work that the Permittee was required to do in carrying out its obligations under this Agreement, and the City may do any of such work as the Director of Public Works deems appropriate to place the Facility in proper working condition. The Permittee shall pay the City for the cost incurred by the City to do that work, including reasonable amounts, calculated under procedures established by the Director of Public Works, for the City's overhead and use of City employees, equipment, and property. Interest shall accrue on those monetary obligations of the Permittee at the rate of one and one-half percent (1 - ½%) per month until paid. Without limiting other remedies available to the City, including recourse to the bond or other instrument referred to in Section 4, it is agreed that those monetary obligations shall be a lien on the Site and may be collected as unpaid taxes in accordance with N.C.G.S. 160A-193. If the City collects on the bond, letter of credit, or other instrument furnished pursuant to this Agreement the proceeds shall be applied to the amounts due under this paragraph and the Permittee shall replace the bond/security to the full face amount in Section 4.

b. This Agreement may be enforced by any remedy available in law or in equity, including but not limited to injunctive relief. The remedies provided by this Section 6 are cumulative, and are in addition to any other remedies available to the City.

c. The Permittee shall pay an attorney's fee of fifteen percent (15%) of the outstanding balance of the amount owed to the City under Section 6(a) of this Agreement if the balance is collected by or through an attorney at law. The liability of a surety or other Person guaranteeing the Permittee's obligations under this Agreement shall include said attorney's fees.

d. The City may withhold any or all permits or other approvals necessary to complete the development of the Property if the Permittee has failed to perform its obligations under this Agreement.

7. Release of Lien by Certificate.

a. Duty to Furnish a Certificate -- On the request of any of the Persons prescribed in subdivision (a) (i) below, and upon the condition prescribed by subsection (a) (ii) below, the Director of Public Works shall furnish a written certificate stating the amount of any monetary liabilities owed by the Permittee to the City pursuant to this Agreement (together with any interest and costs accrued thereon) that are a lien on the Property or the Site.

- i. Who May Make Request -- Any of the following Persons shall be entitled to request the certificate:
 - A. An owner of the Property;
 - B. An occupant of the Property;
 - C. A Person having a lien on the Property;
 - D. A Person having a legal interest or estate in the Property;
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- b. Reliance on the Certificate -- When a certificate has been issued as provided in Section 7(a) above, all monetary liabilities owed pursuant to this Agreement that have accrued against the Site or the Property for the period covered by the certificate shall cease to be a lien against the Property, except to the extent of monetary liabilities stated to be due in the certificate, as to all Persons obtaining such a certificate and their successors in interest who rely on the certificate:

- i. By paying the amount of monetary liabilities stated therein to be a lien on the Property;
- ii. By purchasing or leasing the Property; or
- iii. By lending money secured by the Property.

- c. Without limiting the effect of this Section 7, it is agreed that no oral statement made by any City employee as to the amount of monetary liabilities that are a lien on the Property pursuant to this Agreement shall bind the City.

8. Warranty. The Permittee covenants with the City, that Permittee is seized of the Property and the Site in fee simple, has the right to convey the same in fee simple, that title is free and clear of all encumbrances, and that Permittee will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions stated in the attorney's opinion of title provided in accordance with Section 2 (b) above.

9. Notice. When a notice is required or permitted by this Agreement, it shall be given in writing to the City delivered to the Director of Public Works, 101 City Hall Plaza, Durham, NC 27701, or upon the Permittee, at **Centex Homes, a Nevada General Partnership, 2301 Sugar Bush Road, Suite 400, Raleigh, NC 27612, Attention: Hampton Pitts (919) 760-1110.** If mailed, the notice shall be by certified mail, return receipt requested. These addresses may be changed by sending a notice of the new address attached to a copy of this Agreement.

10. No Waiver of Breach. If the City waives any breach of any obligation or covenant in this Agreement, that waiver shall not constitute a waiver of any other or future breach of the same or any other obligation or covenant. The City's failure to exercise any right under this Agreement shall not constitute a waiver of that right.

11a. Agreement Binding until City Waives Agreement. This Agreement and all the covenants in it shall bind Permittee until the City releases Permittee in writing, signed by the Director of Public Works, from the obligations of this Agreement. The City shall release Permittee from the obligations of this Agreement when a responsible and financially capable successor has signed an Agreement with the City. The responsibility and financial capacity of any successor shall be determined solely by the City in its reasonable discretion.

