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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS  
FOR THE  
ALEXANDER CROSSING HOMEOWNERS ASSOCIATION, INC.**

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**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS  
FOR THE  
ALEXANDER CROSSING HOMEOWNERS ASSOCIATION, INC.**

THIS DECLARATION is made on the date hereinafter set forth by **M/I SCHOTTENSTEIN HOMES, INC.**, an Ohio corporation (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 46 acres of land located in the City of Durham, Triangle Township, Durham County, North Carolina, more fully described in the deed recorded in Book 3462, Page 447, Durham County Registry;

WHEREAS, Declarant desires to create on such property an exclusive residential community of detached single-family homes to be known as Alexander Crossing Subdivision (hereinafter sometimes referred to as the "Subdivision");

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area within the Subdivision, and, to that end, desires to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a nonprofit corporation, the Alexander Crossing Homeowners Association, Inc., for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the real property described in **EXHIBIT A** to this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I DEFINITIONS**

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act.

Section 2. "Association" shall mean and refer to the **ALEXANDER CROSSING HOMEOWNERS ASSOCIATION, INC.**, a North Carolina nonprofit corporation, its successors and assigns.

Section 3. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 5. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or by easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically including, but without limitation, all storm water drainage easements and ponds and facilities constructed thereon, any and all easement rights, if any, granted to the Association on any other land owned by the Declarant, the City of Durham or any other person or firm for the purpose of providing an off-site storm water drainage retention pond and associated storm water drainage facilities. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility as set forth herein. Such maintenance shall include, without limitation, the maintenance of the Storm Detention Pond (the "Facility") in accordance with the provisions of that certain Storm Water Facility Operation And Maintenance Permit Agreement to be entered into with between the Association and the City of Durham (hereinafter the "Permit Agreement") and the provisions of Article X of this Declaration.

Section 6. "Declarant" shall mean and refer to **M/I SCHOTTENSTEIN HOMES, INC.**, an Ohio corporation. It shall also mean and refer to **M/I HOMES OF RALEIGH, LLC**, a Delaware limited liability company, which will be a successor in title of all or part of the Properties. It shall also mean and refer to any person, firm or corporation to whom or which M/I Schottenstein Homes, Inc., or M/I Homes of Raleigh, LLC, shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Durham County Registry.

Section 7. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2008;
- (b) When the total number of votes held by the Class A Members equals the total number of votes held by the Class B Member; *provided, however, that*, Declarant may acquire additional votes and thereby reinstate the Declarant Control Period if additional Lots within the Properties are formed by the creation and subjection to this Declaration of new Lots as set forth in Article II hereof, thus making Declarant the Owner, by virtue of its ownership of the newly-annexed Lots and of other Lots owned by it, of a sufficient number of votes (at the 3-to-1 ratio) to cast a majority of the votes of the membership (it being hereby stipulated that the termination and rejuvenation of Declarant Control shall occur automatically as often as the foregoing shall occur); or
- (c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

**Section 8.** "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of Common Area owned in fee by the Association, any property owned by the City of Durham or other governmental entity, and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

**Section 9.** "Member" shall mean and refer to every person or entity who holds membership in the Association.

**Section 10.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

**Section 11.** "Properties" shall mean and refer to the "Existing Property" described in **Exhibit A** to this Declaration and any additional property annexed pursuant said Article II.

**ARTICLE II**  
**PROPERTY SUBJECT TO THIS DECLARATION**  
**AND WITHIN THE JURISDICTION OF THE**  
**ALEXANDER CROSSING HOMEOWNERS ASSOCIATION, INC.**

**Section 1.** **Existing Property.** The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on **Exhibit A** attached hereto.

**Section 2.** **Additions to Existing Property.** At any time prior to December 31, 2008, additional lands within the area described on **Exhibit B** attached hereto may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed, provided, however, that such property must

be contiguous to property already subject to this Declaration (or separated from such property only by the right-of-way of a public street or road) and must be approved by the City of Durham and, if appropriate, by the Federal Housing Administration and/or Secretary of Veterans Affairs. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. Conveyance of Common Area in Annexed Property. Prior to the conveyance of the first Lot within any newly annexed property to an Owner, the owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

### **ARTICLE III MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots.

There shall be two classes of membership respect to voting rights:

(a) Class A Members. Class A Members shall be the Owners of all Lots except those owned by the Class B Member (as hereinafter defined). When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Lot. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots".

