

Wake County, NC 551
Laura M Riddick, Register Of Deeds
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NORTH CAROLINA

WAKE COUNTY

**THIRD AMENDMENT AND RESTATEMENT OF
THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
THE NEIGHBORHOODS OF WALNUT CREEK**

THIS AMENDED AND RESTATED DECLARATION, made on this 12th day of January, 2000 by RBAG/WALNUT CREEK, L.L.C., a Delaware limited liability company, qualified to do business in the State of North Carolina, hereinafter referred to as the "Declarant;"

WITNESSETH:

WHEREAS, Declarant and the undersigned Owners are the Owners of the real property described in Exhibit A attached hereto and incorporated herein by reference (the "Property"). Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of residential property within The Neighborhoods of Walnut Creek, the neighborhood made subject to this Declaration and amendments hereto by the recording of this Declaration among the Land Records of Wake County, North Carolina. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property and the interrelationship of the component residential neighborhoods and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Property as is now or may hereafter be subjected to this Declaration; and

WHEREAS, the Declarant has previously recorded the Declaration of Covenants, Conditions and Restrictions For The Neighborhoods Of Walnut Creek in Book 8327, Page 2208, as first amended in Book 8368, Page 2185, and secondly amended in Book 8462, Page 14, all in the Office of the Register of Deeds of Wake County, North Carolina; and

WHEREAS, the Declarant, with the written consent of at least 67% of the Owners of Lots in the Property now subject to the Declaration as evidenced by their signatures at the end of this Declaration, wishes to further amend and restate the provisions of the Declaration; and

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

NOW, THEREFORE, Declarant hereby declares that all of the Property described above

and any additional Property as may by Subsequent Amendment be added to and subjected to this Declaration shall be held, sold, used, transferred, occupied and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property. These easements, covenants, restrictions, and conditions shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1 DEFINITIONS

Section 1. "Additional Land" or "Additional Properties" shall mean and refer to additional real Property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration, which Property is more particularly described in Exhibit B, attached hereto and incorporated throughout this Declaration by reference as well as any other real Property which may be properly made subject to this Declaration.

Section 2. "Amenities" means the facilities, if any, constructed, erected or installed on the Common Areas, Limited Common Areas and/or Townhome Common Areas.

Section 3. "Architectural Committee" means a committee of three individuals appointed by the Board of Directors.

Section 4. "Articles" means the Articles of Incorporation of The Neighborhoods of Walnut Creek Association, Inc.

Section 5. "Association" means The Neighborhoods of Walnut Creek Association, Inc., a nonprofit corporation, its successors and assigns.

Section 6. "Board of Directors" or "Board" mean those Persons elected or appointed and acting collectively as the Directors of the Association.

Section 7. "Builder" or "Builders" shall mean any licensed Builder owning three (3) or more Lots.

Section 8. "Building" means a structure or other Amenities, constructed or erected on the Property.

Section 9. "Bylaws" means the Bylaws of The Neighborhoods of Walnut Creek Association, Inc.

Section 10. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association and the easements granted thereto for the common use and enjoyment of all Owners. The Common Area to be owned by the Association shall be described in deeds to the Association and designated as such on recorded maps of the Property. Common Areas shall include, without limitation, common properties, open space, landscape easements, landscaped medians, sign easements, sewer and water lines not located within any public easement or public street right-of-way and serving more than one lot, and any stormwater drainage lines, ponds, stormwater easements, or facilities serving more than one lot and not located within any public street right-of-way nor otherwise maintained by any governmental authority.

Section 11. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, both for general and Parcel purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association. Common Expenses include, but are not limited to, the following:

- A. All sums lawfully assessed by the Association against its Members;
- B. Expenses of administration, maintenance, repair or replacement of the Common Area, Limited Common Area and Townhome Common Area;
- C. Expenses declared to be Common Expenses by the provisions of this Declaration or the Bylaws;
- D. Expenses agreed to by the Members of the Association;
- E. Expenses for maintenance of the private streets, entrance monuments, lights, etc., as provided in this Declaration;
- F. Hazard, liability or such other insurance premiums as the Declaration or the Bylaws may require or authorize the Association to purchase;
- G. Ad valorem taxes and public assessments charges lawfully levied against Common Area, Limited Common Area and Townhome Common Area owned in fee; and
- H. Unpaid assessments resulting from the purchase of a Lot at a foreclosure sale (such assessments shall be collectible from all Members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).
- I. Utilities used in connection with the Common Area, Limited Common Area and/or

Townhome Common Area; and

- J. Landscaping and landscaping maintenance of islands and medians within the right(s)-of-way of public streets and landscaping and landscaping maintenance within the Special Highway Overlay District to the extent they are not maintained by the City of Raleigh or other governmental body;
- K. All expenses classified as Common Expenses pursuant to the Planned Community Act.

Section 12. "Community" shall mean and refer to the residential (single family, apartment and Townhome) portion of that certain real Property and interests therein described in Exhibit A attached hereto, and (a) such additions thereto as may be made by Declarant (or its Mortgagee or transferee as provided in the Declaration) by amendment or supplementary declaration of all or any portion of the real Property described in Exhibit B, attached hereto; and such additions thereto as may be made by the Association by amendment or supplementary declaration of other real Property.

Section 13. "Community-wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors.

Section 14. "Declarant" shall mean RBAG/Walnut Creek, L.L.C., its successors and assigns as provided in the Planned Community Act.

Section 15. "Declaration" means this Declaration of Covenants, Conditions and Restrictions.

Section 16. "Election District" shall mean a geographic area composed of a particular housing type and representing a political unit for the purpose of electing directors. Districts shall not be required to be equal in population. The Declarant and the Board of Directors may establish and alter or reestablish the boundaries of Electoral Districts by recordation of an exhibit to this Declaration containing a description of the land or Lots contained within such Electoral District. Such recordation shall not constitute an amendment to this Declaration and shall not require the formality thereof.

Section 17. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first Mortgage on a Lot who has requested notice of certain matters from the Association as hereinafter and in the Bylaws provided.

Section 18. "Eligible Votes" shall mean those votes available to be cast on the issue at

hand.

Section 19. "Limited Common Area" shall mean all real property and improvements thereto owned by the Association for the exclusive use and enjoyment of fewer than all of the Owners. Limited Common Area shall include without limitation the pool and clubhouse facility and associated parking spaces and facilities including landscaping and lighting thereof. The Limited Common Area to be owned by the Association shall be described in deeds to the Association and designated as such on recorded maps of the Property.

Section 20. "Lot" shall mean a portion of the Property, other than the Common Area, Limited Common Area, Townhome Common Area, private streets, and public street rights-of-way, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the recorded plats of the Property or amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Section 21. "Lot in Use" shall mean any Lot owned by any Person on which a Residential Unit has been fully constructed and for which a certificate of occupancy has been issued by the appropriate governmental agency. In no event shall it mean a Lot owned by the Declarant or a Builder on which no Residential Unit had been constructed.

Section 22. "Member" shall mean and refer to every Person or entity who holds membership in the Association. There shall be four classes of voting membership in the Association.

1. "Class A Members" shall be all those single family Owners as defined in Article III herein, with the exception of the Declarant. Declarant may, however, be a Class A Member upon termination of Class D membership.
2. "Class B Members" shall be all those townhome Owners as defined in Article III herein, with the exception of the Declarant. Declarant may, however, be a Class A Member upon termination of Class D membership.
3. "Class C Members" shall be all Owners of multifamily apartment house structures, if any, with the exception of the Declarant. Declarant may, however, be a Class C Member upon termination of Class D membership.
- D. "Class D Members" shall be the Declarant.

Section 23. "Mortgage" means any Mortgage, deed of trust, and any and all similar instruments used for the purpose of conveying or encumbering real Property as security for the payment or satisfaction of an obligation.

Section 24. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a Mortgagee.

Section 25. "Mortgagor" shall include the trustor of a deed of trust, as well as a Mortgagor.

Section 26. "Owner" shall mean and refer to the record Owner, whether one or more Persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Owner shall include the Declarant and Builders. For the purpose of this Declaration, the Owner of Residential Units shall be as follows: for the purpose of votes and assessments, the record Owner of the Residential Unit; for the purpose of use and enjoyment of Common Area, Limited Common Area and Townhome Common Area and Amenities, the Owner or occupant lawfully residing in the Residential Unit. The Board of Directors may promulgate reasonable regulations conditioning such use upon registration of the names of lawful occupants with the Association.

