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WAKE COUNTY, NC 197
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
05/23/2003 AT 10:36:53

BOOK:010141 PAGE:01115 - 01144

DECLARATION
OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
AVALLON SUBDIVISION

Prepared by and return to: Alison R. Cayton of Manning, Fulton & Skinner, P. A. (Box 133)

THIS DECLARATION, made on the date hereinafter set forth by NOLCON Properties LLC, a North Carolina Limited Liability Company with its principal office located at 9205 Baileywick Road, Suite 201, Raleigh, North Carolina 27615 hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in or near the City of Raleigh, County of Wake, State of North Carolina, commonly referred to as "Avallon Subdivision", which is more particularly described on Exhibit "A" attached hereto;

WHEREAS, it is the desire and intention of Declarant (as defined herein) to impose on that Property described in Exhibit "A" attached hereto restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all Property herein described and the future owners thereof; and,

WHEREAS, the Property shall be comprised of single family residential lots and associated open space.

NOW, THEREFORE, Declarant hereby declares that all of the Property described on Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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ARTICLE I

DEFINITIONS

Section 1. "Articles" shall mean the Articles of Incorporation of the Association as filed with the Secretary of State, State of North Carolina, as the same may be from time to time amended.

Section 2. "Association" shall mean and refer to the Avallon Homeowner's Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 4. "Bylaws" shall mean the document for governance of the Association as adopted initially by the Board and as amended by the Members.

Section 5. "Common Properties" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of the Owners or members of the Association, as may be designated on any subdivision map of the Property or by the Association. Specifically, Common Properties shall include but not be limited to those areas designated on the recorded map of the Subdivision as "Sight Triangle", "Tree Preservation Area", "Landscaped Berm Area Easement (Managed Open Space)", "Undisturbed Buffer Easement (Undisturbed Open Space)", Private Drainage Easements and Stormwater Control Measures.

Section 6. "Common Expenses" shall mean and include, as applicable:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance of the Common Properties, the landscape median located at the entrance of Morvan Way from Glen Eden Drive, and, as determined by the Homeowners Association or the Board, maintenance of ditches within the right-of-way easements, and any amenities as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair, or replacement of the Common Properties, including expenses of maintenance of the sign, lighting, irrigation and landscaping located at all entrances to Avallon Subdivision as shown on the recorded plat and any subsequently recorded plats, and the expenses of maintenance of any sign, lighting, irrigation, berms, fences buffers and landscaping located on any of the Common Properties and easements within Avallon.
- (d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;
- (f) Ad valorem taxes and public assessment charges lawfully levied against Common Properties;

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(g) The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property, cross Common Properties of the Property and serve both the Property and lands adjacent thereto;

(h) The expense of the maintenance of Stormwater Control Measures, including detention pond and associated hydraulic structures constructed on the Property, and funds required to be contributed to the Stormwater Escrow Protection Easement and Access Maintenance Agreement by and among the Declarant, the Association and the City of Raleigh, recorded in Book 1041, page 1145, Wake County Registry;

(i) The expense of the maintenance of all easements and landscaping and improvements thereon, conveyed to the Association;

(j) Un[paid assessment following the foreclosure of a first mortgage or first deed of trust;

(k) Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

Section 7. "Declarant" shall mean and refer to NOLCON Properties, LLC, a North Carolina limited liability company, and The Drees Company, a Kentucky corporation authorized to do business in North Carolina as The Drees Homes Company, as well as their successors and assigns, if Declarant shall make an express conveyance of its rights as developer hereunder to such successor or assign. Any action of the Declarant referred to herein shall mean an action taken by or approved by NOLCON Properties, LLC unless otherwise stated.

Section 8. "Lot" shall mean and refer to any plot or Tract of land shown upon any recorded subdivision map of the Property, as such map or maps may be from time to time be amended or modified, for detached single-family residential use, designated for residential use and for separate ownership and occupancy.

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

Section 10. "Notice" required to be given herein shall be in writing and mailed by U.S. mail, postage prepaid, first class to the address of any Member on the records of the Association or shall be hand delivered to the Member.

Section 11. "Owner" or "Lot 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. A consumer-occupant Lot owner is a Lot owner who occupies the residence on the Lot or purchases a lot for rental.

Section 12. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 13. "Property" shall mean and refer to that certain real property hereinbefore described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

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Section 14. "Stormwater Control Measures" shall mean and refer to the stormwater facilities located outside public street rights-of-way and serving more than one lot and located on the Property as private drainage easements, including without limitation detention pond and associated hydraulic systems.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Properties together with and including the right of access, ingress and egress, on and over the Common Properties, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Element facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(b) the right of the Association to dedicate, sell, lease or transfer all or any part of the Common Properties, or any interest therein, to any public agency, authority, or utility, or to any other person for such purposes and subject to such conditions as may be agreed upon by the Members; provided however, that pursuant to Raleigh City Code §10-3073, conveyances of Common Properties to other persons require an exchange of equal real property as approved by the Planning Director of the City of Raleigh. No such dedication, sale, lease or transfer shall be effective unless it has been approved by four-fifths (4/5) of each class of members and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded and provided the dedication, sale, lease or transfer is in compliance with applicable governmental regulations. On such instrument the Secretary of the Association shall certify that four-fifths (4/5) of each class of members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes, as specified herein, may be made by the Association without consent of the members. Notwithstanding the foregoing, the Declarant may recombine any portion of the Common Properties with a Lot pursuant to the terms of Article VII, Section 16 herein and in accord with applicable governmental regulations and upon approval by the appropriate governmental authority;

(c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage the Common Properties, and the rights of such mortgagee in the Common Properties shall be subordinate to the rights of the members hereunder;

(d) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Properties and improvements thereon, which rules and regulations may further restrict the use of the Common Properties.

(e) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and

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access, as specified above, to the initial Property and all lands included in subsequent phases.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Properties to the members of his family, his tenants, or contract purchasers who reside on the Property, but may not delegate or assign responsibility for the actions of those to whom such right is delegated.

Section 3. Title to the Common Properties. While reserving the right to build and own facilities on the Managed Open Space and to charge reasonable fees for use of said facilities, the Declarant hereby covenants for itself, its heirs and assigns, that prior to the conveyance of the first lot, it will convey fee simple title to the Common Properties located within the Property to the Association, free and clear of all encumbrances and liens, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements. The Association shall be deemed to accept such Common Properties for ownership and maintenance as necessary.

Section 4. Cluster Unit Development. The Property is part of a cluster unit development approved by the City of Raleigh and all such land is subject to Part Ten, Chapter Three of the City Code of Raleigh and this Section is included in this Declaration to comply Section 10-3071(b)(9)c. of the City Code of Raleigh and all terms not otherwise defined herein shall have the definition set forth in the City Code of Raleigh:

(a) The Property is part of a cluster unit development approved by the City of Raleigh in which residential density transfers are permitted; therefore, even though some lots may appear to contain enough land area to construct additional dwelling units or create additional lots, prior density transfers approved within the cluster unit development may, in fact, preclude City of Raleigh approval of additional dwellings or further subdividing of lots.