11b. Covenants Herein to Run with the Land. The obligations of this Agreement run with the Property and with the Site and shall bind all owners of any interest in the Property and the Site. However, where the City has, by written release described in 11a above, accepted an owner of the Site as being responsible and financially capable, and such successor owner owns the Site, but not the Property, then this Agreement shall thereafter run solely with the Site and not with the Property. By way of example and not limitation, all owners of any interest in the Site shall be jointly and severally liable to fulfill the Permittee's obligations under this Agreement as if each of them were the Permittee. Unless the context otherwise requires, the term "Permittee" in this Agreement includes all such owners.

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IN WITNESS WHEREOF, the parties hereto have respectively set their hands and seals, or if corporate, have executed this under seal by their proper officers, the date first above written.

Centex Homes, a Nevada General Partnership

By: W. Hampton Pitts
General Partner

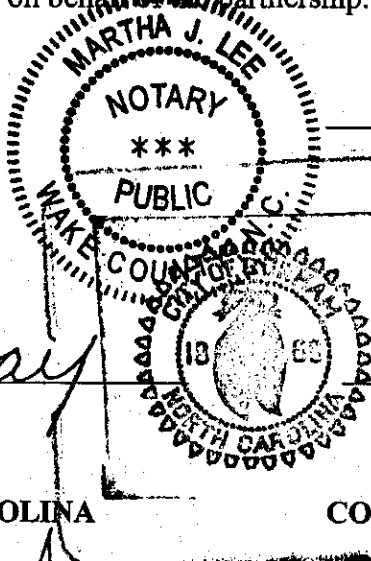
STATE OF NORTH CAROLINA

COUNTY OF DURHAM

State of NORTH CAROLINA
County of WAKE

I, a notary public in and for said county and state, certify that W. HAMPTON PITTS personally (1) appeared before me this day, (2) stated that he or she is a general partner in **Centex Homes, a Nevada General Partnership**, (3) acknowledged that the foregoing agreement with the City of Durham carries on in the usual way the partnership's business, and (4) acknowledged the due execution of the agreement on behalf of the partnership. This the 18th day of FEBRUARY, 2004.

My commission expires: My Commission Expires 4-18-2008



Martha J. Lee
Notary Public

ATTEST:

By: D. Ann Gray
City Clerk
[Affix Municipal Seal]

W. Hampton Pitts
City Manager

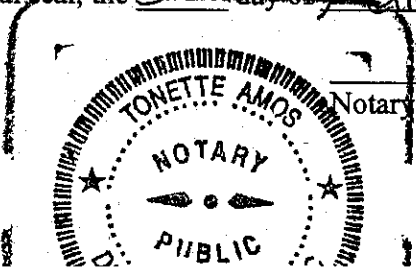
STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Tonette Amos, a notary public in and for the County of Durham, North Carolina certify that D. Ann Gray personally appeared before me this day and acknowledged that he/she is City Clerk of the **CITY OF DURHAM**, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its name by its — City Manager, sealed with its corporate seal, and attested by himself/herself as its said City Clerk or Deputy City Clerk.

Witness my hand and notarial seal, the 3rd day of March, 2004

My commission expires: 07-17-07



Tonette Amos
Notary Public

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.
[Signature]
FINANCE OFFICER 2/20/04
DATE



FOR REGISTRATION REGISTER OF DEEDS
 WILLE L. COVINGTON
 DURHAM COUNTY, NC
 2003 OCT 15 04:39:40 PM
 BK: 4148 PG: 281-293 FEE: \$47.00
 NS: \$25.00
 INSTRUMENT # 2003063508

HOLD FOR: MOORE & ALPHIN, PLLC

(Space Above Line for Recorder's Use Only)

EASEMENT AND MAINTENANCE AGREEMENT

STATE OF NORTH CAROLINA §
 COUNTY OF DURHAM §

THIS EASEMENT AND MAINTENANCE AGREEMENT (this "Agreement") is entered into by and between **LODGE AT SOUTHPOINT, L.P.**, a Delaware limited partnership ("Grantor"), with an address c/o The Hanover Company, 5847 San Felipe, Suite 3600, Houston, Texas 77057, Attn: Bo Buchanan and **CENTEX HOMES**, a Nevada general partnership ("Grantee"), with an address at 2301 Sugar Bush Road, Suite 400, Raleigh, North Carolina 27612, effective as of the 10th day of October, 2003.