Section 27. "Parcel" shall mean and refer to separately designated, developed residential areas composed of various types of housing initially or by amendment made subject to this Declaration; for example, and by way of illustration and not limitation, Townhomes and single-family detached houses. In the absence of specific designation of separate Parcel status, all single-family detached house Lots shall be considered one Parcel, and all townhouse Lots shall be considered one Parcel. Provided, however, the Declarant may designate in any Subsequent Amendment adding Property to the terms and conditions of this Declaration that such Property shall constitute a separate Parcel or Parcels, and thereafter, the Board of Directors by a two-thirds (2/3) vote of all Directors may also designate Parcel status to any area so requesting such status.

Section 28. "Parcel Assessments" shall mean assessments for Common Expenses provided for herein or by any Subsequent Amendment which shall be used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Residential Unit Lots against which the specific Parcel Assessment is levied and for the purpose of maintaining the Property within a given Parcel, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below. The Parcel Assessment shall be levied equally against Owners of each Lot in a Parcel for such purposes that are authorized by this Declaration or by the Board of Directors from time to time, provided that in the event of assessments for exterior maintenance of Residential Units, or insurance on Residential Units, or replacement reserves which pertain to particular Residential Units (pursuant to an amendment to this Declaration), such assessments (that are for the use and benefit of particular Lots/units) shall be levied on a pro rata basis among benefitted Owners. Assessments for Limited Common Areas and Townhome Common Areas shall be levied on a pro-rata basis among those lots having the right to use such Areas.

Section 29. "Person" means any individual, corporation, partnership, limited liability company, Association, trustee, or other legal entity.

Section 30. "Property" shall mean and refer to that certain real Property described in Exhibit A attached hereto and such Additional Land as may hereinafter be brought within the jurisdiction of the Association.

Section 31. "Residential Unit" shall mean a structure situated upon a portion of the Property intended for any type of independent ownership for use and occupancy as a residence by a single family and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, multifamily apartment house structures, patio homes, Townhomes, and single-family houses on separately platted Lots, as may be developed, used, and defined as herein provided or as provided in Subsequent Amendments covering all or part of the Property; provided, further, the term shall include all portions of the Lot owned as a part of any structure thereon. For the purposes of this Declaration, a Residential Unit shall come into existence upon the issuance of a certificate of occupancy by the appropriate governmental agency.

Section 32. "Subsequent Amendment" shall mean, an amendment to this Declaration which adds additional Property to that covered by this Declaration. Each such Subsequent Amendment may, but is not required to impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of this Declaration.

Section 33. "Townhome" means a dwelling or residential unit constructed upon its own separate Lot within the Property and constituting a part of a Building.

Section 34. "Townhome Common Area" shall mean all real property and improvements thereto owned by the Association for the exclusive use and enjoyment of the Townhomes. Townhome Common Areas shall include without limitation private streets and drives, all utilities and drainage facilities located underneath said private streets and drives not maintained by a governmental entity, parking spaces and facilities, including landscaping and lighting thereof. The Townhome Common Area to be owned by the Association shall be designated as such on recorded maps of the Property.

Section 35. "Planned Community Act" shall mean the provisions of Chapter 47F of the General Statutes of North Carolina applicable to the Property, as such provisions shall be amended and recodified from time to time.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment: Every Owner of a Lot shall have a right and easement of use and enjoyment in and to the Common Area including specifically an easement for access, ingress and egress from and to public streets and walkways and an easement for parking which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- A. Admission and Other Fees: Subject to the ordinances of the City of Raleigh, the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities or Amenities situated upon the Common Area, Limited Common Area or Townhome Common Area.
- B. Suspension of Use of Common Area and Limited Common Area: The right of the Association to suspend the right to use any recreational facilities owned by the Association by any Owner, his family, occupants, tenants, guests, etc. during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for infraction or violation of any provision of this Declaration, the Bylaws or published rules and regulations of the Association.
- C. Dedication and Transfer of Common Area, Limited Common Area and Townhome Common Area: The right of the Association to dedicate or transfer all or part of the Common Area, Limited Common Area and/or Townhome Common Area to any public agency, authority, or utility, or for such purposes as may be agreed to by the Members, and subject to such conditions as may be agreed to by the Members, and provided that said dedication or transfer shall be approved as provided herein. No such dedication or transfer shall be effective unless an instrument signed by eighty percent (80%) of the entire membership agreeing to such dedication or transfer has been recorded in the Wake County Registry and such other agreement of consent as required by the Planned Community Act. Any such dedication or transfer shall be made subject to every Owner's easement for access, ingress and egress to streets and walkways. Notwithstanding anything herein to the contrary, the Common Area, Limited Common Area and Townhome Common Area shall be preserved for the perpetual benefit of the owners of the Lots and units within The Neighborhoods of Walnut Creek.
- D. Guests: The right of the Association to limit the number of guests of Members.

- E. **Borrowing for Improvements:** The right of the Association, in accordance with its Articles and By-Laws and the Planned Community Act, to borrow money for the purpose of constructing, repairing, or improving the Common Area, Limited Common Area, Townhome Common Area and Amenities (or any portion thereof) and in aid thereof, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership, but in any event not less than 67% of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Planned Community Act in the case of Limited Common Area and Townhome Common Area, to mortgage, pledge, deed in trust, or hypothecate said properties, and the right of such Mortgagee of said Property shall be subordinate to the rights and easements of the Association and the Owners established hereunder.
- F. **Parking:** The right of individual Owners to the exclusive use of parking spaces as provided in this Declaration with an easement of ingress and egress to and from said parking area.
- G. **Use of Recreational Facilities:** The right of the Association, through its Board of Directors, to determine the time and manner of use of recreational facilities, if any, by the Members.
- H. **Easements:** The right of the Declarant, during Class D membership, with regard to the Property which may be owned for the purpose of development, to grant easements in and to the Common Area, Limited Common Area or Townhome Common Area contained within the Property to any public agency, authority, or any utility for such purposes as benefits the Property or any portion thereof and Owners or Lots contained therein. This Article II, Section 1(H) may not be amended or deleted, without the written consent of Declarant.
- I. **Exchanges:** The right of the Association, as provided by and consistent with Section 10-3073(a)(2) of the Raleigh City Code, as the same may be amended from time to time, to exchange all or part of the Common Area, Limited Common Area or Townhome Common Area for other real property and consideration of like value and utility subject to the provisions of the Planned Community Act.

Section 2. **Delegation of Use:** Any Owner of a Residential Unit may delegate, in accordance with the By-Laws, his right of use and enjoyment to the Common Area, Limited Common Area, Townhome Common Area, Amenities and facilities to the members of his family, his tenants, contract purchasers, or guests, who reside on the Property, subject to the provisions of Article II, Section 1. An Owner shall be deemed to have made a delegation of all such rights to the occupants of any leased Residential Unit.

Section 3. Parking Rights: Ownership of each single family attached Townhome Lot shall entitle the Owner or Owners thereof to the use of not less than two (2) designated automobile parking spaces within the Townhome Common Area provided for each such Townhome Lot, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking lot. The Association shall permanently assign said parking spaces for each Townhome Lot as near the Residential Unit to which it is assigned as is reasonably possible. Declarant hereby reserves until December 31, 2005 the right to establish additional areas of parking as Declarant, in its discretion, may determine to be needed. The Owner of a Townhome Lot may delegate, in accordance with the By-laws, his right of use and enjoyment to the Limited Common Area and Townhome Common Area and facilities to the members of his family, his tenants, contract purchasers and guests.

Section 4. Title to Common Areas: The Declarant hereby covenants for itself, its heirs, successors and assigns, that in accordance with the Planned Community Act it will convey fee simple title in the Common Area, Limited Common Area and Townhome Common Area to the Association, free and clear of all encumbrances and liens, except utility, greenway and drainage easements and easement of enjoyment to which the Owners of each Residential Unit are entitled to share. Title to Common Area, Limited Common Area and/or Townhome Common Area annexed pursuant to Article IV shall be similarly conveyed to the Association.

Section 5. Television Antennas: The Association may provide one or more central television antennas or other receiving device for the convenience of the Members. The costs of these may be included in annual or special assessments applicable to Lots.

Section 6. Use of Lots. Except as may be otherwise expressly provided in this Declaration, each Residential Unit shall be used for single family residential purposes and not as a boarding house or other arrangement for the rental of individual rooms. Any lease of a Lot or Residential Unit shall be in writing, shall state that it is subject to this Declaration and the Bylaws and rules and regulations of the Association and that a breach thereof shall be a default of the such lease, and shall not be for a period of less than thirty (30) days. With the exception of family day care on any Lot so designated by the Declarant and the use of Lots as models and sales centers by Builders, no trade or business of any kind may be conducted on a Lot. Lease or rental of a Lot or Residential Unit for residential purposes shall not be considered to be a violation of this covenant, so long as the lease is in compliance with reasonable rules and regulations as the Board of Directors may promulgate. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration, the By-laws, and the rules and regulations adopted hereunder.

