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**DECLARATION**

**OF**

**COVENANTS, CONDITIONS, RESTRICTIONS,  
RESERVATIONS AND EASEMENTS**

**FOR**

**WALNUT CREEK BUSINESS PARK**

**Wake County, North Carolina**

**July 26, 2002**

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, RESERVATIONS AND EASEMENTS  
FOR WALNUT CREEK BUSINESS PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS AND EASEMENTS (this "Declaration") is made this 26 day of July, 2002, by DUKE REALTY LIMITED PARTNERSHIP, an Indiana limited partnership doing business in North Carolina as Duke Realty of Indiana Limited Partnership (hereinafter referred to as "Declarant"), as the current owner of the Property (as hereinafter defined).

**RECITALS:**

WHEREAS, Declarant has heretofore acquired fee simple title to a tract or tracts of land containing approximately 92 acres, located in the City of Raleigh, Wake County, North Carolina, and known as Walnut Creek Business Park, more particularly described on Exhibit A, attached hereto incorporated herein by reference (together with such Additional Property, as hereinafter defined, or such portion or portions thereof, as may from time to time be submitted by Declarant to the covenants and restrictions of this Declaration pursuant to the terms hereof, "the Property").

Declarant intends to develop the Property for office/industrial/retail uses and ancillary uses permitted under the applicable zoning classification currently in effect, as hereinafter provided, together with necessary and appropriate infrastructure including roads, utility lines, detention ponds, signage and hard and soft landscaping.

Declarant desires to subject and impose upon the Property certain covenants, conditions, restrictions, reservations and easements set forth in this Declaration for the purpose of insuring the proper use and appropriate development, maintenance and improvement of the Property.

Declarant desires to provide within the Common Area (as hereinafter defined) the Improvements (as hereinafter defined) for the benefit of all of Owners of all or any part of the Property with non-exclusive access and use of the Common Area in common with Declarant.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, owned, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and otherwise disposed of subject to the covenants, conditions, restrictions, reservations, easements, charges and liens set forth in this Declaration.

**ARTICLE 1.**

**DEFINITIONS AND PURPOSES**

Section 1.1. **Definitions.** In addition to terms defined elsewhere in this Declaration, the following words, when used in this Declaration, shall have the following meanings:

(a) "Articles of Incorporation" shall mean the Articles of Incorporation of the Walnut Creeks Owners' Association, Inc., as filed with the Secretary of State of the State of North Carolina.

- (b) "Association" shall mean "Walnut Creek Owners' Association, Inc."
- (c) "Board of Directors" shall mean the body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under North Carolina corporate law.
- (d) "Bylaws" shall mean the Bylaws of Walnut Creek Owners' Association, Inc. as they may be amended.
- (e) "Committee" shall mean the Design Review Committee established under Article 6 of this Declaration.
- (f) "Common Area" shall mean, but is not limited to, any portion of the Property to be used for (i) sanitary sewer lines, detention ponds, surface water drainage flow inhibitors and other infrastructure items; (ii) medians in the right-of-way; (iii) monument signage; and (iv) fire tank and associated service lines.
- (g) "Common Expenses" shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Sites, including all reasonable reserves.
- (h) "Community Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property. Such standard may be more specifically determined by the Board of Directors.
- (i) "Declarant" shall mean Declarant and its successors and shall include any person or entity designated as a successor or assignee by specific assignment of its rights and duties under this Declaration pursuant to Section 10.4 hereof.
- (j) "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Reservations, Restrictions and Easements as the same shall be supplemented or amended from time to time as provided herein.
- (k) "Development Guidelines" shall mean the Development Guidelines adopted by the Committee, as the same are amended, modified, supplemented and replaced from time to time. The Development Guidelines are by this reference incorporated herein and made a part hereof.
- (l) "Improvement" or "Improvements" shall mean, with respect to any Site or in the Common Area, any building, structure or construction which may affect the appearance of such Site including by way of illustration, but not limitation, all land preparation or excavation, utilities and sewer facilities, landscaping, buildings whether fully or partially enclosed, parking structures, parking areas, exterior paint or material or colors, trackage, fences, walls, exterior screening, poles, towers, antenna, aerials, lighting, driveways, ponds, lakes, fountains, swimming pools, tennis courts, decks, benches and other exterior furniture, walkways, jogging paths, utilities, pipes, lines and wires, signs, glazing or reglazing of exterior windows, exterior communications equipment and facilities, and any construction which affects the exterior color or appearance of any building or structure. The term "Improvements" includes both original improvements that may be permanent or temporary, stationary or moveable, or that may be above, on or below ground level.