RECITALS:

A. Grantor owns certain real property legally described in **Exhibit "A"** attached hereto and made a part hereof for all purposes, together with the improvements located thereon commonly known as Lodge at Southpoint Apartments (the "Grantor Property").

B. Grantee owns certain real property located adjacent to the Grantor Property as further and legally described in **Exhibit "B"** attached hereto and made a part hereof, upon which property Grantee or its successors or assigns intends to construct a single-family residential community (the "Grantee Property").

D. Grantor desires to grant and Grantee desires to obtain a non-exclusive easement for constructing, installing, maintaining, repairing and replacing certain improvements as more particularly described herein over the portion of the Easement Area (as hereinafter defined) lying on the Grantor Property for the purpose of providing a landscaped entrance area into the residential development Grantee intends to construct on the Grantee Property.

EXHIBIT E
 Lodge Agreement

FOR AND IN CONSIDERATION of the recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantee and Grantor hereby covenant and agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee a non-exclusive easement (the "**Easement**") for the sole purpose of constructing, installing, maintaining, operating, repairing and replacing landscaping, monument signage, lighting, irrigation and related improvements as more particularly described herein (collectively, the "**Improvements**") to be installed within the portions of the property located on the Grantor Property more particularly described on Exhibit "C" attached hereto (the "**Easement Area**") for the benefit of the Grantee Property. Such Easement shall be non-exclusive; provided, however, that no owner of the Grantee Property shall grant any right to utilize the Easement or Easement Area to any person or entity other than Grantee's successors and assigns. No parking easement is granted or created hereby.

2. Installation of Improvements. The Improvements will be constructed, at Grantee's sole cost and expense, in a location or locations to be designated by Grantor within the Easement Area. No Improvements will be constructed within the Easement Area by Grantee until the plans and specifications for the drainage, design, color, materials, landscaping, lighting layouts and illumination levels and construction means and methods (collectively, the "**Plans**") are approved by Grantor, the Approving Parties (as defined in that certain Amended and Restated Operating and Easement Agreement and Declaration filed in Book 2706, Page 104, Register of Deeds of Durham County, North Carolina, as the same may be modified and amended from time to time) and the County of Durham, or other appropriate governmental authority. The monument sign (the "**Sign**") comprising a portion of the Improvements will be for identification purposes for the Grantee Property and Grantor, at its sole cost and expense, shall have the right to include a panel within the Grantee's Sign identifying the improvements on the Grantor Property. Any such design, construction, installation, maintenance and repair shall be done in accordance with all applicable laws, rules, regulations and requirements of applicable governmental authorities and shall be prosecuted with due diligence and in a good and workmanlike manner, and in performing such acts, Grantee shall make all reasonable efforts not to interfere with or impair the Grantor's use or occupancy of the Grantor Property or disturb or damage the Existing Improvements (hereinafter defined) within the Easement Area. As part of the Improvements, Grantee will be required to install, at Grantee's sole cost and expense, an underground irrigation system to irrigate the landscaping to be installed and maintained by Grantee as part of the Improvements. The irrigation system and lighting systems must be separately metered and the operating cost therefor shall be borne solely by Grantee.

Grantee acknowledges that there currently exists within or near the Easement Area a sidewalk, curbs, columns, detention pond, irrigation system, trees and other vegetation (the "**Existing Improvements**"). Prior to construction of any Improvements by Grantee within the Easement Area, Grantee shall submit to Grantor for approval a plan for preservation of the Existing Improvements while Grantee is performing any work with the Easement Area, including, without limitation, a plan for erection of tree barriers. Tree barriers and other protective materials shall be installed by Grantee prior to commencement of construction of any Improvements in accordance with the plan approved by Grantor. Grantee shall be responsible, at its sole cost and expense, for the prompt repair and/or replacement of any damage to any portion of the Existing Improvements caused

by Grantee, its agents, contractors, employees, successors or assigns while performing any work within the Easement Area pursuant to a right to do so under this Agreement.