Without the prior written consent of the Association's Board of Directors, nothing shall be done or kept on any Lot or on either the Common Area, Limited Common Area or Townhome Common Area or any part thereof which could increase the rate of insurance on the Property or

any part thereof over what the Association, but for such activity, would pay. Noxious, destructive, or offensive activity, or any activity constituting an unreasonable source of annoyance, shall not be conducted on any Lot or on either the Common Area, Limited Common Area or Townhome Common Area or any part thereof, and the Association as well as every Owner shall have standing to initiate legal proceedings to abate such activity. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, or annoyance to other Owners, and the Board of Directors shall have the power to make and to enforce reasonable rules and regulations in furtherance of this provision.

Section 7. Rules and Regulations. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Areas, Limited Common Areas, Townhome Common Areas, Amenities, facilities and individual Lots. Copies of such regulations and amendments thereto shall be furnished by the Association to all Owner's prior to the effective date. Such regulations shall be binding upon the Owner's (with the exception of Class D Members), their families, tenants, guests, invitees, and agents until and unless such rule, regulation or requirement shall be specifically overruled, canceled, or modified by the Board of Directors or the Association in a regular or special meeting, by a majority of the Eligible Votes. The Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions. All rules and regulations shall be uniform with respect to all Residential Unit types.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Person or entity who is a record Owner of a fee or undivided fee in any Lot which is subject by covenants of record to assessments, or which is specifically exempted from assessment either by the terms of this Declaration or by the terms of appropriate governmental laws, ordinances, or regulation, or will become subject to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include Persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to, or will become subject to, assessment by the Association. Ownership of said Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this subdivision. Following termination of the Property as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

No Owner, whether one or more Persons shall have more than one (1) membership per Residential Unit owned. In the event the Owner of a Residential Unit is more than one Person or entity, votes shall be cast as provided in the Planned Community Act.

Section 2. The Association shall have up to four classes of voting membership.

Class A: Class A Members shall be all Owners of detached single family units with the exception of the Class D Members, if any, and shall be entitled to one (1) vote for each Residential Unit owned. Class D Members may, however, be a Class A Member upon the termination of Class D membership. When more than one Person holds an interest in any Residential Unit, all such Persons shall be Members and the vote allocated to such Residential Unit shall be cast in accordance with the Planned Community Act.

Class B: Class B Members shall be all Owners of townhouse units with the exception of the Class D Members, if any, and shall be entitled to one (1) vote for each Residential Unit owned. Class D Members may, however, be a Class B Member upon the termination of Class D membership. When more than one Person holds an interest in any Residential Unit, all such Persons shall be Members and the vote allocated to such Residential Unit shall be cast in accordance with the Planned Community Act.

Class C: Class C Member(s) shall be all Owners of multifamily apartment house structures, if any, with the exception of the Class D Members, and shall be entitled to one-tenth (1/10th) of a vote for each Residential Unit owned. Class D Members may, however, be a Class C Member upon the termination of Class D membership. When more than one Person holds an interest in any multifamily apartment house structure, all such Persons shall be Members and the vote allocated to such Residential Unit shall be cast in accordance with the Planned Community Act.

Class D: The Class D Member shall be the Declarant and shall be entitled to three (3) times the regular vote for each Residential Unit owned based on the class to which such Residential Unit would otherwise belong. The Class D membership shall cease and be converted to Class A, Class B or Class C membership, as appropriate, upon either of the following events, whichever occurs first:

- A. When the total votes outstanding in Class A membership, Class B and Class C membership equal the total votes outstanding in Class D membership, but provided that the Class D membership shall be reinstated if thereafter and before the time stated in subparagraph (B) below, Additional Lands are annexed to the Property without the assent of Class Members for the development of such Additional Lands by the Declarant, all as provided in Article IV, Section I, herein;
- B. On December 31, 2005; or
- C. Upon the surrender of the Class D membership by the Declarant.

**ARTICLE IV
ANNEXATION OF ADDITIONAL PROPERTIES**

Section 1. Notwithstanding, anything to the contrary herein, prior to December 31, 2005, Declarant, its successors or assigns, may, without the consent of the Class A, Class B or Class C membership, annex Additional Properties by subjecting the same to the provisions of this Declaration. After December 31, 2005, annexation of contiguous Additional Properties shall require the assent of eighty percent (80%) of the Class A, Class B and Class C membership combined. Upon annexation, said area shall be used only for residential purposes and shall be subject to this Declaration and all Owners shall automatically become Members of the Association.

The submission of such Additional Properties to the provisions of this Declaration shall be accomplished by a Subsequent Amendment to this Declaration executed by Declarant or by the Association, as required with the same formalities as this instrument. Such amendment shall become effective upon the recordation of same.

**ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS**

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

- (1) Annual assessment or charges; and
- (2) Special assessments for extraordinary maintenance and capital improvements.

Such assessments are to be established and collected as hereinafter provided. All assessments relating to the Common Area shall be shared equally by the Owners of each Lot in Use. Special assessments for capital improvements shall, except as provided herein, be shared equally by the Owners of each Lot without regard as to whether or not said Lot is a Lot in Use. The annual and special assessments, together with such interest thereon and the cost of collection thereof, including reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon such until paid in full. Each such assessment, together with such interest, and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of such Property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used to exclusively pay Common Expenses and for the purpose of promoting the beautification of the Property, the recreation, health, safety and welfare of the residents in the Property, and for the improvement, maintenance, repair and replacement of the Common Areas, Limited Common Areas, and Townhome Common Areas and of the homes situated upon the Property. Assessments shall include, but not be limited to, the payment of taxes, liability insurance and all assessments for the public improvements of the Common Areas, Limited Common Areas and Townhome Common Areas, the enforcement of these covenants and the rules of the Association and, in particular, for the improvement and maintenance of private streets, drives and parking, areas, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, Limited Common Areas and Townhome Common Areas and of those Townhomes situated upon the Property on which the Association is obligated to perform exterior maintenance. The Association shall be required to maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Townhomes and Common Areas, Limited Common Areas and Townhome Common Areas out of the assessments levied.

Assessments for exterior maintenance of the Townhomes, private streets, lighting, Townhome Common Areas, etc. and for the Limited Common Areas shall be Parcel Assessments assessed only against the Parcel(s) receiving exterior maintenance or having the right to use the Townhome Common Areas and/or Limited Common Areas.

Section 3. Maximum Annual Assessments:

- A. Until January 1, 2000, the maximum annual assessment shall be \$40.00 per month per single family Lot, \$90.00 per month per Townhome Lot, and \$15.00 per month per Residential Unit in a multifamily apartment house.
- B. From and after January 1, 2000, the maximum annual assessment may be increased each year not more than 10% above the maximum assessment for the previous year without a vote of the Membership.
- C. From and after January 1, 2000, the maximum annual assessment may be increased above 10% by a vote of two-thirds (2/3) or more of each Class of Members who are voting in Person or by proxy at a meeting duly called for this purpose. Additionally, the maximum annual assessment may be increased above 5% for any one or more Classes of Members by a vote of two-thirds (2/3) or more of each of the relevant classes. For example, an increased assessment related to the limited common areas would require a 2/3 vote of the Class A and Class B members, an increased assessment related to the townhome common area would require a 2/3 vote of the Class B members.

- D. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.
- E. As long as Declarant or its successors or assigns, has a majority of the total vote of the Class A, Class B, Class C and Class D votes, Declarant, its successors or assigns, will advance all expenses for the maintenance and operation of the Association to the extent that annual assessments paid by the Owners are inadequate for this purpose. Such advance shall be to the Association and on terms generally available to Declarant from its lending institution. At such time as the majority of the total votes of Class A, Class B, Class C and Class D votes are no longer possessed by Declarant, its successors or assigns, it shall have no further obligation for maintenance and operation of the Association pursuant to the terms of this section. Declarant, its successors and assigns, shall be responsible for the payment of homeowner dues and charges pursuant to other sections of this Article.