(m) "Member" shall mean a Person subject to membership in the Association, as provided in Section 3.2.

(n) "Owner" shall mean the individual, partnership, limited liability company, corporation, trust, unincorporated association or other legal entity, including Declarant, owning fee title to any land within the Property. In the event that fee simple title to a Site is held by multiple Owners, either as the result of creation of a tenancy-in-common or the creation of an estate for years pursuant to which one Owner is a ground lessor and the other Owner is a ground lessee, such multiple Owners shall within thirty (30) days after the date of their acquisition of any Site, execute and deliver to Declarant a written instrument, including a power-of-attorney appointing and authorizing one Owner as their agent to receive all notices and demands to be given pursuant to the terms and provisions of this Declaration, to execute any and all documents, consents and instruments required under the terms and provisions of this Declaration and to cast all votes to take any and all actions required or permitted to be taken by them under the terms and provisions of this Declaration. If the multiple Owners of a Site fail to deliver to Declarant such written instrument, then Declarant may elect to recognize only a document, consent or instrument executed by all of the multiple Owners; provided, however, a notice by Declarant given hereunder with respect to such Site shall be effective if given to any of the multiple Owners. Owner may change its designated agent by written notice to Declarant, but such change shall be effective only after actual receipt of the notice by Declarant. Attached hereto as Exhibit B and incorporated herein by reference is a "Notice of Ownership" which must be filed with the Association upon any transfer or conveyance of any portion of the Property. The Association shall be entitled to rely on the correctness of any Notices of Ownership filed with it, and such notice may be used for all assessment notices and any other notices to be given by the Association. The failure of an Owner to provide the Association with an updated and current Notice of Ownership shall be considered a default of this Declaration and a waiver by said Owner of receiving any such notices. If the filed Notice of Ownership is not accurate and the Association undertakes the task of obtaining accurate information, the Association's costs in obtaining the correct information shall be considered an additional assessment and lien against the respective Site.

(o) "Person" shall mean a natural person, a corporation, a partnership, trust, association, company or any other entity, or any combination thereof.

(p) "Property" shall mean the land described on Exhibit A hereto, together with any additional real property made subject to this Declaration pursuant to Section 1.3 of this Declaration.

(q) "Rules and Regulations" shall mean the guidelines, rules and regulations adopted by the Board of Directors, the Association or the Committee, from time to time.

(r) "Site" shall mean a tract of land, the size, boundaries and dimensions of which are established and identified by site and block number shown upon any recorded subdivision map of the Property or additions thereto as designated in the city documents. If two or more contiguous Sites, as defined above, are acquired by the same Owner in fee, such commonly owned contiguous Sites may, at the option of said Owner and subject to the approval of Declarant, be combined and treated as a single Site for purposes of this Declaration.

(s) "Supplemental Declaration" shall mean an instrument filed in the Real Property Records of Wake County, North Carolina which subjects additional real property to the terms of this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the real property

described in such instrument.

(t) "Utility Easement Area" shall mean a ten (10) foot strip of property inside and along the boundary lines of any Site.

(u) "Zoning Ordinance" shall mean the latest adopted version of the City of Raleigh Ordinances, Part 10 "Planning and Development".

(v) "Voting Units" shall mean that each Class "A" Member shall have the right to cast one vote per each acre of land owned within a Site, with portions of an acre being rounded to the nearest whole number of acres.