3. **Mechanic's and Materialman's Liens.** Grantee shall be responsible for any and all claims of contractors, subcontractors, mechanics and materialmen along with all costs and expenses associated therewith including, without limitation, attorneys' fees and court costs, claimed or asserted with respect to activities and work performed by or at the request of Grantee in connection with the Improvements. Grantee agrees to indemnify and hold Grantor, its partners, shareholders, directors, officers, employees, agents, lenders, successors and assigns (collectively, the "**Indemnified Parties**") and Lawyers Title Insurance Corporation of North Carolina (the "**Title Company**") harmless from and against any and all loss, cost, damage and expense which Indemnified Parties and/or the Title Company may suffer, incur or become liable for which arise directly or indirectly out of any mechanics' or materialmen's liens or claims in connection with the design, installation, maintenance and repair of the Improvements. Promptly upon completion of the Improvements, Grantee agrees to provide Grantor and the Title Company with final unconditional lien waivers from each general contractor engaged by Grantee to perform the initial construction of the Improvements, in form and content reasonably acceptable to Grantor and the Title Company.

Whenever Grantee, its agents, contractors, employees, successors or assigns are performing any work within the Easement Area pursuant to a right to do so under this Agreement, it is agreed that (i) Grantor shall be given at least five (5) days' written notice prior to performance of any work by or for the Grantee within the Easement Area, (ii) Grantee that will not block or otherwise interfere with the use of any accessways or driveways to the Grantor Property, (iii) Grantor shall have the right to require that, to the extent feasible, all work by or for Grantee be performed in stages or during non-peak hours of business for the improvements on the Grantor Property, so as to minimize any disruption of the operation of the improvements on the Grantor Property, and (iv) all contractor(s) performing work by or for Grantee must be fully insured (with types and amounts of coverage acceptable to Grantor, given the nature and amount of work to be performed by each such contractor).

4. **Maintenance and Repair Costs.** Grantee shall at all times maintain and repair the Improvements and the Easement Area in a first-class condition in compliance with all applicable laws and the OEA. In the event Grantor reasonably believes that repair, replacement or maintenance of any portion of the Improvements is necessary, Grantor shall provide written notice of the same to Grantee. If Grantee does not commence such repair, replacement or maintenance within fifteen (15) days following receipt of such notice, then Grantor shall have the right, but not the obligation, to maintain, replace and/or repair any conditions which Grantor believes require repair, replacement or maintenance. All reasonable amounts expended by Grantor in repairing, replacing and/or maintaining any of the Improvements shall be paid by Grantee within fifteen (15) days following written demand therefor, together with an administrative fee of fifteen percent (15%) and interest at the lower of (i) ten percent (10%) per annum or (ii) the maximum non-usurious rate permissible from time to time under applicable law, from the later of (a) the date of expenditure; or (b) fifteen (15) days following written notice of the expenditure to the date of payment in full. Any amounts due Grantor hereunder, together with interest thereon as aforesaid, shall be a charge against, and a continuing lien upon, Grantee's Property. Notwithstanding the foregoing, upon assignment to and assumption of the maintenance obligations and rights of Grantee hereunder by a homeowner's association in the manner provided in Paragraph 7, the lien rights described in the immediately

preceding sentence will run only to the common areas of the Grantee Property. The provisions of this paragraph shall be in all respects subject and subordinate to the lien of any mortgages or deeds of trust at any time or from time to time on the Grantee's Property and to the rights of the holders of any such mortgages or deeds of trusts. The rights, powers and remedies provided herein shall be cumulative and not restrictive of other remedies at law or in equity, and the exercise by Grantor of any particular right, power or remedy shall not be deemed an election of remedies or preclude Grantor's resort to other rights, powers or remedies available to it.