Section 4. Special Assessments for Capital Improvements: In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, Limited Common Area, and/or Townhome Common Area; including, the fixtures and personal property related to such capital improvements, the private streets located on the Property (which the Association shall maintain through Parcel Assessments), and the costs of any purchase of an individual Owners Property and the costs of repairing and/or rebuilding any such Property purchased by the Association to the acceptable condition. Provided that any such special assessment shall have the assent of two-thirds (2/3) or more of the votes of each relevant Class of Members who are voting in Person or by proxy at a meeting duly called for this purpose. For example, only Class A and Class B members are relevant to a special assessment for the Limited Common Area, and only Class B members are relevant to special assessments for the Townhome Common Area.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all relevant Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of relevant Members or of proxies entitled to cast sixty percent (60%) of all the votes shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned and the required quorum at the next meeting shall be reduced by one-half of the required quorum for the previously adjourned meeting as provided in the Planned Community Act. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment: Both annual and special assessments related to the Common Expenses must be fixed at a uniform rate for all Lots in Use within a particular Parcel, but may vary between Parcels. The Assessment on the Townhome Parcel shall exceed the assessment on the single family Parcel due to the private streets, lights, and exterior maintenance, etc. All assessments may be collected on a monthly basis. Provided, however, that the Association shall also have the authority, through the Board of Directors, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from Owner's breach of any of the provisions of this Declaration or as provided for by Article VII. Provided further, that for any Lot which is not a Lot in Use, Builders and the Declarant shall be assessed at the rate of 25% of the assessment otherwise payable in such Lot was a Lot in Use.

Section 7. Date of Commencement of Annual Assessments: The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall adopt a proposed budget for the Association and set the amount of the annual assessment against the Lots at least 90 days in advance of each annual assessment period. The Board of Directors shall send to each Member a written summary of the proposed budget and a written notice of the meeting of Members to consider ratification of the proposed budget at least 10 days and not more than 60 days in advance of such meeting. Unless otherwise provided in the Planned Community Act, there shall be no requirement that a quorum be present at such meeting to consider ratification of the proposed budget. The proposed budget shall be ratified unless at that meeting a majority (or such smaller percentage as required by the Planned Community Act) of the votes of all Members rejects the proposed budget. In the event the proposed budget is rejected, the last ratified budget of the Association shall continue until a new proposed budget is ratified. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing, signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated as provided in the Planned Community Act.

Section 8. Effect of Non-Payment of Assessment Remedies of the Association: Any assessments which are not paid within thirty (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, or the highest rate allowed by law, late fees as outlined by the Board of Directors, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against

the Property. Interest, late fees, costs, and reasonable attorney fees of any such action shall be added to the amount of such assessment. Each such Owner, by this acceptance of a deed to a Lot hereby expressly vests in the Association, its agents or assigns, the right and power to bring all actions against such Owner personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a Mortgage or a deed of trust lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. The lien provided for in this action shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in an interest foreclosed at foreclosure and to acquire and hold, lease, Mortgage and convey the same. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area, Limited Common Area, Townhome Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgage: The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage on a Lot. Mortgagees are not required to collect assessments and nothing in this Declaration shall require that failure to pay assessments shall constitute a default under a Mortgage insured by HUD or VA. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any such Mortgage or of deed of trust or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer; provided that the Association and Declarant have been notified of said foreclosure prior to the date thereof. Such unpaid assessments extinguished by the foreclosure sale shall be deemed to be Common Expenses collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

Section 10. Exempt Property: The following Property, subject to this Declaration, shall be exempt from the assessment created herein:

- A. All Property dedicated to and accepted by a local public authority; and
- B. The Common Areas, Limited Common Areas and Townhome Common Areas.

Section 11. Insurance Assessments. The Board of Directors or its duly authorized agent may have the authority to and shall obtain insurance for all the Buildings owned by the Association against loss or damage by fire or other hazards in an amount sufficient to cover the full replacements cost of any repair or any repair or reconstruction work in the event of damage or destruction from any hazard and shall also obtain a broad-form public liability policy covering all Common Area, Limited Common Area and Townhome Common Area and all damage or

injury caused by the negligence of the Association or any of its agents in an amount of not less than one million dollars. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be a Common Expense. All such insurance coverage shall be written in the name of the Association.

It shall be the responsibility of each Owner at his own expense to obtain hazard insurance in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction to his Residential Unit from any hazard, and such hazard insurance shall be with a company and in an amount and in a form which is acceptable to the Board of Directors of the Association. The hazard insurance policy to be taken out by each Owner shall include a loss payable clause listing the Association as an addition insured. Each Owner shall have to satisfy the Board of Directors of the Association that at all times his Property is covered by the required hazard insurance. In the event of damage or destruction by fire or other casualty to the Property of an Owner, the Owner, notwithstanding the responsibility of the Association for exterior maintenance shall, with the concurrence of the Mortgagee, if any, within thirty (30) days after receipt of the insurance proceeds, contract to rebuild or repair such damage or destroyed portion of in as good condition as formerly. In the event the Owner fails to pay all of the costs of repairing any/or rebuilding to the same condition as formerly, the Board of Directors shall have the power to purchase the property and to repair and rebuild the same and to levy a special assessment against all Members to pay the purchase price and to pay for the costs of repairing and/or rebuilding to the same condition as formerly; provided, however, that the Board of Directors' power to levy a special assessment for these purposes is subject to the prior approval of the Association given pursuant to the voting requirements of Article V, Section 4.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family guests, tenants, contractors, employees or invitees or is caused by fire, lightning, thunderstorm, hail, explosion, riot, attending strike, civil commotion, aircrafts, vehicles and smoke as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance policy, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Lot is subject.

Should the Owner fail to rebuild or repair as contemplated above, and the Board of Directors elects to exercise its power to purchase then the Owner of the Residential Unit shall convey marketable title to the Association upon payment to the Owner by the Association of the fair market value of the Lot and Residential Unit in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the Owner. If they cannot otherwise agree on a fair market value or method of determining fair market value, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The fair market value as determined by averaging the three appraisals shall be final and binding on all parties. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-

half (½) of the fee of the third appraiser. If the Board of Directors and the Owner agree upon a single appraiser, each shall pay one-half (½) the cost of the appraisal.

In the event of damage or destruction by fire or other casualty to any Property covered by insurance written in the name of the Association, the Board of Directors shall, with concurrence of the Mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Property to as good condition as formerly existed. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by the Federal Deposit Insurance Corporation or other Federal Government Agency, with a provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3rd) of Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall advertise for sealed bids with any licensed contractor, or they may negotiate with any contractor who may be required to provide a full performance and payment bond or letter of credit for the repair and reconstruction or rebuilding of such destroyed Building or Buildings. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all Members as established by Article V, Section 4, above to make up any deficiency for repairs or rebuilding of the Common Area, Limited Common Area and/or Townhome Common Area.

Section 12. **Two Months of Assessments to be Collected at Closing:** At the closing of each sale of a Lot after such Lot becomes a Lot in Use, a sum shall be collected from the purchaser equal to the total regular annual assessment applicable to such Lot for the succeeding two months and such sum shall be paid to the general operating fund of the Association to be used in the manner specified for annual assessments. This contribution shall not be considered an advance against assessments to become due.

ARTICLE VI PARTY WALL

Section 1. General Rules of Law to Apply: Each wall which is built as a part of the original construction of a Townhome upon the Property 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 Article, 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 thereto.

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

Section 3. Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereof 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 such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

Section 4. Construction or Reconstruction: The Owner may construct or reconstruct a party wall subject to and within the limitations of architectural control and other limitations of these covenants with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Lot to as near the same condition which prevailed on or before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing: Notwithstanding any other provisions of this Article, an Owner, his family members, guests, tenants, employees or contractors who, by his negligence or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6. The Right to Contribution Runs with the Land: The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners' successors in title.

Section 7. Certification by Adjoining Property Owner that No Contribution Is Due: If any Owner desires to sell his Property, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request that the adjoining Owner or Owners or any one of them, provide a certification that no right of contribution exists. Whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. In the event an adjoining Owner refuses or neglects to provide such certification, it shall be deemed a waiver to proceed against such Owner or his Successors for such contribution.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII EXTERIOR MAINTENANCE

Section 1. In addition to maintenance of the Common Area, the Association shall provide (through Parcel Assessments) maintenance, repair and replacement of Limited Common Areas and Townhome Common Areas, and exterior maintenance for each Townhome Lot which is subject to assessment hereunder as follows: paint, repair and replace exterior Building surfaces, care of roofs, gutters, downspouts, trees, shrubs, grass, walks, driveways on the Lot of a Townhome, and all other exterior improvements. Maintenance, upkeep, and repairs of any patio, deck, porch decking, screens and screen doors, exterior doors, and windows and window fixtures and other hardware shall be the responsibility of the individual Owner of the Lot appurtenant thereto additionally, such exterior maintenance shall not include glass surfaces or exterior lighting attached to or wired to the Townhome. In order to enable the Association to accomplish the foregoing, it is hereby reserved to the Association the right to unobstructed access over and upon each Townhome Lot and each Townhome at all reasonable times to perform maintenance as provided in this Article. The Owner may, at his election, plant flowers, and grass in his rear yard and may also maintain portions or all of his rear yard, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. In such event, such Owner shall maintain such plantings or other maintenance. No such maintenance by an Owner shall reduce the assessment payable by him to the Association. Notwithstanding the above, any plantings or maintenance outside the rear yard must receive the prior written approval of the Association. If, in the opinion of the Association, any such Owner fails to maintain his yard or side yard in a neat and orderly manner, the Association may perform such maintenance and assess Owner for the costs of such. The Owner shall not place any furniture, construct or place any structure, or place any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information for future Members of this Association, the Declarant wishes to make it known that it is a part of the original plan of the development to construct a variety of Townhomes with a variety of exteriors for the good of the entire subdivision. Some Townhomes will require far more maintenance than others because of the type of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those Persons connected with the conception, design, construction, and financing of this subdivision as originally planned are in accord in their belief that all Members of the Association will be benefitted by the variety of exteriors and therefore the Association should provide exterior maintenance and make a uniform rate charge without regard to actual cost of maintenance of each Townhome under construction thereon).