(b) Class B Member. The Class B Member shall be the Declarant. Subject to the provisions of this subsection, Declarant shall be entitled to three (3) votes for each Lot that it owns (each a "Class B Lot").

At any time that Declarant no longer has the right to appoint and remove the members of the Board of Directors (*see* Article I, Section 8 hereof), Declarant shall have one vote for each Class Lot that it owns; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 3. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the dwelling constructed thereon as his own personal living quarters or if any residence within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such rental units shall not be entitled to any weight greater than forty-nine (49) percent on any matter pending before the Association.

An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For The Alexander Crossing Homeowners Association, Inc., recorded in the Durham County Registry. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Each owner shall furnish the Association a copy of any lease or sublease of his dwelling.

#### **ARTICLE IV PROPERTY RIGHTS**

**Section 1. Owners' Easements of Enjoyment and Access.** Except as limited by Section 2 of this Article IV and by the Rules and Regulations adopted by the Members and/or the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use of and access to, from, and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facilities hereafter situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of 30 days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least 80% of the votes of the entire membership of the Association and at least three-fourths (3/4) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when such easements, in the opinion of the Board, are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Durham or to another nonprofit corporation for the aforementioned purposes, provided, however, that, no conveyance to any entity other than the City of Durham shall be permitted

unless and until the grantee of such conveyance has entered into an agreement with the City covering the matters addressed in the Permit Agreement. Notwithstanding any other provision of this Declaration, the Board of Directors of the Association may, without vote of the Members, exchange Common Area for equivalent real property, provided that such exchange is approved by the City of Durham.

(d) the right of the Association, with the assent of Members entitled to at least 80% of the votes of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

#### Section 2. Delegation of Use.

(a) Family. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Durham County, North Carolina.

(b) Tenants. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Durham County, North Carolina.

(c) Guests. The right and easement of use and enjoyment granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase or section to an Owner, it will convey to the Association title to those portions of the Common Area to be owned in fee by the Association. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Properties for the purpose of constructing any improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens, including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes, except utility, drainage and greenway easements of record or shown on the recorded plats of the Subdivision. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Common Area. It is the intent of the Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, Declarant will, prior to the conveyance of the first Lot in any phase or section of the Subdivision to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area easement lies.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within any Common Area; (2) erect gates, fences, buildings or other structures on any Common Area; (3) place any garbage receptacles on or in any Common Area; (4) fill or excavate any Common Area or any part thereof; or (5) plant vegetation or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

It is the intent of the Declarant that a Common Area easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner. If an Owner of a Lot on which a Common Area easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 8 of Article V of this Declaration.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

(c) Association's Right of Entry for Maintenance of Common Area Easements. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement, and any other portion of the Lot to the extent necessary to gain access to the Common Area easement, for the purposes of: (i) installing and maintaining entrance signage and other signage; (ii) making such improvements to the Common Area easement as have been approved by the Association; and (iii) maintaining the Common Area easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use. No such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

## **ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot that it owns within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together interest and late

charges set forth in Section 8 of this Article V and all costs of collection, including reasonable attorneys' fees, shall be a charge on the land and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

It is the intent of the Declarant that any monetary fines imposed against an Owner pursuant to Section 3 of Article VII of the Bylaws shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, storm water drainage facilities, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of all fees and expenses necessary to provide the surety required by Section 12 of this Article V; (iv) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (v) procurement and maintenance of insurance; (vi) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2003, the Maximum Annual Assessment shall be \$144.00 for each Class A Lot.

(a) From and after January 1, 2004, the Maximum Annual Assessment for Class A Lots may be increased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the Maximum Annual Assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

(b) The Maximum Annual Assessments for Class A Lots may be increased without limitation if such increase is approved by not less than two-thirds (2/3) of the votes cast by the Class A Members present, in person or by proxy, at a meeting duly called for that purpose.

Section 4. Annual Assessments; Ratification of Budgets; Certificate of Payment. Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. Except as otherwise provided in this Section, the assessment established for each Class B Lot shall

always be one-fourth (1/4) of the assessment for a Class A Lot. Annual assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots in any phase on the first day of the month following the conveyance to the Association of all or any part of the Common Area within that phase.

Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

A Class B Lot that contains a dwelling that is occupied as a residence shall be assessed at the Class A rate. All other Class B Lots (including, without limitation, a Lot containing a dwelling used as a model and/or sales center) shall be assessed at the Class B rate.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within 30 days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than 10 days nor more than 60 days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as provided in Section 6 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than 10% larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

**Section 5. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments 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, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article and shall be in the ratios provided in this Section

4 of this Article. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

**Section 6. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3(b) or 5 shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty (60%) percent of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

**Section 7. Effect of Nonpayment of Assessments; Remedies.** An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

**Section 8. Subordination of the Lien to Mortgages.** The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

**Section 9. Exempt Property.** All property dedicated to and accepted by a public authority and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

**Section 10. Working Capital Fund.** At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to one-sixth (1/6) of the annual assessment for the appropriate Class A Lot in effect at the time of such sale or occupancy shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to pursuant to this Section shall not be considered as an advance payment of any regular assessment.

Section 11. Reserves for Storm Water Repair and Reconstruction. The budget of the Association shall at all times contain a line item for routine maintenance of the Facility and a separate line item for the repair and reconstruction of the Facility as provided in Section 3 of the Permit Agreement and Article X of this Declaration.

Section 12. Surety Bond for Detention Pond Maintenance and Repair. The Association shall at all times maintain the surety required by Section 4 of the Permit Agreement and Article X of this Declaration, and all costs of same shall be part of the common expenses of the Association.

## ARTICLE VI RIGHTS OF LENDERS

Section 1. Books and Records. Any owner or holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the owner or holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.
- (b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

Section 3. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the owners and holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes nor the exchange of real property as provided in Section 1(c) of Article IV hereof shall be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Durham or to another nonprofit corporation for the aforementioned purposes.
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;
- (c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

**Section 4. Payment of Taxes and Insurance Premiums.** The owners or holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

## **ARTICLE VII EASEMENTS**

**Section 1. Access and Utility Easements.** Easements for the installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power transmission lines, sanitary sewer and storm water drainage facilities and for other public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

**Section 2. Easements for Governmental Access.** An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

As provided in Section 5 of the Permit Agreement, Declarant hereby establishes and grants to the City of Durham a perpetual, nonexclusive easement over the Common Area and every Lot to the extent necessary to permit the City to inspect the Detention Pond and for the purpose of correcting, repairing, replacing, and maintaining the Detention Pond and exercising any other rights of the City as provided in the Permit Agreement or this Declaration.

As provided in that certain Revised Declaration Of Rights And Privileges Of The City Of Durham In Storm Water Management Facility Easements recorded in Book 2298, Page 208, Durham County Registry, as the same may be amended from time to time (the "Revised Declaration"), Declarant hereby establishes and grants to the City of Durham a perpetual, nonexclusive easement over the Common Area and every Lot to the extent necessary to permit the City for access to and from all storm water management

facilities installed within the Subdivision for the purpose of exercising any of the rights of the City as provided in the aforesaid Revised Declaration.

Section 3. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling 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 such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Easement Over Common Area. A perpetual, nonexclusive easement over the Common Area lies is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to and from the Common Area and for the use thereof.

Section 5. Easement For Encroachments. In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment.

Section 6. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

## **ARTICLE VIII ARCHITECTURAL CONTROL**

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs) wall or other structure shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or relandscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be

deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed \$125.00, for receiving and processing each application. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article VIII to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three or more persons appointed by the Board. Such delegation shall be made by the Declarant by recording in the Durham County Registry an Assignment Of Declarant's Rights. Declarant shall delegate such authority no later than the date upon which Declarant no longer owns any Lots within the Properties, or December 31, 2008, whichever is earlier.

Any use of the term "Declarant" in this Article VIII shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

## **ARTICLE IX GENERAL PROVISIONS**

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

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

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

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered

by a vote of the Owners as set forth below. This Declaration may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty percent (80%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. No amendment shall be effective unless it has been approved, if required, by the Federal Housing Administration ("FHA") or Secretary of Veterans Affairs ("VA"), and is recorded in the office of the Register of Deeds of Durham County. Furthermore, Declarant shall have the right, without approval or joinder of any Owner, to amend this Declaration during the Declarant Control Period to correct clerical or typographical errors and to ensure compliance with the requirements of any governmental entity with jurisdiction over the Property or the Subdivision.