Notwithstanding anything in the immediately preceding paragraph to the contrary, Grantee shall be required to continually maintain the landscaped areas constituting a portion of the Improvements in a first-class condition, by (i) mowing and edging all lawn areas at walkways, curbs and plant beds, cutting grass at base of trees, sign posts, columns, lighting posts, sprinkler heads and other hardscape improvements, at least once a week; (ii) providing a regular, deep watering program which will be enough for the growing needs of the turf; (iii) fertilizing lawns as required throughout the year (except during the months of July and August) with 20-4-4 fertilizers and chelated iron; (iv) providing a weed control program using extreme care in the use of chemicals; (v) removing all grass growing through pavements and pavement joints by using herbicides; (vi) controlling insects with regular applications of commercial insecticides at the manufacturer's recommended rate; (vii) spraying for diseases with an approved commercial fungicide strictly according to the manufacturer's recommendations when they first appear; (viii) annually pruning trees and/or shaping as needed by a qualified arborist and replacing of dead or damaged trees; (ix) performing complete weeding, trimming, edging, and cultivating of all shrub, flower and groundcover beds once per month, to promote growth and maintain neat, orderly appearance; (x) thinning groundcover planting once every two years during the late fall or early spring prior to the growing season; (xi) applying fertilizer for shrubs and groundcover with not less than a 12-6-6 analysis twice a year during early spring and early fall at the rate of 10 pounds per 1,000 square feet; (xii) fertilizing all flower beds with complete commercial fertilizer four times per year; (xiii) replanting all damaged or thin areas in groundcover beds at proper spacing with like plants; (xiv) changing out seasonal flowers a minimum of 2 times per year, or as required to provide a quality appearance; (xv) pruning of shrubs at least once a month from March to October or as seasonal variations require; (xvi) disposing of all waste materials or refuse off the Easement Area and removing leaves, papers, grass clippings, and other debris at least weekly from all areas; (xvii) monitoring the automatic controlling devices for the irrigation system to provide optimum moisture levels in all planted areas (irrigation cycles shall be set to take place prior to sunrise; (xviii) servicing sprinkler system as required to maintain sprinklers in correct operating condition (operation of sprinklers shall be monitored on a bi-monthly basis to assure proper coverage and operation); (xix) adjusting sprinklers to avoid damage to windows, buildings, automobiles, pedestrians, and other traffic and facilities; (xx) making any needed repairs and alterations to the sprinkler system and water lines; (xxi) supplementing irrigation beyond that which can be provided by the irrigation system shall be provided as required in order to assure optimum moisture levels for all plants and other vegetation.

5. Duration of Easement. The Easement shall be perpetual in duration, subject to the terms and provisions hereof and shall, both as to the benefits and the burdens thereof, run with the title to, and burden the title to, the Grantor Property and the Grantee Property. Notwithstanding the foregoing to the contrary, the Easement contained herein shall terminate (a) upon any failure by Grantee to meet its obligations hereunder following written notice, as provided herein, or (b) upon

the mutual agreement of the parties with respect to the termination of any portion or all of the Easement at any time.

With regard to Grantor's right to terminate the Easement as provided in Paragraph 5(a) above, Grantor agrees to give Grantee thirty (30) days prior written notice setting forth in reasonable detail the obligations Grantee has failed to perform and opportunity to cure before exercising any such right of termination and if such failure continues after the expiration of such thirty (30)-day period, Grantor shall have the right to terminate the Easement without any further notice to Grantee.

6. Rights Reserved. Grantor reserves and retains its right to use any portion of the Grantor Property burdened by or immediately adjacent to the Easement Area for any and all purposes which do not unreasonably interfere with or prevent the use or enjoyment by Grantee of the Easement granted herein.

7. Covenants Running with the Land. The Easement granted herein shall be a covenant running with the land and shall inure to the benefit of, and be binding upon, the parties hereto, their tenants, licensees, invitees, successors and assigns, including, without limitation, all subsequent owners of the Grantor Property and the Grantee Property and any and all parties claiming by, through or under them. The rights and obligations of Grantee set forth in this Agreement may be assigned to a homeowner's association duly formed and validly existing for the Grantee Property, provided (a) no default exists hereunder on the part of Grantee, (b) the association assumes in writing all of the obligations of Grantee hereunder, and (c) Grantor is provided with copies of the articles of incorporation, bylaws and other organizational documents for the association. Upon the assignment to and assumption by the said homeowner's association, Grantee shall be released from any and all rights and obligations under this Easement from and after the date of such assignment. Upon assumption and assignment of the rights and obligations hereunder by Grantee to the said homeowner's association, the association shall not have the right to further assign its rights or obligations hereunder without the prior written consent of Grantor.