Section 2. Single Family Homes and Apartment Lot. In the event an Owner of any other single family Lot or the Apartment Lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval

by two-thirds (2/3) vote of the Board of Directors, shall have the right (but not the obligation), through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the Building and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VIII EASEMENTS

Section 1. Encroachment. Each Lot and the Property included in the Common Area, Limited Common Area or Townhome Common Area shall be subject to an easement for encroachments, created by construction, settling, and overhanging. A valid easement for such encroachments and for the maintenance of same so long as it stands, shall and does exist. In the event the structure containing two or more Townhomes is partially or totally destroyed and then rebuilt, the Owners of the Townhomes so affected agree that minor encroachments or part of the adjacent Townhome units or Common Areas, Limited Common Areas or Townhome Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 2. Easements for Utilities and Governmental Agencies. There is hereby created a blanket easement upon, across, over, and under all of the Common Area, Limited Common Area and Townhome Common Area for ingress and egress, installation, replacing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, electricity, other utilities, and a master antenna system. By virtue of this easement it shall be expressly permissible for the providing electrical, water, sewer, telephone, gas or cable television company to erect and maintain the necessary underground equipment and other necessary equipment on said Common Area, Limited Common Area and Townhome Common Area and to affix and maintain gas, water, sewer pipes, electrical and/or telephone wires, circuits, and conduits on, above, across attached single family dwellings. An easement is further granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar Persons to enter upon the drives and private streets and Common Area, Limited Common Area and Townhome Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area, Limited Common Area and Townhome Common Area provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated in the Common Area, Limited Common Area or Townhome Common Area except as initially planned and approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement crosses Property without conflicting with the terms hereof. The easement provided for in this Article shall in no way affect other recorded easements on said premises.

Section 3. Easement and Right of Entry for Repair, Maintenance and Reconstruction: If any Residential Unit is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his Residential Unit. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Each Owner shall have the right to ingress and egress over, upon and across the Common Area, Limited Common Area and/or Townhome Common Area necessary for access to his or her Lot and shall have the right to lateral support for his or her Lot.

Section 5. An easement is hereby established for the benefit of the City of Raleigh over all Common Area, Limited Common Area and Townhome Common Area and over an area five feet behind the curb line of any street or roadway in the Property hereby or hereafter established for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

Section 6. Until December 31, 2013, notwithstanding any provisions contained in the Declaration of the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns a nonexclusive, right, privilege and easement with respect to the Property, Additional Properties, and The Neighborhoods of Walnut Creek for the benefit of Declarant and Builders, its successors, and assigns over, under, in, and/or on the Property, without obligation and without charge to Declarant and Builders, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use, and enjoyment, and/or otherwise dealing with the Property and/or Additional Properties. The reserved easement shall constitute a burden on the title to the Property and Additional Properties and specifically includes, but is not limited to:

1. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on, or in the Property; and the right to tie into any portion of the Property with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities, constructed or installed in, on, under, and/or over the Property any damage caused by the exercise of such rights shall be repaired and the damaged property shall be restored to as near the same condition, as reasonable and practical, as that which existed prior to the exercise of such rights; and

2. The right to construct, install, replace, relocate, maintain, authorize, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, desirable, or incidental to the construction and sale of residences on the Property;
3. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any Property, including, without limitation, Property conveyed to the Association, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto.
4. This section may not be amended without the written consent of Declarant.

Section 7. An easement over all Lots having any property within the Special Highway Overlay District is hereby granted and reserved to the Association for the purpose of planting, pruning, watering, spraying, and maintaining the plantings within the Special Highway Overlay District. Such expenses shall be a Common Expense.

ARTICLE IX ARCHITECTURAL CONTROL AND USE RESTRICTIONS

Section 1. The Property is hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each Building site in this subdivision; to protect the Owners against such improper use of surrounding Building sites as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of said Property; to guard against the erection thereof of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Property; to encourage and secure the erection of attractive homes hereon, with appropriate locations thereof on Building sites; to secure and maintain proper set-backs from the streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said Property and thereby to enhance the values of investments made by the purchasers of Building sites therein.

Section 2. Each Lot, as approved by the appropriate municipal authority, shall constitute a residential Building site (hereinafter called "Building Site") and shall be used for residential purposes only. The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant during Class D membership, its successors and assigns, or thereafter the Association's Board of Directors (or the Architectural Committee appointed by it) and the appropriate municipal authority the size and

shape of any Building Site may be altered; provided that no Building Site or group of Building Sites may be resubdivided so as to produce a greater number of Building Sites than that allowed by the applicable zoning or subdivision laws in force at the time of said change. More than one Lot may be used as one Building Site provided the location of any structure permitted thereon is approved in writing by the Declarant, its successors and assigns during Class D membership and thereafter by the Architectural Committee, and said Lot is recombined as provided in N.C. General Statute 160A-376(1). This development was approved for single family detached dwellings, single family attached dwellings and multifamily dwellings.

Section 3. No Building, wall, fence, or other structure shall be commenced, altered, erected, or maintained upon the Property, nor shall any addition or repair be made thereto, nor shall any Building, wall, fence, or other structure be rebuilt after destruction by any hazard until plans and specifications, showing the nature, kind, space, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant or the Architectural Committee. In the event the Architectural Committee or Declarant fails to approve or disapprove such design and location within seventy-five (75) days after said completed plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. To the extent not prohibited by the Planned Community Act or by regulations of HUD or VA, the Association shall have the right to charge and collect a reasonable fee for review of such plans and specifications.

Section 4. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out-buildings shall be used on any portion of said Property at any time as a residence, either temporarily or permanently.

Section 5. Each Lot shall be conveyed as a separately designated and legally described freehold estate, subject to the terms, conditions and provisions.

Section 6. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for Declarant or any Builder to maintain during the period of construction and sale, upon such portion of the premises as Declarant or Builder deems necessary, such facilities as in the sole opinion of Declarant or Builder may be reasonably required, convenient, or incidental to the construction and sale of Residential Units, including but without limitation, a business office, construction trailers, a sales trailer, storage area, construction yards, signs, model units and sales office.

Section 7. No unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property, and in no event in the Common Area, Limited Common Area or Townhome Common Area nor shall said Property be used in any way or for any purpose which may endanger the health or reasonably disturb the Owner of any Residential Unit or the resident

thereof, except as specifically authorized herein. No business activities of any kind whatsoever shall be conducted in any Building or in any portion of said Property, however, the foregoing covenants shall not apply to the business activities, and signs, of the rental office of the multifamily apartment project, or the construction and maintenance of Buildings, if any, of Declarant or Builders, their agents and assigns, during the construction and sales period, and The Neighborhoods of Walnut Creek Association, Inc., a nonprofit corporation, incorporated or to be incorporated under the laws of the State of North Carolina, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth.

Section 8. All clothes lines, equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Lots, streets or detached single-family dwelling. All garbage, trash, or rubbish shall be regularly removed from the premises and shall not be allowed to accumulate therein. All clothes shall be confined to deck or patio areas.

Section 9: No fences, hedges, or walls shall be erected or maintained upon said Property except such as are installed in accordance with initial construction of the Buildings located thereon by Declarant or thereafter by the Association. Except for the right of ingress and egress, the Owners of said Lots are hereby prohibited and restricted from using any said Property outside of the exterior Building lines, deck and patio areas, except as may be allowed by the Association's Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all the Owners and the Association, and is necessary for the protection of the Owners.

Section 10. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Areas, Limited Common Areas and all exterior and roofs of the Townhomes, including, but not limited to, of the Townhome Common Areas, parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representatives.