(b) the Declarant reserves the following additional rights: to add real estate to Property in accordance with this Declaration; to add Common Properties; to create dwelling units or Lots; and to modify or change dwelling unit types. Notwithstanding anything here in to the contrary Declarant shall have no obligation to annex additional lands to the Property.

(c) The maximum number of dwelling units and the maximum number of dwelling units per acre that may be contained in the cluster unit development or transferred to portions of the cluster unit development without rezoning the cluster unit development to another zoning classification is 73 dwelling units and 5.94 dwelling units per acre, respectively. The maximum acreage that may be contained in the Cluster Unit Development shall be 21.78 acres and the maximum number of dwelling units and the maximum number of dwelling units per acre shall be adjusted accordingly should the acreage change.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record Owner of a Lot which is subject to assessment 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. The Association shall have two classes of voting membership:

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Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited. In the event that two or more Lots are recombined to form one Lot, the owner of the new Lot shall only be entitled to one vote for the new Lot. Likewise, in the event that one Lot is subdivided to form two or more Lots, the owners shall be entitled to one vote per new Lot.

Class B. The Class B Member shall be the Declarant and Declarant shall be entitled to three (3) votes for each lot as may be developed within the Property. (which property Declarant presently owns, and contemplates developing as additional subdivision lots) under applicable zoning ordinances and regulations, as they may be amended from time to time, if fully developed to maximum density under such ordinances and regulations. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; however, the Class B membership shall be reinstated if thereafter, and before the time stated in subparagraph (b) below, additions are made to the Properties sufficient to give the Class B membership a total number of votes to exceed those of the Class A membership; or,

(ii) Ten (10) years from the date this Declaration is recorded in the Office of the Register of Deeds, Wake County, North Carolina

Section 3. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 1(b) herein.

ARTICLE IV

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 therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction or reconstruction of improvements; and (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Properties and public roads if the Association shall default in payment thereof. The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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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 breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses; and, in particular, but not limited to, for the acquisition, improvement and maintenance of Property, services, amenities and facilities, and for the use and enjoyment of the Common Properties, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Properties, the providing for security to the Property, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants and other professionals for the Association when necessary, for purposes permitted by the Planned Community Act in Chapter 47 of the General Statutes of North Carolina, and for such other needs as may arise.

Section 3. Amount of Assessment.

(a) Initial Maximum Assessment. To and including December 31, 2003, the maximum annual assessment shall not exceed Six Hundred and no/100 Dollars (\$600.00) per Lot.

(b) Increase by Association. From and after December 31, 2003, the annual assessment imposed by this Association, initially \$600.00 effective for any year (including 2003) may be increased effectively from and after January 1 of the succeeding year by the Board of Directors, by a percentage which may not exceed ten (10%) percent. Any budget increasing assessments by less than ten percent (10%), is ratified unless ninety percent (90%) of the total vote of each class of Members vote to reject the budget at a duly called meeting. The Board of Directors, at its option may declare that a special Refurbishment Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Refurbishment Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied no more than once every five (5) years from the date of the recording of this Declaration. The Refurbishment Assessment shall be used to pay for the cost of enhancing, refurbishing or repairing portions of the Common Properties such as, but not limited to entryway features, lighting and landscaping and the like.

(c) Increase by Members. From and after December 31, 2003, the annual assessment may be increased by a percentage greater than permitted by section 3(b) above by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger

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or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

(e) Board Authority. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, Declarant may loan to the Association funds to cover the expenses not otherwise covered by the assessment hereunder.

(g) Attorney's Fees. There shall be an approval by the majority of the votes of the members prior to making a special assessment for attorneys fees or prior to incorporating attorneys fees (other than those typically incurred in the normal management of the Subdivision) into the annual budget on which the annual assessment is based.

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, restoration, repair or replacement of a capital improvement upon the Common Properties, any extraordinary maintenance, including vegetation, fixtures and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvements upon the Common Properties. This assessment may not be used for any other purposes including litigation involving the Association. Further, this assessment may not be charged until the Declarant has completed all initial improvements to the Property and dedicated the streets to the City of Raleigh for maintenance and the same have been accepted by the City of Raleigh.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Properties and any limited common properties which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a minimum seven (7) day, maximum twenty-one (21) day notice requirement, and the required quorum at the

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subsequent meeting shall be one-half (2) of the required quorum at the preceding meeting. If at a second meeting, the requirement of one-half of the required quorum is not met, then in a subsequent meeting the requirement shall be one-half (1/2) of the required quorum and successive meetings may be held until a quorum is maintained by successively halving the quorum requirement of the prior meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual basis or other periodic basis established by the Board.

Section 8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital. The annual assessments provided for herein shall commence as to all Lots at the time of recording of a deed from the Declarant to the initial property owner. Provided, however, that Lots owned by the builder of the initial improvements on the Lot ("Builder") shall be assessed at a rate of twenty-five percent (25%) of the amount of the assessment due. The assessments on Lots owned by a Builder shall accrue each month that the Builder owns the Lot and shall not be required to be paid by the Builder until the date of closing of the sale of a Lot from a Builder to a consumer-occupant Lot Owner or the date of rental of a Lot from a Builder. A consumer-occupant Lot Owner shall pay the pro-rata amount of the full annual assessment from the date of closing on any Lot until the first day of the first calendar year following closing of that sale or until the end of such period as the Association chooses to collect the Assessments. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, each consumer-occupant Lot owner shall, at the time of the initial sale of a Lot by a builder to that consumer-occupant Lot owner, pay to the Association a sum equal to two (2) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the consumer-occupant Lot Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment levied against a Lot and not paid within thirty (30) days after the due date shall be delinquent, in default, shall be subject to a late charge of Twenty-five and no/100 DOLLARS (\$25.00) per month and shall constitute a lien on that Lot when a claim of lien is filed with the Clerk of Court in Wake County, North Carolina in the manner set forth in N.C. Gen. Stat. § 47F-3-116(g). For any lot in default, the Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot.