8. No Rights in Public Generally. The easements and rights created, reserved and established by this Agreement do not, are not intended to, and shall not be construed to create any easements, rights or privileges in or for the benefit of the general public or for any other purpose.

9. No Third Party Beneficiaries. No provision of this Agreement shall be construed to create any rights or benefits in any person or party other than Grantor and Grantee.

10. Entire Agreement. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein contained and assumed. No oral representations, modifications or amendments concerning this instrument shall be effective and this instrument may be modified only by a written instrument signed by the party to be charged.

11. Conveyance of Easement Subject to Encumbrances. The parties hereto hereby acknowledge, stipulate and agree that the conveyance of the Grantee Easement by Grantor is subject to all liens, encumbrances, easements and other matters, whether or not filed of public record, affecting the Grantor Property or the Easement Area, including, without limitation, that certain Amended and Restated Operating and Easement Agreement and Declaration filed in Book 2706, Page

104, Register of Deeds of Durham County, North Carolina, as the same may be modified and amended from time to time (as amended, the "OEA"). Grantee agrees to comply with the terms and conditions of the OEA to the extent that the Easement Area and/or the Improvements are governed thereby.

12. Attorney's Fees. In the event of any controversy, claim or dispute relating to this instrument or the breach hereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

13. Notice. All notices and other communications required or permitted hereby shall be in writing and shall be deemed to have been duly and sufficiently given if personally delivered with proof of delivery thereof (any notice or communication so delivered being deemed to have been received at the time so delivered), or sent by Federal Express (or other reputable overnight courier), designating next-day delivery (any notice or communications so delivered being deemed to have been received on the business day following receipt by the courier), or sent by United States Registered or Certified Mail, Return Receipt Requested, Postage Prepaid, at a post office regularly maintained by the United States Postal Service (any notice or communication so sent being deemed to have been received two (2) days after mailing in the United States), or sent by facsimile transmission, with a copy being simultaneously sent by United States mail as set forth above. Any owner of the affected property may, by notice given as aforesaid, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices; provided, however, that notices of change of address or addresses shall be effective only upon receipt.

14. Severability. If any term, covenant or condition of this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected or invalidated thereby.

15. Time of Essence. Time is of the essence with respect to the performance of each of the terms, provisions, covenants, obligations and conditions contained in this Agreement.

16. Counterparts. This Agreement may be signed in multiple identical counterpart originals, all of which taken together shall constitute one and the same instrument.

Executed as of the day and year first set forth above.

GRANTOR:

LODGE AT SOUTHPPOINT, L.P., a Delaware limited partnership

By: THC 1999 Limited Partnership, a Texas limited partnership, its general partner

By: Hanover G.P. LLC, a Texas limited liability company, its general partner

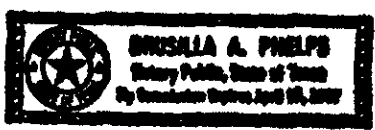
By: Hanover Interests, Inc., a Texas corporation, its sole member/manager

By: Kathy K. Bineford
Name: KATHY K. BINEFORD
Title: VICE PRESIDENT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

I, DRUSILLA PHELPS, the undersigned Notary Public, do hereby certify that KATHY BINEFORD personally appeared before me this day and acknowledged that he/she is VICE PRESIDENT of Hanover Interests, Inc., a Texas corporation, the sole member of Hanover G.P. LLC, a Texas limited liability company, the general partner of THC 1999 Limited Partnership, the sole general partner of Lodge at Southpoint, L.P., a Delaware limited partnership and the party named in the foregoing instrument and that he/she executed the foregoing instrument for and on behalf of such partnership.

WITNESS my hand and notarial seal this 10th day of OCTOBER, 2003.