Section 11. All fixtures and equipment installed within a Townhome commencing, at a point where the utility lines, pipes, wires, conduits, or systems are within the exterior walls of Townhomes, including the courtyards, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act, nor any work that will impair the structural soundness or integrity of another Townhome, nor impair any easement or hereditament, nor do any act or allow any condition to exist which will adversely affect the other Townhomes or their Owners. All water and sewer lines located outside the exterior walls of the townhome units and/or within the Common Area, Limited Common Area and/or Townhome Common Area shall be maintained by the Association.

Section 12. Without the prior written approval and the authorization of the Board of Directors, no exterior television or radio antennas, or solar panels or other utility devices, of any

sort shall be placed, allowed or permitted upon any portion of the exterior of the improvements to be located upon the Property; other than a master antenna system provided by the Association, should any such master antenna system or system provided by the Association, should any such master antenna system or systems be utilized and require any such exterior antenna.

Section 13. No action shall at any time be taken by the Association or its Board of Directors or the Architectural Committee, which in any manner would discriminate against any Owner in favor of any of the other Owners.

Section 14. No obnoxious or offensive activity shall be carried on upon the Property or improvements thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood or any Owner.

Section 15. No exterior lighting fixture (or interior fixture designed to light the exterior) other than standard fixtures installed during the original construction of the Residential Unit, by Declarant, or approved by the Board of Directors or appointed architectural committee, shall be installed within or upon any Residential Unit Lot without adequate and proper shielding of the fixture. No fixture shall be installed that may become an annoyance or a nuisance to Owners or occupants of adjacent or other Lots. All modifications of exterior lighting must be approved in writing, in advance, by the Board of Directors or appointed architectural committee.

Section 16. Except for unit identification signs required by the ordinances of the City of Raleigh, no sign of any kind shall be displayed to the public view on any Lot (except one temporary For Rent or For Sale sign per Lot of not more than thirty inches by forty eight inches) or in the Common Area, Limited Common Area, or Townhome Common Area without the prior written consent of the Board of Directors. The Board, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on the Common Area, Limited Common Area and Townhome Common Area. This subsection shall not apply to Class D Members.

Section 17. In addition to those restrictions contained in Article IX, the Board of Directors of the Association shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the use and enjoyment of each Lot and of the Common Area, Limited Common Area and Townhome Common Area.

Section 18. Storage and Parking of Vehicles. There shall be no outside storage or parking upon any Lot or within the Common Area or Limited Common Area, or within the right-of-way of any street in or adjacent to the Property of any truck (excluding pick-up trucks), tractor, mobile home or trailer (with or without wheels), camper, camper trailer, boat or other water craft, boat trailer, inoperable automobile, or any transportation device of any kind by any Owner or tenant. Such vehicles may only be stored and parked only within a garage, the door to which is generally kept closed. No Owner or tenant shall repair or restore any vehicle of any

kind upon any Lot, Common Area, Limited Common Area or Townhome Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered in such a manner that the number of automobiles which may reasonably be parked therein after the alteration is less than the number of automobiles that could have been reasonably parked in the garage as originally constructed.

Section 19. Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on the Property, except that no more than two (2) dogs, three (3) cats, and a reasonable number of other normal household pets may be kept in residences subject to rules and regulations adopted by the Association through its Board of Directors, provided that such pets are not kept, bred or maintained for any commercial purpose. Puppies and kittens in excess of the numbers set forth above may be kept only until old enough to be safely separated from their mother. The Board of Directors shall have the absolute power to prohibit any particular pet from being kept on the Property, including inside a residence, if the Board of Directors in its sole and absolute discretion determines that the pet is dangerous, a nuisance, or otherwise has a negative impact on the Community.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement: The Association and each Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants and reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by Association or by any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability: Invalidation of any one or more of these covenants or restrictions by judgement or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Amendment: The covenants, conditions and restrictions of the Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time, said covenants shall automatically be extended for successive periods of ten (10) years. Except as specifically otherwise provided herein, the covenants, conditions and restrictions of this Declaration may be amended as provided in Article X by an instrument signed by not less than the Owners of sixty-seven percent (67%) of the Lots. Any amendments must be recorded.

Section 4. Certificate of Amendments. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors

of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

A. Reasonably assure itself that the amendment has been executed by the Owners of the required number of Residential Units (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined).

B. Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that these were executed. The following form of certification is suggested:

"CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NEIGHBORHOODS OF WALNUT CREEK ASSOCIATION, INC."

By authority of its Board of Directors, The Neighborhoods of Walnut Creek Association, Inc. hereby certifies that the foregoing instrument has been duly executed by the Owners of sixty-seven percent (67%) of the Lots of The Neighborhoods of Walnut Creek and is therefore a valid amendment to existing covenants, conditions and restrictions of the Neighborhoods of Walnut Creek.

THE NEIGHBORHOODS OF WALNUT CREEK ASSOCIATION, INC.

BY: _____
PRESIDENT

ATTEST:

Secretary

C. Immediately and within the thirty (30) day period, aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded and indexed as provided in this section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all Persons thereafter purchasing any Lot in The Neighborhoods of Walnut Creek. All amendments shall be approved as set forth herein, as required.

Section 5. Intentionally Deleted.

Section 6. Disputes. In the event of any dispute arising, concerning the provisions of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of said committee.

Section 7. Voting. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Association's By-Laws.

Section 8. Liability Exemptions. In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police or other public service when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Developer, homeowners association or occupants. In no case shall the City of Raleigh or the State be responsible for maintaining any private street. Such responsibility shall rest with the homeowners association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 9. Address. Each Member agrees to keep Association informed of his address at any time and any notice sent or delivered to said address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as the Ownership of each Lot.

Section 10. VA/HUD Approval. As long as there is a Class D membership, the following actions will require prior approval of the Veterans Administration (the "VA") and/or the Department of Housing and Urban Development (the "HUD"): annexation of additional properties (except as permitted by applicable HUD or VA regulations for annexations by the Declarant pursuant to a right reserved under the Declaration), mortgaging of Common Areas, Limited Common Areas and/or Townhome Common Areas, withdrawal of or dedication of or otherwise deeding of Common Areas, Limited Common Areas and/or Townhome Common Areas to persons other than the Association, and amendment of this Declaration.

Section 11. Greenway - City of Raleigh Approval. Notwithstanding any other provisions of these Declarations, the Association, Owners, Members, Tenants of members, members' guests or invitees, or families of members, shall not, within any portion of the Common Area which is greenway area dedicated to the City of Raleigh, without the prior written consent of the City of Raleigh:

1. Grant easements of any nature whatsoever;
2. Remove any trees or vegetation;
3. Erect gates, fences or other structures;

4. Place any garbage receptacles;
5. Fill or excavate; and
6. Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the City of Raleigh may erect trails; trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association and Lot Owners may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City and may enter into such agreements with the City of Raleigh as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

Section 12. Cluster Unit Development. All lots within the Property were approved by the City of Raleigh as a cluster unit development and therefore even though a Lot within the Property may appear to contain enough land area to permit construction of additional Residential Units, prior approval density transfers may in fact, preclude City approval of additional Residential Units.

Section 13. Maximum Land Area. The maximum land area for the development including all additional lands annexed thereto shall be one hundred and eight (108) acres.

Section 14. Maximum Residential Units. The maximum total number of Residential Units for the Property, including all additions thereto, shall be six hundred and seventy (670) units.

Section 15. Maximum Density. The maximum density for the Property shall be twenty (20) Residential Units per acre. It is expected that this density shall only be approached by the apartment units.

Section 16. Right to Change Residential Unit Types. The Declarant, subject to the prior approval of the City of Raleigh, shall have the right to change Residential Unit types and add Common Area, Limited Common Area and/or Townhome Common Area without the consent or approval of the Owners.

Section 17. Landscaping of Island(s). Landscaping of islands within the right(s)-of-way of public street(s) shall be the responsibility of the Association as set out in Article I, Section 11J. Such area(s) shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants must

be removed by the Association and replaced as necessary. Neither the City nor the State will be liable for any accidents or damage caused by such encroachment within the right(s)-of-way and the Association shall hold harmless the public and indemnify the City and State from such liability.

Section 18. Special Highway Overlay District. A portion of the Property as shown on the recorded maps contain areas designated as Special Highway Overlay Districts ("SHOD"). Uses of SHOD are regulated by the City, so that among other things, the construction of buildings, vehicle surface areas, and loading areas are prohibited within the SHOD, and the SHOD are to be planted and maintained as regulated by the City. Destruction, injury or removal of City required landscaping within the SHOD is a violation of the City Code, punishable by fines and imprisonment; any destruction, injury or removal of such landscaping is also a violation of this Declaration.

Section 19. Gender and Grammar. The singular, wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes requires to make provisions hereby apply to either corporations or individuals, man or wife, shall in all cases be assumed as though in each case fully expressed.