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The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage or deed of trust and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage, first deed of trust, or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

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

ARTICLE V

ARCHITECTURAL CONTROL

No site preparation (including, but not limited to grading, elevation work, landscaping, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, bulkheads, screens, landscaping, plantings, equipment, swimming pools, or other structures shall be commenced, erected, placed, altered or maintained upon any lot, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location and elevations of the proposed improvements relative to their existing and future septic field disposal areas, landscaping or plantings shall have been submitted to, and approved in writing by, as to harmony of external design and location in relation to surrounding structures and topography, an Architectural Committee composed of no fewer than three (3) persons and no more than eleven (11) persons appointed by the Declarant through and until the date that is five (5) years after commencement of development of the Subdivision, or such earlier date as determined by Declarant in its sole discretion; initial construction on all Lots shall be reviewed and approved by the Declarant until the sale of the final Lot in the Subdivision by the Declarant. After such dates, the Architectural Committee shall be composed of no fewer than three (3) persons and no more than eleven (11) persons, and shall be appointed by the Board. In the event the Architectural Committee fails to

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approve such submission made by any Lot Owner within thirty (30) days after said plans and specifications have been received by the Committee, approval will be deemed to have been approved. Any plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding any prior approval by the Committee.

Upon request, the Association, on behalf of the Architectural Committee, shall provide any Owner with a letter stating that any such work, plans and specifications, landscaping or plantings have been approved, and the letter may be relied upon by third parties.

Approval or disapproval by the Architectural Committee of such plans, location or specifications may be based upon any grounds, including purely aesthetic and environmental, which in the sole discretion of the Committee, it shall deem sufficient. Neither the Association, Board, nor the Architectural Committee shall be responsible for any defects in the plans and specifications submitted to it or in any structure erected or improvements made on any Lot.

The Board and the Architectural Committee, or their appointed agents, shall have the right, at their election, but shall not be so required, to enter upon any of the Lots during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications.

The Architectural Committee shall have the power to grant, and may allow, variances of, and adjustments of, the restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however, that variances or adjustments are done in conformity with the intent and purposes hereof; and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to other Lots in the immediate neighborhood. Variances and adjustments may be of the height, size, and setback requirements, pursuant to the terms herein, but shall not be limited thereto. No variance shall be permitted if it violates governmental minimum standards. Notwithstanding the foregoing, Declarant shall have the power to grant the above variances and adjustments so long as Declarant has the authority to appoint members to the Architectural Committee.

In the event of the grant of any variance in the restrictions established herein, the Declarant for so long as the Declarant has the authority to appoint members to the Architectural Committee, and thereafter the Association on behalf of the Architectural Committee shall execute a document acceptable in substance to the Association attesting to such grant and the specific nature thereof in form suitable for recording, so that the Lot Owner may record the document in the Registry of the County in which the Lot is located. Such document shall be prepared at the cost of the Lot Owner and shall be binding upon the Declarant, the Association, its successors and assigns, and other Lot Owners and may be relied upon by third parties to evidence the variance approval.

Any purchaser of a lot or institution financing a lot shall rely on the foregoing statement.

The Association, so long as Declarant has authority to appoint members to the Architectural Committee, shall defer architectural approvals and grants of variances to Declarant unless Declarant has voluntarily relinquished control of the Association.

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ARTICLE VI

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property, except as provided in Section 2 of this Article VI, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 15 days nor more than 30 days in advance of the meeting setting forth the purposes of the meeting. The presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to a notice requirement of a minimum of seven (7) days and a maximum of twenty-one (21) days and the required quorum shall be one-half (2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat. Subsequent meetings may be held reducing the quorum requirement by one-half at each meeting until a quorum is attained.

Section 2. If within ten (10) years of the date this Declaration is recorded in the office of the Register of Deeds of Wake County, North Carolina, the Declarant should develop additional land which Declarant owns or may hereafter acquire, which land is contiguous to the boundaries of the Property, or such other land as Declarant may hereafter acquire contiguous to the additional land, which additional land has been subjected to this Declaration, such land may be annexed by the Declarant without the consent of members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association.

Section 3. Annexation of additional lands shall be accomplished by recording in the Office of the Register of Deeds in the county in which the Property is located, a Declaration of Annexation, duly executed by the Declarant, if the Declarant has the right to annex pursuant to Section 2 above, (and by the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Property on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances.

Section 4. Subsequent to recordation of the Declaration of Annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Properties within the lands annexed free and clear of all encumbrances and liens except for encumbrances of utility services, access, storm drainage and other similar service or utility easements. The Association shall be deemed to accept such Common Properties for ownership and maintenance as necessary.

Section 5. Should Declarant elect to annex any additional property and accordingly to subject such property to the terms and conditions of this Declaration, Declarant reserves the right to alter the restrictions contained in Sections 1 and 2 of Article VIII herein. The addition of property authorized under this paragraph may increase the cumulative maximum number of lots

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authorized in the properties, and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

ARTICLE VII

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Properties. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Property. No portion of the Property (except for a temporary office of the Declarant and building models used by Declarant shall be used except for single-family residential purposes and for purposes incidental or accessory thereto.

No trade or business of any kind shall be conducted upon any Lot or part thereof, except as may be approved by the Board of Directors on a case-by-case basis after petition by an Owner. Provided however, that any such approved business must be conducted entirely within the confines of the house or garage of an Owner and must not create, among other things, a nuisance to the neighbors, or create among other things, excessive noise, traffic, odors or unpleasant appearances. Once permission is granted by the Board of Directors for such a business, the Board of Directors automatically retains the right to terminate approval of such business for violation of the above conditions or any other conditions stated in the Board's initial approval and the Owner shall terminate such business within thirty (30) days after receipt of notice from the Board.

Lots 1 - 13 inclusive and Lot 45 as shown on the recorded map of the Subdivision shall not have direct access to Glen Eden Drive or to Edwards Mill Road. No closed fence (other than a brick masonry wall) greater than four (4) feet in height shall be installed within twenty (20) feet of the right of way of Edwards Mill Road. Within those areas of the Property between twenty (20) and fifty (50) feet of the right of way of Edwards Mill Road, any fence greater than four (4) feet in height shall be fifty percent (50%) screened by plantings.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 4. Basketball Goals and Recreational Equipment. No basketball backboards or goals may be mounted on any house. No portable basketball goals shall be permitted. Permanently mounted basketball backboards and goals and other permanent recreational equipment or installation may be permitted if approved by the architectural committee.

Section 5. Animals. No stable, dog run, poultry house or yard or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any Lot without the express written permission of the Association first had and obtained. However, a reasonable number of household pets as determined by the Board of Directors of the Association shall be permitted, provided they are not raised for commercial purposes. For purposes of these covenants, no more than two (2) dogs and three (3) cats shall be considered reasonable. All pets must be leashed at

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all times when outside the house unless they are confined in an enclosed area. Owners must immediately clean up pet waste at any location in the community.

Section 6. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Common Properties which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Properties.

Section 7. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain such portion of the Property.

Section 8. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot except as provided for in Article VII, Section 2 hereinabove, except that the Declarant or its agents may use any unsold Lots for sales or display purposes, Declarant may maintain a sales or rental office on the Property.