**Section 4. FHA/VA Approval.** In the event that Declarant has arranged for and provided purchasers of Lots with FHA-insured or VA-guaranteed mortgage loans, then as long as any Class B Lot exists, as provided in Article III hereof, the following actions may require the prior approval of FHA or VA: annexation of additional properties, mortgaging of real property owned by the Association, deeding of such real property to persons other than the Association (not including the granting of an easement or and exchanges permitted by Article IV, Section 1(c) hereof), and amendment of this Declaration.

**Section 5. Non-Liability of the City.** The City of Durham shall not be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

**Section 6. Subdivision of Lots.** No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant and, if required, by the City of Durham.

**Section 7. Declarant's Right To Change Development.** With the approval of the City of Durham, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types and reallocate units within, and withdraw real property from the development.

**Section 8. Insurance.** The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than \$1,000,000.00. The Association shall also procure and maintain full replacement value hazard insurance on real and personal property owned by the Association, and shall procure and maintain officers', directors' and employees' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration.

**Section 9. Rules and Regulations.** The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective. Any violation of such rules shall be punishable by fine and/or suspension of voting rights as provided in this Declaration.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted Association, or the Restrictive Covenants applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area, provided, however, that the Association shall not have the right to suspend the right to use private streets providing access to an Owner's Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any open space and recreational facility within the Properties if the Owner is more than 30 days delinquent in paying any assessment or other charge due to the Association.

The Association shall at all times have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

## **ARTICLE X STORM WATER FACILITY MAINTENANCE**

In accordance with the requirements of the City of Durham as set forth in the Permit Agreement, a permanent Stormwater Detention Pond (the "Facility") will be located on a portion of the Common Area. The operation and maintenance of the Facility is subject to the terms of the Permit Agreement. Upon conveyance of the Common Area to the Association, the Association shall operate and maintain the Facility.

Section 1. Expenditure Priority. To the extent not inconsistent within any applicable state or federal law or regulation including, without limitation, the requirements of the Federal Housing Administration ("FHA"), the Secretary of Veterans Affairs ("VA"), the Federal National Mortgage Association ("FNMA"), or the Federal Home Loan Mortgage Corporation ("FHLMC"), the Association's obligations under the Permit Agreement shall receive the highest priority for expenditures with the exception of expenditures for (i) assessments levied by the local governmental authorities (ii) *ad valorem* property taxes (iii) liability and hazard insurance required to be maintained by the Association (iv) any other expenditures which are required by law to have a higher priority.

Section 2. Reconstruction and Repair Fund. The Association shall maintain a fund for the reconstruction and repair of the Facility, which shall be separate from the fund for the routine maintenance of the Facility. The reconstruction and repair fund shall contain at all times the dollar amount reasonably determined from time to time by the Director of Public Works for the City of Durham, or his successor, to be adequate to pay for the probable reconstruction and repair cost of the Facility for a three year period.

The reconstruction and repair fund shall be listed as a separate line in the Association's budget and shall be kept in an account insured by the Federal Deposit Insurance Corporation or by another entity acceptable to the Director of Public Works for the City of Durham, or his successor. The funds in the reconstruction and repair account shall not be commingled with any of the Association's other funds.

Section 3. Special Assessments. In accordance with Article VI, Section 4 of the Declaration, the Association shall charge special assessments, if necessary, to meet the Association's obligations under the Permit Agreement, provided, however, that such special assessment shall require the consent of the Members as set forth in Section 5 of Article V of this Declaration.

Section 4. Dissolution and Transfer. Notwithstanding any provision to the contrary contained in the Declaration and to the extent permitted by applicable law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a person or entity who has executed a Permit Agreement with the City of Durham, and that to the extent permitted by applicable law, the Association shall not sell, convey or otherwise transfer any interest in the Common Area on which the Facility is located to any party until the intended transferee has executed a Permit Agreement.


Section 5. Bond. In accordance with the terms of the Permit Agreement, upon conveyance of the Common Area on which the Facility lies to the Association, the Association will be required to maintain a bond or other surety instrument in an amount and form acceptable to the City of Durham.