Drusilla A Phelps
Notary Public

(STAMP - SEAL)

GRANTEE:

CENTEX HOMES, a Nevada general partnership

By: Centex Real Estate Corporation, a Nevada corporation, Its managing general partner

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

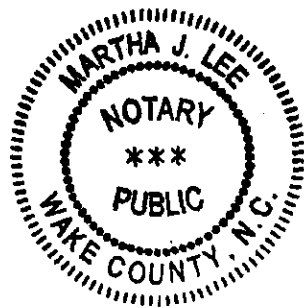
STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, MARTHA J. LEE, the undersigned Notary Public, do hereby certify that W. Hampton Pitts personally appeared before me this day and acknowledged that he is Division President of Centex Real Estate Corporation, a Nevada corporation, managing general partner of Centex Homes, a Nevada general partnership and the party named in the foregoing instrument and that he executed the foregoing instrument for and on behalf of such partnership.

WITNESS my hand and notarial seal this 14th day of OCTOBER, 2003.

Martha J. Lee
Notary Public
My Commission Expires 4-18-2008

(STAMP - SEAL)



CONSENT OF LIENHOLDER

The undersigned lienholder hereby consents to the grant of the easements burdening the Grantor Property as set forth in the foregoing Easement and Maintenance Agreement.

COMERICA BANK ~~TEXAS~~

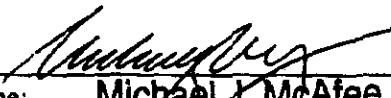
By: 
Name: Michael J. McAfee
Title: Senior Vice President
Texas Division

Exhibit A

BEING all of "Tract 3" as shown on a plat entitled "Final Plat - Subdivision for Midland 751 Development Company, LLC" prepared by The John R. McAdams Company, Inc. dated 4/16/98 and last revised 6/8/98, as recorded in Plat Book 141, Page 15, Durham County, North Carolina Registry of Deeds.

EXHIBIT E
Lodge Agreement

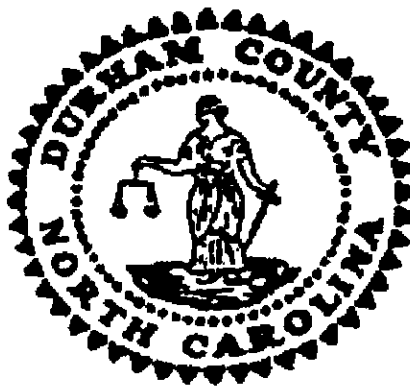
Exhibit "B"

Lying and being in Triangle Township, Durham County, North Carolina and being more particularly described as follows:

Beginning at an iron pipe found in the southeast line of property now or formerly owned by The Lodge at Southpoint as shown on a plat recorded in Plat Book 148, Page 27, Durham County Registry, said iron pipe being the northwest corner of property belonging now or formerly to R.F. Whitfield as said property is described in Book 396, Page, Durham County Registry; thence from said point of beginning along and with the western line of property belonging now or formerly to R. F. Whitfield South 03 degrees 12' 04" West 305.01 feet to an iron pipe; thence along and with the northern line of Eagles Pointe Subdivision South 86degrees 46' 28" West 2222.42 feet to a point in the eastern right-of-way of NC Highway 751 (80 foot public right-of-way); thence along and with the eastern right-of-way of said NC Highway 751 North 08 degrees 39' 24" West 489.11 feet to a point; thence along and with the southern line of The Lodge at Southpoint South 88 degrees 39' 43" East 2310.18 feet to the POINT AND PLACE OF BEGINNING; containing 893,193 square feet or 20.50 acres, more or less, as shown on a plat entitled "Boundary Survey Property of Lizzie T. Davis Heirs," dated August 7-27, 2002 (Revised September 16, 2003) and prepared by Priest, Craven & Associates, Inc. (Drawing No. 2002-43), to which survey reference is hereby made for a more particular description.

f:/wp51/data/centex/southpoint terrace/southpt.des

EXHIBIT E
Lodge Agreement



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording and/or cancellation.

Filed For Registration: 05/25/2004 04:38:02 PM
Book: RE 4402 Page: 245-323
Document No.: 2004026679
DECL 79 PGS \$245.00
NS: \$25.00
Recorder: SHARON M CEARNEL

State of North Carolina, County of Durham

The foregoing certificate of MICHAEL D. PHILLIPS Notary is certified to be correct. This 25TH of May 2004

WILLIE L. COVINGTON , REGISTER OF DEEDS

By: Sharon M Cearnel
Deputy/Assistant Register of Deeds



2004026679