Section 9. Signs. No Lot Owner shall display, or cause, or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or any portion of the Common Properties, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority; provided, however, that the Declarant, or its respective agents, may place "For Sale" or "For Rent" signs on any Lots for sale and in suitable places on the Common Properties approved by the Association; provided, however, that during the development of the Property and the initial marketing of Lots, the Declarant may maintain a sales office and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. Such permitted signs shall be placed in the approximate center of a Lot and six feet from the road curb. No sign shall be nailed to trees.

Section 10. Fences, Walls, and Hedges. No fence, wall, hedge or other mass planting shall be erected or permitted in front of a dwelling on any Lot, except as approved by the Architectural Committee pursuant to Article V herein.

Section 11. Alterations. No person shall undertake, cause, or allow any alteration, removal of trees and vegetation, or construction in or upon any portion of the Common Properties except at the direction or with the express written consent of the Association.

Section 12. Common Properties Use. The Common Properties shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Property, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 13. Parking. No boats, trailers, campers, motorhomes, trucks or tractors shall be parked on any Lot, on the Common Properties, or on any right of way of any roads or streets within the Property or adjoining the Property by any Lot Owner, its family members, tenants or

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contract purchasers, except inside an enclosed garage located on a Lot or in a specified storage area established by the Association or except as otherwise may be permitted by Rules and Regulations of the Association. Delivery and maintenance vehicles are permitted. Notwithstanding the foregoing, this prohibition shall not apply to contractor's trucks and vehicles during the construction of any dwelling, garage or accessory building, it being clearly understood that contractor's trucks and vehicles shall be permitted to park on the roads and streets within the Property until completion of any dwelling, garage or accessory building.

Section 14. Trailers, etc. No trailer, tent, mobile home, modular home or other structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or storage units used by the contractor during the construction of a dwelling, garage or accessory building, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

Section 15. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view. Any such receptacles may be installed only within an accessory building or within a screened area, or buried underground; provided, however, that nothing contained herein shall prevent the Declarant or Association from erecting, placing or permitting the placing of tanks, or other apparatus, on the Property for uses related to the provision of utility or other service.

Section 16. Guest Facility. A guest apartment or guest facility may be included as part of a main detached single family dwelling or accessory building.

Section 17. Subdividing. No Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board. However, the Declarant hereby expressly reserves unto itself, and to any successor to which Declarant makes a specific assignment of this right, the right to replat any two (2) or more Lots it owns and/or Common Properties (so long as replatting of the Common Properties conforms with applicable governmental regulations and upon approval by the appropriate governmental authority) shown on the plat of any subdivision of the Property in order to create one or more modified Lots; to recombine one or more Lots it owns and/or Common Properties to create a larger Lot; to eliminate from this Declaration Lots that are not otherwise buildable or Lots it owns and/or Common Areas that are needed for access to any area of the Property or are needed for Stormwater Control Measures or access areas, and to take such steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site or access area or roadway, said steps to include, but not to be limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted Lots. If any of the Common Properties is recombined with a Lot, the Association shall execute all necessary documents to effect the recombination, and substitute other Common Properties approved by the Planning Director of the City of Raleigh which must be conveyed to the Association pursuant to Raleigh City Code §10-3073(a)(2).

Section 18. Delivery Receptacle. No mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazines or similar material shall be erected or located on any Lot unless and until the size, location, design and type of material for the receptacle shall have been approved by the Board or the architectural committee.

Section 19. Antennae. With exception to the Federal Communications Commissions Restrictions identified in the Telecommunications Act of 1996, the following applies: Exterior radio and television antennae, aerials, disks and dishes for reception of commercial broadcasts shall not be permitted on any Lot and no other aerials, disks and dishes (for example, without

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limitation, amateur short wave or ship to shore) shall be permitted on any Lot without permission of the Board as to design, appearance and location or pursuant to Regulations issued for that purpose

Section 20. Construction Limitations. During construction, all vehicles involved, including those delivering supplies, must enter the Lot on a driveway only as approved by the Board so as not to damage unnecessarily trees, street paving and curbs. During construction, builders must keep the homes, garages, and building sites clean and free of debris. All building debris, stumps, trees, etc., must be removed from each Lot by builder as often as necessary to keep the house and Lot attractive. Such debris will not be dumped in any area of the Property.

Section 21. Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be carried on or conducted on the Property.

Section 22. Drying Areas. Clotheslines or drying yards shall not be located upon any Lot without the prior written consent of the Board, which consent may be conditioned or withheld in the sole discretion of the Board, or as set forth in Regulations established for that purpose.

Section 23. Maintenance. Subject to any other applicable terms of this Declaration, the Owner of each portion of The Property, at such Owner's sole cost and expense, shall Maintain its portion of The Property, including improvements thereon, in a safe, clean and attractive condition at all times, including the following thereon:

- (a) Prompt removal of all litter, trash, refuse and wastes;
- (b) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material;
- (c) Maintenance of flower and plant gardens;
- (d) Maintenance of exterior lighting and mechanical facilities;
- (e) Maintenance of parking areas and driveways;
- (f) Maintenance of all Improvements thereon;
- (g) Maintaining adequate soil erosion controls;
- (h) To the extent not adequately Maintained by the City, the Association or a public utility provider, Maintenance of the sidewalk, driveway, driveway apron and utility laterals serving each Owner's portion of The Property. Each Owner also shall provide snow and ice removal for any sidewalks located adjacent to such Owner's portion of The Property.

Each Owner shall perform the foregoing responsibilities in a manner that does not reasonably disturb or interfere with the reasonable enjoyment by the other Owners of their portions of The Property.

If any Owner fails to perform any of the foregoing Maintenance Responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required Maintenance. If any

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such Owner fails to perform the required Maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's portion of The Property and perform such Maintenance without any liability to any Person for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required Maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Owner an invoice therefor. If the Owner fails to reimburse the Association as required, the Association shall have the same rights and remedies for collection of the amount as provided in Article IV, Section 9 herein for collections of delinquent Assessments.

Section 24. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 25. Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

Section 26. Undisturbed Open Space. No impervious surface, land-disturbing activity, encroachment construction or erection of any structure, nor removal of vegetation shall occur within undisturbed open space areas without a zoning permit first being issued by the City of Raleigh.

ARTICLE VIII

BUILDING RESTRICTIONS

Section 1. Square Footage. Any dwelling erected on a detached single-family residential Lot shall contain a minimum enclosed dwelling area of two thousand two hundred (2,200) square feet. In addition thereto, and unless a variance is granted therefor as provided herein, all dwellings shall have an enclosed two car garage attached to the main dwelling. The term "enclosed dwelling area" as used in this Section 1 shall mean the total enclosed area within a dwelling subject to heating and cooling, and at the Declarant's discretion may include basement space; provided however, that the term specifically does not include garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling. Variances of these square footage requirements in the amount of 15% may be granted by Declarant or the Board of Directors of the Association pursuant to Article V hereof, but in no case will the size be less than that required by the governmental agency having jurisdiction over the Property.