Section 6. Easement to the City of Durham. Declarant hereby grants to the City of Durham an easement for ingress, egress and regress over and across the Common Area on which the Facility lies for the purpose of inspecting the Facility and for the purpose of correcting, repairing, replacing, and maintaining the Facility and exercising the other rights of the City of Durham that are provided for by the Permit Agreement.

Section 7. Conflict of Laws. The provisions of this Article XII and the Permit Agreement shall be subordinate to the requirements of any state or federal law or regulation including, without limitation, the rules and regulations of the FHA, VA, FNMA and FHLMC (the "Governmental Rules") concerning the operation of homeowners' associations. To the extent that the provisions are inconsistent with the provisions of any of the Governmental Rules, the provisions of the Governmental Rules shall control such issue.

IN WITNESS WHEREOF, Declarant and the Association has each caused this instrument to be executed under seal as of the date set forth in the notary acknowledgment below.

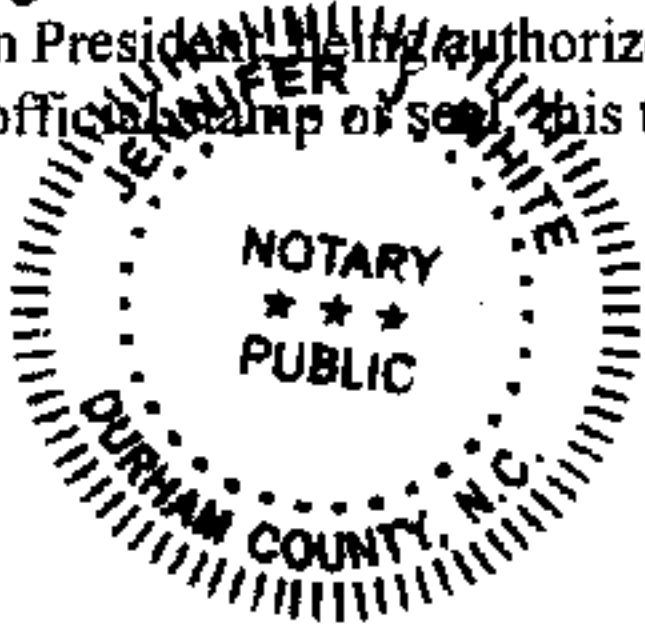
**M/I SCHOTTENSTEIN HOMES, INC.,**  
an Ohio corporation

By:   
Donald E. Fraley  
Division President

\*\*\*\*\*

STATE OF NORTH CAROLINA -- COUNTY OF ~~WAKE~~ DURHAM

I, the undersigned, certify that DONALD F. FRALEY personally appeared before me this day and acknowledged that he is a Division President of **M/I Schottenstein Homes, Inc.**, an Ohio corporation, and that he, as Division President, being authorized to do so, executed the foregoing on behalf of the corporation. Witness my hand and official stamp of seal this the 28<sup>th</sup> day of July, 2003.