ARTICLE XI UNDERGROUND UTILITIES

Declarant reserves the right to subject the Property to a contract with Public Service Company of North Carolina, Inc. and/or Carolina Power and Light Company for the installation of underground utility service and the installation of street lighting.

Declarant further reserves the right to connect to each unit necessary water and sewer service which may require a continuous monthly charge to the Owner of the Lot. Upon acceptance of a deed to the Lot each Owner agrees to pay said continuing monthly charges, if any.

ARTICLE XII OWNER RESPONSIBILITY

Anything contained herein to the contrary notwithstanding, an Owner shall be responsible and liable for any and all violations of these Declarations by his employees, contractors, tenants, guests and invitees, but absolute liability is not imposed on Owners for damage to Common Areas or Lots.

[Signature are on the following page.]

[Signature Page]

IN WITNESS WHEREOF, the Declarant and the Owners have caused this Amendment to be duly executed under seal by their respective duly authorized Managers or, if corporate, by their respective duly authorized officers by authority of their respective boards of directors, the day and year first above-written.

DECLARANT:

RBAG/WALNUT CREEK, L.L.C., a Delaware limited liability company

By: M-COBEGO, INC., an Illinois corporation, MANAGER

By: [Signature]
Name & Title: ~~By~~ Michael Dean Chadwick, President



(Corporate Seal)

ATTEST:

[Signature]

Name & Title: [Signature]

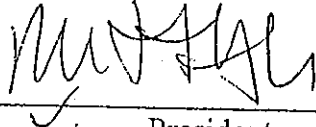
By: 1st AMERICAN REALTY, L.L.C., a N.C. limited liability company, MANAGER

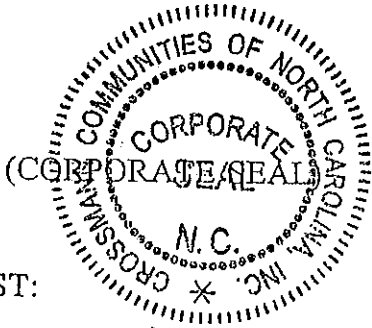
By: [Signature] (SEAL)
Michael Dean Chadwick, Manager

[Signatures continued on following page.]


OWNERS:

CROSSMANN COMMUNITIES OF
NORTH CAROLINA, INC.,
a North Carolina corporation

By: 
President



ATTEST:


Secretary

TOM CHARNETZKY CUSTOM
HOMES, INC.,
a North Carolina corporation

By: _____
President

(CORPORATE SEAL)

ATTEST:

Secretary

JUSTYN L. HARPER (SEAL)

[Signature page continued]

OWNERS:

**CROSSMANN COMMUNITIES OF
NORTH CAROLINA, INC.,**
a North Carolina corporation

(CORPORATE SEAL)

By: _____
_____ President

ATTEST:

Secretary

**TOM CHARNETZKY CUSTOM
HOMES, INC.,**
a North Carolina corporation

(CORPORATE SEAL)

By: Tom Charnetzky
_____ President

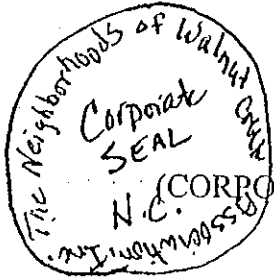
ATTEST:

Michelle Pless
_____ Secretary

Justyn L. Harper (SEAL)
JUSTYN L. HARPER

**CERTIFICATION OF VALIDITY OF AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE NEIGHBORHOODS AT WALNUT CREEK**

By authority of its Board of Directors, The Neighborhoods of Walnut Creek Association, Inc. hereby certifies that the foregoing instrument has been duly executed by the Owners of 75% of the Lots of The Neighborhoods of Walnut Creek and is therefore a valid amendment to the Declaration of Covenants, Conditions and Restrictions For The Neighborhoods of Walnut Creek and any previous valid amendments thereto.



(CORPORATE SEAL)

**THE NEIGHBORHOODS OF WALNUT
CREEK ASSOCIATION, INC.,**
a North Carolina not-for-profit corporation

By: [Signature]
President

ATTEST:

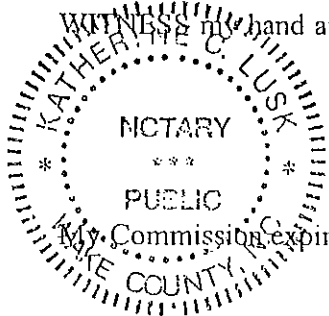
[Signature]
Secretary

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Edward J. Bedford, personally came before me this day and acknowledged that he/she is _____ Secretary of **THE NEIGHBORHOODS OF WALNUT CREEK ASSOCIATION, INC.**, a North Carolina not-for-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attest by him/her as its _____ Secretary.

WITNESS my hand and official seal, this the 13th day of January, 2000.

(SEAL-STAMP)



[Signature]
Katherine C. Lusk
Notary Public

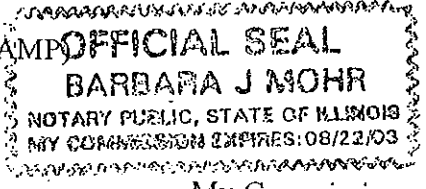
STATE OF NORTH CAROLINA

COUNTY OF Lake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Robert S. Ross, personally came before me this day and acknowledged that he/she is Asst. Secretary of M-COBEGO, INC., an Illinois corporation, Manager of RBAG/WALNUT CREEK, L.L.C., a Delaware limited liability company, and that by authority duly given and as the act of the corporation acting as a Manager of said limited liability company, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by him/her as its Asst. Secretary, for and on behalf of said limited liability company.

WITNESS my hand and official seal, this the 12 day of January, 2000.

(SEAL-STAMP)



Barbara J Mohr
Notary Public

My Commission expires: 8-22-03

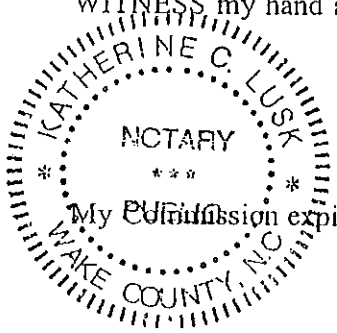
STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that MICHAEL DEAN CHADWICK, Manager of 1st AMERICAN REALTY, L.L.C., a North Carolina limited liability company, Manager of RBAG/WALNUT CREEK, L.L.C., a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as Manager of 1st AMERICAN REALTY, L.L.C. for and on behalf of RBAG/WALNUT CREEK, L.L.C.

WITNESS my hand and official seal, this the 13th day of January, 2000.

(SEAL-STAMP)



Katherine C. Lusk
Notary Public

My Commission expires: 3-24-01

STATE OF NORTH CAROLINA

COUNTY OF Durham

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Michelle J. McJunkin, personally came before me this day and acknowledged that he/she is _____ Secretary of **CROSSMANN COMMUNITIES OF NORTH CAROLINA, INC.**, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attest by him/her as its _____ Secretary.

WITNESS my hand and official seal, this the 13th day of January, 2000.

(SEAL-STAMP)

Debbie McKeen
Notary Public

My Commission expires: 6-16-2003

STATE OF NORTH CAROLINA

COUNTY OF Durham

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that _____, personally came before me this day and acknowledged that he/she is _____ Secretary of **TOM CHARNETZKY CUSTOM HOMES, INC.**, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attest by him/her as its _____ Secretary.

WITNESS my hand and official seal, this the _____ day of _____, 2000.

(SEAL-STAMP)

Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF _____

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that _____, personally came before me this day and acknowledged that he/she is _____ Secretary of **CROSSMANN COMMUNITIES OF NORTH CAROLINA, INC.**, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attest by him/her as its _____ Secretary.

WITNESS my hand and official seal, this the _____ day of _____, 2000.

(SEAL-STAMP)

Notary Public

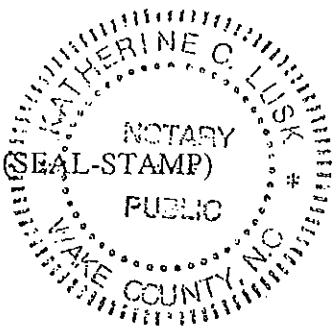
My Commission expires: _____

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Michelle Plues, personally came before me this day and acknowledged that he/she is _____ Secretary of **TOM CHARNETZKY CUSTOM HOMES, INC.**, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attest by him/her as its _____ Secretary.

WITNESS my hand and official seal, this the 13th day of January, 2000.