Section 2. Setback Lines. In no case will the setback be less than that required by the governmental agency having jurisdiction over the Property.

Section 3. Height and Accessory Building. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any detached single-family residential Lot other than a detached single family dwelling not to exceed the lesser of three (3) stories in height or thirty-nine (39) feet, a garage and small accessory building (which may include a pool house), provided, the use of such dwelling or accessory building does not in the opinion of the Board or Architectural Committee overcrowd the site. Such accessory building

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may not be constructed prior to the construction of the primary dwelling. All garages must be attached to the main dwelling, unless the Board, Declarant or the Architectural Committee pursuant to Article V hereof, approves in writing a variance permitting a detached garage. The Board, Declarant, or the Architectural Committee, pursuant to Article V hereof, may approve in writing a variance permitting a single-family dwelling of more than three stories.

Section 4. Multi-Family Use Prohibited. No multiplex residence or apartment house shall be erected or placed on, or allowed to occupy, any detached single-family residential Lots, and no dwelling once approved and constructed shall be altered or converted into a multiplex residence or apartment house.

Section 5. Remedies. If the finished dwelling, garage, accessory building or other structure does not comply with the submitted and approved plans and specifications, the Board retains the right to make the necessary changes at owner's expense to comply with the approved plans and specifications, the right to treat such charge or cost as an assessment, the right to file under the North Carolina lien laws as described in Article IV, Section 9 herein, a notice of liens for any costs incurred, and the further right to resort to all remedies provided under the laws of North Carolina for the recovery of such costs and the expenses of collection, including without limitation, reasonable attorneys' fees. Any changes in plans or specifications must first be reapproved by the Declarant in accordance with procedure herein specified in Article V.

Section 6. Trash Receptacles. Each Lot Owner shall provide receptacles for garbage in a screened area constructed of materials compatible to those used on the dwelling not generally visible from the road, or provide underground receptacles or similar facilities in accordance with standards established by the Association.

Section 7. Parking Spaces. Each Lot Owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said Lot in accordance with standards established by the Association.

Section 8. Storm Drainage. Each Lot Owner shall maintain the drainage devices on its Lot which exclusively serve that Lot at its own expense. Furthermore, each Lot Owner shall not allow the diversion or concentration of stormwater runoff without the prior written approval of the Architectural Committee, and no drainage diversion or structure may be constructed in violation of any North Carolina Department of Transportation regulation.

ARTICLE IX

EASEMENTS

Section 1. Utility Easements. All of the Property, including Lots and Common Properties, shall be subject to such easements for driveways, walkways, parking areas, water lines, sewer lines, storm drainage, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Properties conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration.

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Section 2. Easement for the Benefit of Governmental Authorities. An easement is hereby established for the benefit of any governmental authority having jurisdiction over the Property, or other governmental agency, over all Common Properties for the setting, removing and reading of water meters (which shall be separate for each Lot), maintaining and replacing water, sewage and drainage facilities, for police protection, fire fighting and garbage collection and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the governmental authority or other responsible agency, be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the governmental authorities responsibilities.

Section 3. Specific Utility Easements & Tree Preservation Area. There is hereby reserved an easement fifteen (15) feet in width along the front and side property lines, and fifteen (15) feet along the rear property line of each Lot designated for detached single-family residential use for the purpose of installation, repair, maintenance, erection, construction and inspection of water lines, sewer lines, gas lines, electric lines, telephone lines, cablevision lines or other such utility or service lines and for drainage cuts and storm sewer lines. The Declarant reserves the right to subject the real property in this subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables which may require an initial contribution and/or the installation of street lighting, which will require a continuing monthly payment to Carolina Power & Light Company by the owner of each lot. Pursuant to the zoning conditions stated City of Raleigh rezoning case Z-33-01, there is expressly excluded from the easements reserved within this section 3 a tree preservation area that is fifty feet (50') in width as measured perpendicularly from tax parcels 0785.08-89-8212, 0785.08-99-0312; 0785.08-99-1400; 0785.08-99-3372 and 0785.08-99-4271 (herein "Tree Preservation Area"). Declarant hereby expressly grants and conveys to the Association as a Common Property a perpetual, non-exclusive easement in the Tree Preservation Area as defined herein and as shown on any recorded plat of this subdivision, for those purposes stated within this Section 3. Within the Tree Preservation Area, all trees having a caliper of four (4) inches or more shall be retained and except in areas where prohibited by the Neuse River Riparian Buffer Rules, supplemental landscaping shall be provided within such areas in accordance with the plan attached hereto as Exhibit B-1. Notwithstanding the foregoing: (a) Utility lines, including water and sewer may cross the Tree Preservation Area; (b) New vegetation, as well as the fence referred to in section 6 of this Article IX may be included within the Tree Preservation Area; (c) Treatment or removal of unsafe, dead, dying or diseased trees shall be allowed; and (d) with respect to the portion of the Property within fifty (50) feet (measured perpendicularly) of tax parcel 0785.08-99-4271 a landscaped berm shall be installed therein which shall be constructed as shown on Exhibit B-2 attached hereto. It is provided, however, that the berm shall be installed so as to preserve existing trees with a caliper of four (4) inches d.b.h. Thus, the berm may meander and have gaps as appropriate to preserve such trees.

Section 4. Recorded Easements. There are hereby reserved easements as shown on the recorded map or maps of the subdivision. In the event of a conflict in the width of any easement reserved herein or on the recorded map, the wider easement shall prevail.

Section 5. Drainage Easement. Declarant does hereby grant and convey to the Association as Common Properties, for the use and benefit of the Owners, a perpetual, non-exclusive easement for the use, drainage, inspection, maintenance, repair, reconstruction and replacement of the Stormwater Control Measures on, over and upon any portion of the Property

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not owned in fee by the Association such as private drainage easements on which Stormwater Control Measures are located and on, over and upon such other portions of the Property reasonably necessary to conduct such inspection, maintenance, repair, reconstruction, and replacement of the Stormwater Control Measures and for ingress, egress and regress to and from the Stormwater Control Measures.