Jennifer J. White  
Notary Public  
My commission expires: 4/13/2008

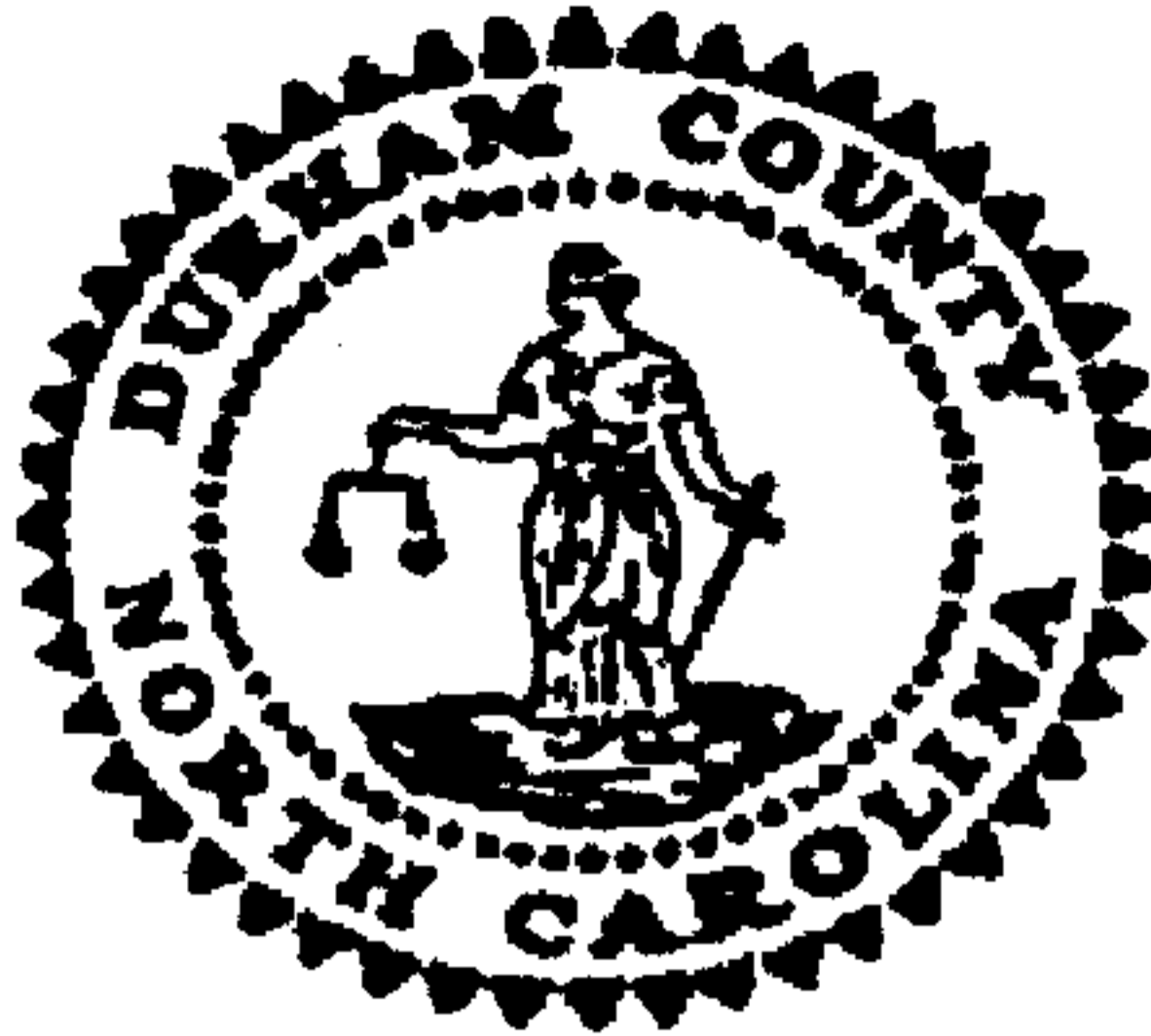
EXHIBIT A

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

All of **Lots 1-17 and 96-113**, inclusive, as shown on that certain plat entitled "**Alexander Crossing, Phase 1**" recorded in **Plat Book 157, Pages 253, 255, 257 and 259**, Durham County Registry, and all of the Common Area shown and identified thereon including, without limitation, the property shown and identified on said plat as: (i) "Open Space (A) 28,933 sq. ft."; (ii) "Open Space (B), 137,095 sq. ft."; (iii) "Open Space (C) 313,948 sq. ft."; (iv) "Open Space (D) 22,231 sq. ft."; (v) the area adjacent to the southern line of Lot 4 identified as "3,413 sq. ft., 17' Sign & Landscape Area Deeded To Alexander Crossings Homeowner's Association"; and (vi) the area adjacent to the southern line of Lot 5 identified as "3,418 sq. ft., 17' Sign & Landscape Area Deeded To Alexander Crossings Homeowner's Association" but specifically and excluding the rights-of-way of public streets shown on said recorded plat.

EXHIBIT B

Lying and being in the City of Durham, Triangle Township, Durham County, North Carolina, more fully described in the deed recorded in Book 3462, Page 447, Durham County Registry, SAVING AND EXCEPTING THEREFROM the property identified and described on Exhibit A to this Declaration.



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

\*\*\*\*\*  
Filed For Registration: 08/04/2003 01:00:10 PM  
Book: RE 4039 Page: 552-575  
Document No.: 2003048283  
DECL 24 PGS \$80.00  
Recorder: CAROL JENKINS

\*\*\*\*\*  
State of North Carolina, County of Durham

The foregoing certificate of JENNIFER J WHITE Notary is certified to be correct. This 4TH of August 2003

WILLIE L. COVINGTON , REGISTER OF DEEDS

By:   
Deputy/Assistant Register of Deeds



2003048283