Katherine C. Lusk
Notary Public

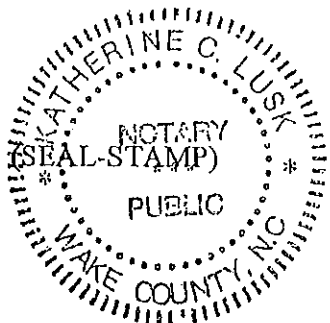
My Commission expires: 3-24-01

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that **JUSTYN L. HARPER**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the 15th day of January, 2000.



Katherine C. Lusk
Notary Public

My Commission expires: 3-24-01

EXHIBIT A

DESCRIPTION OF PROPERTY

Being all of Phase 1 of The Neighborhoods of Walnut Creek, containing approximately 22.13 acres as shown on plats recorded in Book of Maps 1999, Page 878-880, Wake County Registry.

EXHIBIT B

DESCRIPTION OF PROPERTY THAT MAY BE ANNEXED

Being all of Lots 1, 2, 3, 4, 5, and 7, containing approximately 107.12 acres of land as shown on the Right of Way Dedication Recombination Exempt Subdivision Plat plats recorded in Book of Maps 1998, Pages 1665-1666, Wake County Registry.

PREPARED BY AND RETURN TO:
Edward Bedford
1st American Realty, L.L.C.
2521-134 Schieffelin Road
Apex, NC 27502

NORTH CAROLINA

WAKE COUNTY

Wake County, NC 594
Laura H Riddick, Register Of Deeds
Presented & Recorded 11/16/1999 13:28:10
Book : 008462 Page : 00010 - 00010

DECLARATION OF ANNEXATION -
COVENANTS, CONDITIONS and
RESTRICTIONS FOR THE
NEIGHBORHOODS OF WALNUT
CREEK TOWNHOMES CLUSTER
UNIT DEVELOPMENT

THIS DECLARATION OF ANNEXATION is made this 11th day of November, 1999, by ~~RBAG, Walnut Creek, L.L.C.~~, a Delaware limited liability company, hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property in the City of Raleigh, Wake County, North Carolina, consisting of approximately 2.12 acres known as The Neighborhoods of Walnut Creek Townhomes Cluster Unit Development, being all of Lots 1 through 24, inclusive, (the "Property") according to a plat recorded in Book of Maps 1999, Page 2108, Wake County Registry, N.C., to which plat reference is made for a more particular description; and

WHEREAS, Declarant imposed Covenants, Conditions and Restrictions for The Neighborhoods of Walnut Creek Subdivision, Phase I with a Declaration dated June 1, 1999 and recorded in the Office of the Register of Deeds of Wake County, N.C. in Book 8327, Page 2208-2248 and amended in Book 8368, Page 2185 (the "Declaration"); and

WHEREAS, in Article IV of the Declaration the Declarant reserved the right to subject additional portions of real property which were described on Exhibit B to the Declaration; and

WHEREAS, the Declarant now wishes to subject the Property, which is a portion of the property described in Exhibit B of the Declaration, to the terms and conditions of the Declaration; and

WHEREAS, the Declarant will convey the Property, subject to certain covenants, conditions and restriction as provided in the Declaration.

NOW, THEREFORE, in consideration of the premises and the mutual benefits and duties contained in the Declaration, the Declarant declares that all the Property shall be held, sold and conveyed subject to the easements, covenants, restrictions, reservations and conditions contained in the Declaration which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the residences to

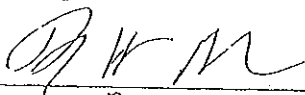
be constructed on the Property, which easements, covenants, restrictions, reservations and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part of the Property, and which shall inure to the benefit of each Owner, all as described and set forth in the Declaration recorded in the office of the Register of Deeds of Wake County, N.C., in Book 8327, Pages 2208-2248, ^{as amended,} the terms of which are incorporated herein by reference.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, or if corporate have caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, or behalf of and in the name of RBAG/WALNUT CREEK, L.L.C., a Delaware limited liability company, this 5 day of November, 1999.

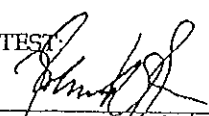
RBAG/WALNUT CREEK, L.L.C., a
Delaware limited liability company

By: M-COBEGO, INC., an Illinois
corporation, MANAGER

(CORPORATE SEAL)

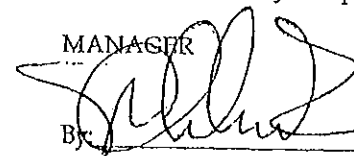
By: 
Name & Title: Bruce H Block, President

ATTEST:


NAME & TITLE: Robert S. Ross, Asst. Secy.

By: 1st AMERICAN REALTY, L.L.C., a
N.C. limited liability company,

MANAGER

By:  (SEAL)
Michael Dean Chadwick, Manager

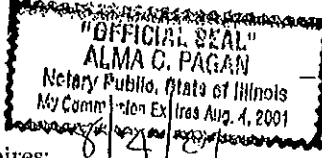
STATE OF Illinois

COUNTY OF WOK

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Robert S. Ross, personally came before me this day and acknowledged that he/she is Assistant Secretary of M-COBEGO, INC., an Illinois corporation, Manager of RBAG/WALNUT CREEK, L.L.C., a Delaware limited liability company, and that by authority duly given and as the act of the corporation acting as a Manager of said limited liability company, the foregoing instrument was signed in its name by its Assistant President, sealed with its corporate seal and attested by him/her as its Assistant Secretary, for and on behalf of said limited liability company.

Witness my hand and official seal, this the 5 day of November, 1999.

(SEAL-STAMP)



Alma C. Pagan
NOTARY PUBLIC

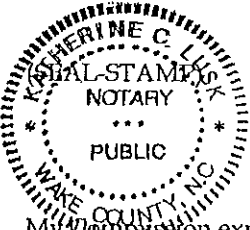
My Commission expires: 8/4/01

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that MICHAEL DEAN CHADWICK, Manager of 1st AMERICAN REALTY, L.L.C., a North Carolina limited liability company, Manager of RBAG/WALNUT CREEK, L.L.C., a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as Manager of 1st AMERICAN REALTY, L.L.C. for and on behalf of RBAG/WALNUT CREEK, L.L.C.

Witness my hand and official seal, this the 11th day of November, 1999.



Katherine C. Lusk
NOTARY PUBLIC

My Commission expires: 3/24/01

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 808462 Page : 88818 - 88813



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina - Wake County

The foregoing certificate of

Christine C. Rusk

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

Laura M. Riddick, Register of Deeds

By: *Christine C. Rusk*
Assistant/Deputy Register of Deeds

This Customer Group
of Time Stamps Needed

This Document
of Pages
New Time Stamp

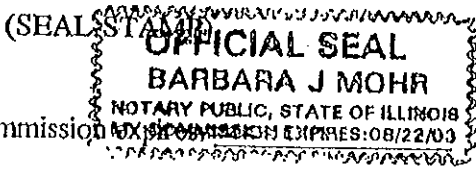
JK008583PG00827

STATE OF ILLINOIS

COUNTY OF LAKE

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Shannon Barber, personally came before me this day and acknowledged that he/she is Assistant Secretary of M-COBEGO, INC., an Illinois corporation, Manager of RBAG/WALNUT CREEK, L.L.C., a Delaware limited liability company, and that by authority duly given and as the act of the corporation acting as a Manager of said limited liability company, the foregoing instrument was signed in its name by its Vice President, and attested by him/her as its Assistant Secretary, for and on behalf of said limited liability company.

Witness my hand and official seal, this the 8 day of May, 2000.



Barbara J Mohr
Notary Public

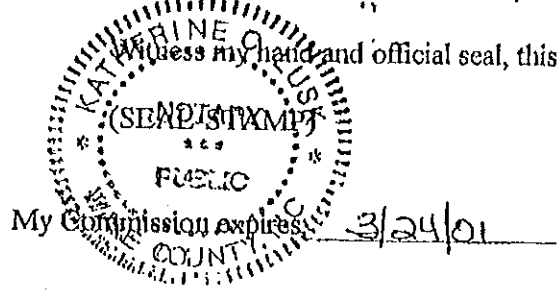
My Commission Expires

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Michael Dean Chadwick, Manager of 1st AMERICAN REALTY, L.L.C., a North Carolina limited liability company, Manager of RBAG/WALNUT CREEK, L.L.C., a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as Manager of 1st AMERICAN REALTY, L.L.C. for and on behalf of RBAG/WALNUT CREEK, L.L.C.

Witness my hand and official seal, this the 9th day of May, 2000.



Katherine C Gust
Notary Public

My Commission Expires

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 006583 Page : 00025 - 00028

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Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina - Wake County

The foregoing certificate 5 of _____

_____ *Katherine C. Lusk*
_____ *Barbara J. Mohr*

_____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: *Sandra K. Callahan*
Assistant/Deputy Register of Deeds

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