Section 6. Landscape Berm Easement. Declarant does hereby grant and convey to the Association as Common Properties, for the use and benefit of the Owners, a perpetual, non-exclusive easement for the use, inspection, maintenance, repair, reconstruction and replacement of the berms, fencing and landscaping on, over and upon the Landscape Berm Easement Area as shown on any recorded plat of this subdivision and across any portion of the Property not owned in fee by the Association reasonably necessary to conduct such inspection, maintenance, repair, reconstruction, and replacement of the berms and landscaping and for ingress, egress and regress to and from the Landscape Berm Easement Area. Further, pursuant to the zoning conditions stated City of Raleigh rezoning case Z-33-01, the following areas are included in this grant of easement and maintenance thereof shall also be accomplished by the Association and as set out in the zoning conditions. (a) A landscaped berm shall be installed in the area of the Property within twenty-five (25) feet (measured perpendicularly) of tax parcels 0785.08-99-6055, 0785.08-98-5995, 0785.08-98-6818 and 0785.08-98-7706 and shall be constructed as shown on Exhibit B-3 attached hereto; and (b) a closed fence six (6) feet in height will be constructed by the Declarant and maintained and repaired by the Association along the common boundary line of the Property and the lots with the following PIN numbers: 0785.08-89-8212; 0785.08-99-0312; 0785.08-99-1400; 0785.08-99-372; 0785.08-99-4271; 0785.08-99-6055; 0785.08-98-5995; 0785.08-98-6818; and 0785.08-98-7706. The fence may meander along the property line in order to avoid removal or disturbance of existing trees.

Section 7. Sign & Wall Easements and Sight Triangles. Declarant does hereby grant and convey to the Association as Common Properties, for the use and benefit of the Owners, a perpetual, non-exclusive easement for the use, inspection, maintenance, repair, reconstruction and replacement of the signage and wall on, over and upon the Sign & Wall Easement as shown on any recorded plat of this subdivision and across any portion of the Property not owned in fee by the Association reasonably necessary to conduct such inspection, maintenance, repair, reconstruction, and replacement of the signage and wall and for ingress, egress and regress to and from the Sign & Wall Easements. Sight Triangles as designated on the recorded plat are Common Properties. Within Sight Triangles there shall not be placed any sight obstructing or partially obstructing wall, fence, foliage, sign, or parked vehicle between two feet and eight feet above the curb elevation.

Section 8. Ground Disturbance. These reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil and any other action necessary to complete installation.

Section 9. Priority and Amendment of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Properties, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof. Amendments of the easements contained in this Declaration shall not be valid unless and until approved by and executed by (a) the owners of the properties and Lots both benefited and burdened by the easement and (b) the percentages of membership approval as set out in Article XII, Section 3 of this Declaration, and such amendment is recorded in the Wake County Registry.

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Section 10. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding utilities, grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 11. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot that endangers any building or any portion of the Common Properties.

ARTICLE X

INSURANCE

Section 1. Insurance to be Maintained by the Association. The following insurance coverage shall be maintained in full force and effect by the Association:

(a) Public liability in any amount not less than one million dollars and property damage insurance of not less than eighty percent (80%) of the replacements cost in such form as shall be required by the Association.

(b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.

(c) Such other insurance coverage as it may determine to be desirable and necessary.

(d) Fidelity bonds for those officers or employees having control over Association funds.

(e) Other insurance required by law.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

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ARTICLE XI

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, U. S. Department of Veterans Affairs, Federal Housing Authority, Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

(a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

(c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

(d) To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof.

(e) To be given notice by the Association of any substantial damage to any part of the Common Properties.

(f) To be given notice by the Association if any portion of the Common Properties, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

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ARTICLE XII

GENERAL PROVISIONS

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

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

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

Section 4. Amendments Permitted Without Membership Approval. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the members:

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

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necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.

- (d) The Declarant for so long as it has control of the Board may amend this Declaration to include any platting change of the Property as permitted herein or to make amendments correcting minor typographical errors or other similar clerical errors.

Section 5. Governmental Authority Amendments. No amendment which would change or delete any provision herein required by any governmental authority, including those affecting the Stormwater Control Measures or escrow funds, shall become effective until submitted to and approved by that authority; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

Section 6. Recordation. No amendment shall be effective until recorded in the County in which the Property is situate.

Section 7. Stormwater Control Measures. The Raleigh City Code requires stormwater runoff from the Property to be controlled and nitrogen loading from stormwater runoff from the Property to be reduced. To comply with the City Code, Stormwater Control Measures will be installed and maintained. Failure to maintain the Stormwater Control Measures is a violation of the Raleigh City Code potentially subjecting each Owner to significantly daily civil penalties and other enforcement actions. Consequently, on behalf of each Owner, the Association shall maintain, repair, replace and reconstruct the Stormwater Control Measures so that at all times the Stormwater Control Measures shall perform as designed and at all times shall comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities. In addition, the Association shall perform maintenance of the Stormwater Control Measures as set forth on Exhibit C of that Stormwater Escrow Protection Easement and Access Maintenance Agreement recorded in Book 10141, page 1145 Wake County Registry.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 16th day of May, 2003.

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NOLCON Properties LLC, a North Carolina limited liability company

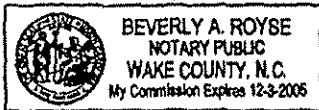
By: [Signature]
Bob J. Fry, Manager

STATE OF NORTH CAROLINA :
COUNTY OF WAKE :

I, the undersigned Notary Public, certify that Bob J. Fry, Manager of NOLCON Properties LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed on behalf of said company.

Witness my hand and Notarial Stamp/Seal this 16th day of MAY, 2003

[Signature]
Notary Public
My Commission Expires: 12-03-2005

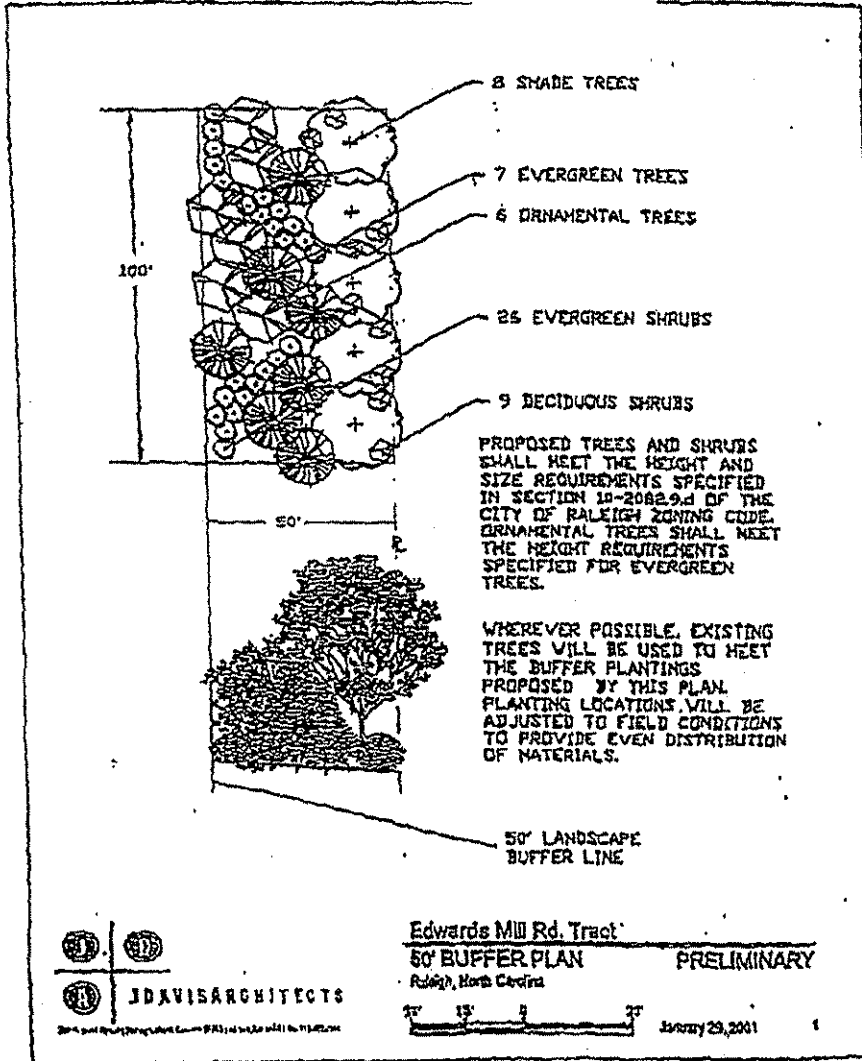


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EXHIBIT "A"

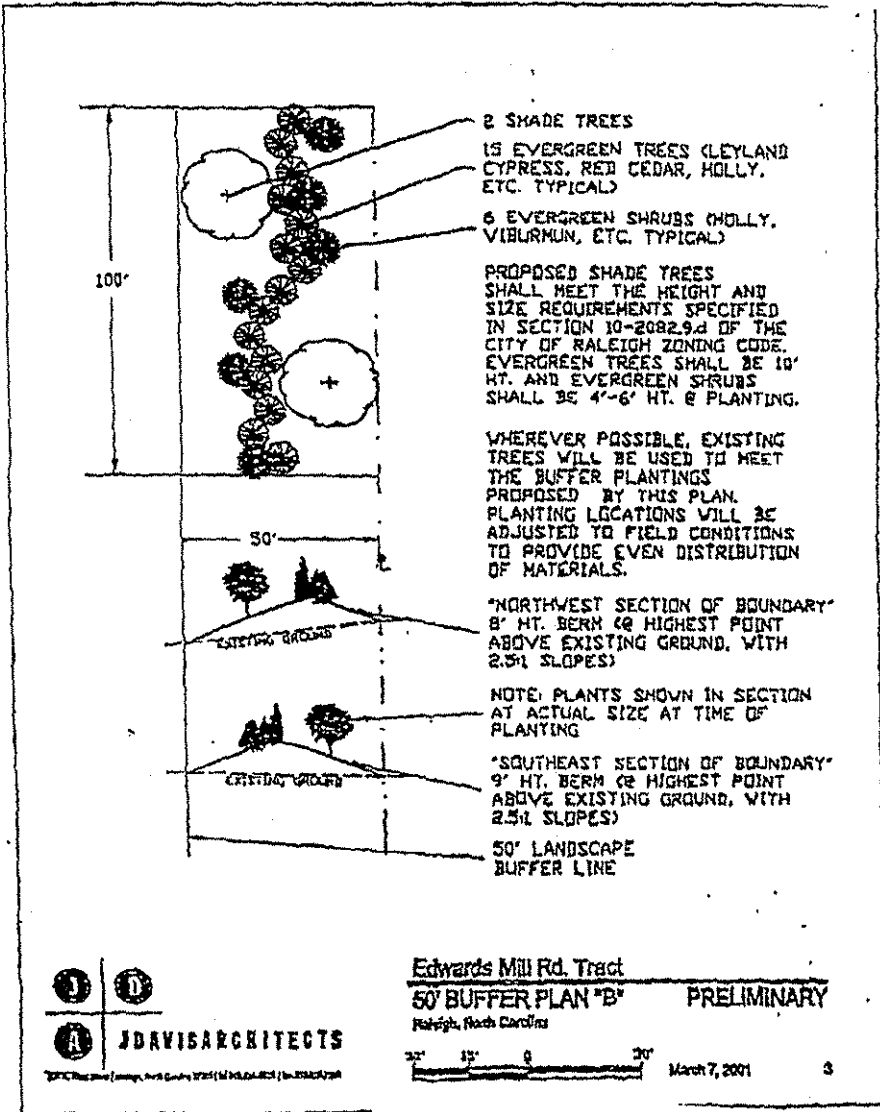
BEING all of that 11.846 acre tract shown on that map entitled "Subdivision and Recombination Avallon" dated March 28, 2003 by Bass, Nixon & Kennedy, Inc. recorded in Book of Maps 2003, pages 830 and 831 Wake County Registry.

EXHIBIT B-1



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

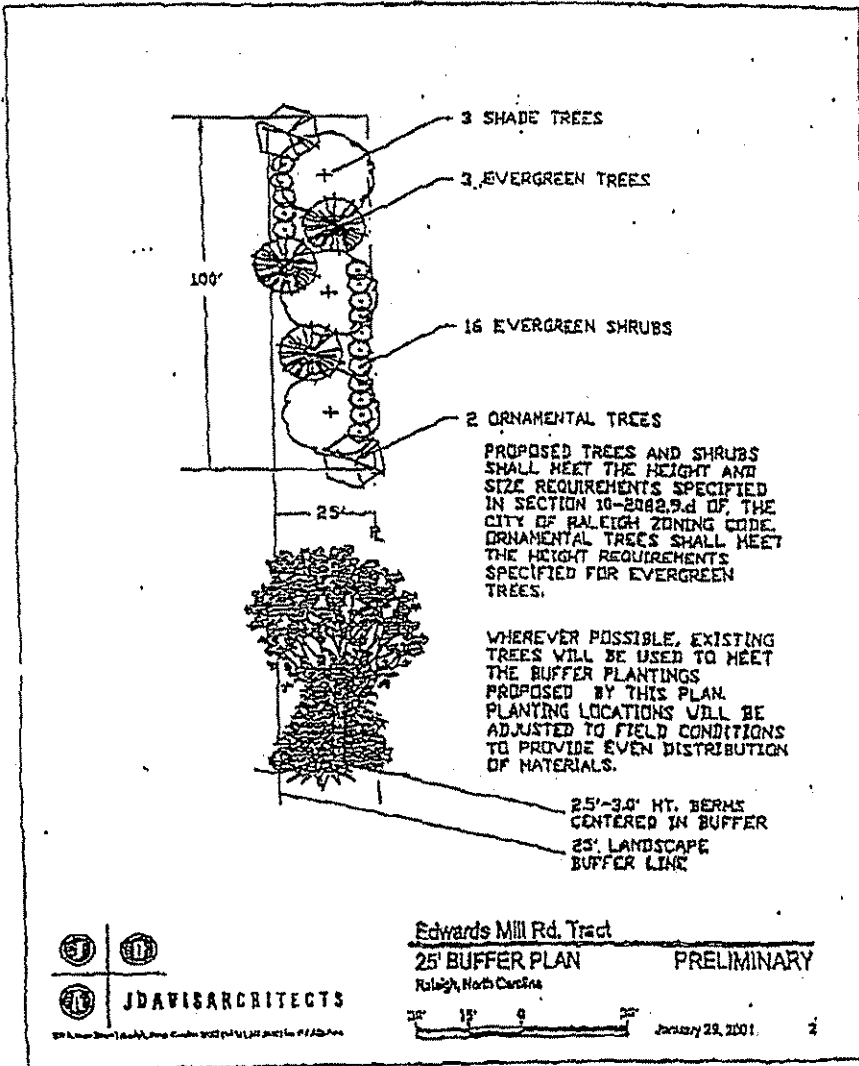
EXHIBIT B-2



J DAVIS ARCHITECTS
2010 North Hills Street, Suite 100, Raleigh, NC 27605

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

EXHIBIT B-3



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

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Laura M Riddick
Register of Deeds
Wake County, NC



Book : 010141 Page : 01115 - 01144

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



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

North Carolina - Wake County

The foregoing certificate of Beverly A Royse

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: George W Pearson
Assistant/Deputy Register of Deeds

This Customer Group
of Time Stamps Needed

This Document
New Time Stamp
30 # of Pages

WAKE COUNTY, NC 675
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/14/2003 AT 11:34:06

BOOK:010493 PAGE:02480 - 02484

STATE OF NORTH CAROLINA :

COUNTY OF WAKE :

AMENDMENT TO
DECLARATION

Prepared by and Return to: Alison R. Cayton of Manning, Fulton & Skinner, P.A.

THIS AMENDMENT to Declaration is entered into on the 3rd day of October,
2003 by **NOLCON Properties LLC, a North Carolina limited liability company**
(“Declarant”) and **The Drees Company d/b/a The Drees Homes Company, a Kentucky**
Corporation;

WITNESSETH

WHEREAS Declarant executed and recorded that certain Declaration of Covenants,
Conditions, Easements and Restrictions for Avallon Subdivision recorded in Book 10141, page
Wake County Registry, (herein, “Declaration”); and

WHEREAS Declarant and the owners of the all of the property affected by the
Declaration desire to make certain amendments to the Declaration.

NOW THEREFORE, Declarant and the other parties hereto are the owners of all of the
property described in Exhibit A of the Declaration, all of which is affected by the Declaration,
do hereby declare that pursuant to the terms of Article XII, Section 3 of the Declaration, the
Declaration is amended as follows:

Article I, Section 6 is hereby amended by adding a new subsection 1 as follows:

Costs and expenses associated with the maintenance by the Association of the front
yard, back yard, side yard, the standard landscaping provided by the builder for each Lot
and the sprinkler systems installed on each Lot.”

2. Article IV, Section 3(a) is hereby deleted and the following is inserted in lieu thereof:

“(a) Initial Maximum Assessment. To and including December 31, 2003, the maximum annual assessment shall not exceed One Thousand Eight Hundred and no/100 Dollars (\$1,800.00) per Lot.”

3. The first sentence of Article IV, Section 3(b) is hereby deleted and the following is inserted in lieu thereof:

“From and after December 31, 2003, the annual assessment imposed by this Association, initially \$1,800.00 effective for any year (including 2003) may be increased effectively from and after January 1 of the succeeding year by the Board of Directors, by a percentage which may not exceed ten (10%) percent.”

4. The title of Article VII, Section 23 shall be deleted and a title and new first paragraph and shall be inserted “before the word “Subject” as follows:

“Section 23. Lot Maintenance.

Association Lot Maintenance Responsibilities: The Association shall be responsible for the maintenance of the front yard, back yard, side yard, standard landscaping provided by the builder for each Lot, and the sprinkler systems installed on each Lot. Such maintenance shall include but not be limited to mowing the grass, pruning the trees and shrubbery and maintenance, repair and winterizing of the sprinkler systems. The Association shall hereby have an easement on each Lot for the express purpose of providing the Lot Maintenance described herein. Each Owner shall be responsible, at Owner’s sole cost and expense, for watering the grass and landscaping on a regular basis with the sprinkler system located on that Owner’s Lot. Each Owner shall be responsible for payment to the Association any additional costs arising out of the maintenance of landscaping in excess of that provided by the builder for each Lot. Further, each Lot owner shall be responsible for repairs and replacement of the sprinkler system located on that Lot due to damage caused by an Owner in excess of normal wear and tear.

Owner’s Lot Maintenance Responsibilities:”

5. The following shall be added to Article VII, Section 23 prior to the paragraph beginning with “If any Owner fails...”

“Enforcement of Remedies for Lot Maintenance:”

6. Except as otherwise provided herein, all other terms and conditions of the Declaration remain the same.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to the Declaration to be executed, all as of the day and year first above written.

NOLCON Properties LLC, a North Carolina limited liability company

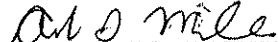
By: 
Bob J. Fry, Manager

STATE OF NORTH CAROLINA :
COUNTY OF WAKE :

I, the undersigned Notary Public, certify that Bob J. Fry, Manager of NOLCON Properties LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed on behalf of said company.

Witness my hand and Notarial Stamp/Seal this 13 day of October,
2003

AMANDA S. MILLER
NOTARY PUBLIC
WAKE COUNTY, N.C.
My Commission Expires 8-30-2006


Notary Public
My Commission Expires: 8/30/2006

The Drees Company d/b/a The Drees Homes Company, a Kentucky corporation;

By: [Signature]
Vice President

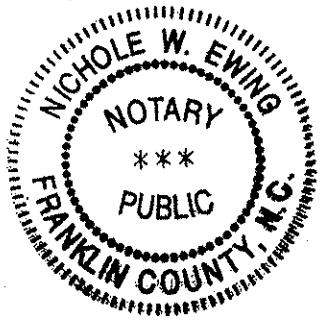
STATE OF North Carolina:

COUNTY OF Wake:

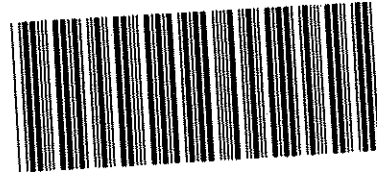
I, Nichole W. Ewing, Notary Public of the state and county aforesaid certify that David A. Hausfeld personally came before me this day and acknowledged that he is Vice President of **The Drees Company d/b/a The Drees Homes Company**, a Kentucky corporation, and that he as Vice President, being so authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 13th day of October, 2003.

[NOTARY SEAL]



[Signature]
Notary Public
My Commission Expires: November 1, 2005



BOOK:010493 PAGE:02480 - 02484

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Wake County Register of Deeds