Section 1.2. Purpose. The Property is hereby made subject to the covenants, conditions, restrictions, reservations and easements contained in this Declaration, all of which shall be deemed to run with the Property and with each and every Site within the Property, and shall burden and bind the Property for the duration hereof, in order to insure proper use and appropriate development, maintenance and improvements of the Property; to prevent the erection within the Property of Improvements constructed of improper or unsuitable materials, quality or methods of construction; to encourage the construction of attractive and harmoniously designed improvements within the Property which provide a high quality, first class office/industrial/retail development; to protect the present and future value of the Property; and to generally promote the welfare and safety of Owners of any part of the Property.

Section 1.3. Annexation. Declarant may from time to time unilaterally, subject to the provisions of this Declaration, annex any additional real property adjacent to or in the vicinity of the Property. Such annexation shall be accomplished by filing in the Real Property Records in Wake County, North Carolina, a supplemental declaration annexing such additional real property by express statement. Any such annexation shall be effective upon the filing for record of such supplemental declaration, unless otherwise provided therein, and upon becoming effective the term "Property" henceforth shall be deemed to include the annexed real property. Provided, however, nothing in this Declaration shall be construed to require Declarant or any successor Declarant to annex any additional real property.

Section 1.4. Additional Covenants, Conditions, Restrictions, Reservations and Easements. Declarant may from time to time unilaterally subject any portion of the Property then owned by Declarant to additional covenants, conditions, restrictions and easements by filing in the Real Property Records in Wake County, North Carolina Supplemental Declaration. No such additional covenants, conditions, restrictions and easements shall affect a Site previously conveyed to an Owner, except to the extent permitted pursuant to Section 6.2 of this Declaration.

## ARTICLE 2.

### CONSTRUCTION, USE AND MAINTENANCE OF COMMON AREAS

Section 2.1. Declarant's Rights, Powers and Authority. Declarant shall at all times have the right, power and authority to do the following:

(a) to construct Improvements from time to time, within the boundaries of the Common Areas.



(b) to enter at any time, without being liable to an Owner, upon any portion of the Common Areas to enforce the provisions of this Declaration or to replace, maintain or repair any Improvement located thereon.

(c) to grant and convey to any utility company or appropriate governmental authority easements on, over, across and under the Utility Easement Area or Common Areas for the purpose of excavating, constructing, erecting, operating, repairing, maintaining, replacing or removing thereon, therein and thereunder, lines, cables, wires, pipes and other devices for utility purposes; sanitary sewers; water systems and equipment; detention ponds, storm drainage systems; sprinkler systems and pipelines; and any similar public or quasi-public improvements or facilities, and to relocate easements in, and modify the size and capacity of utilities in, the Utility Easement Area or Common Areas.

(d) to connect storm sewer lines to any detention pond which may now or hereafter be deemed a Common Area and to provide storm drainage and run-off from a Site to such Common Area.

(e) to prohibit any Owner and its tenants, agents, employees, customers, invitees and licensees from using the Common Areas in the event any assessment is not paid by an Owner when due.

(f) to make, establish and amend such rules and regulations, not in conflict with this Declaration, as Declarant deems proper, governing the use of the Common Area by Owners or non-Owners, so long as such rules and regulations are commercially reasonable.

(g) to take such other actions as are in keeping with the purpose and intent of this Declaration.

Section 2.2. Designation By Declarant of Common Area. Declarant shall have the right, at any time, at its cost and expense, to designate as a Common Area any part of the Property which is owned by Declarant, or to modify the configuration of or reduce the area contained within any part of the Common Areas located on any part of the Property which is owned by Declarant and not by an Owner, without the joinder or consent of any Owner being required and without compensation to any Owner.

Section 2.3. Grant of Easement over Common Area. Declarant shall have the power to convey the Common Areas to the Association by easement, deed, or by plat recorded in the Real Property Records of Wake County, North Carolina, at such time and from time to time as Declarant deems appropriate. Upon conveyance, the Association shall accept and maintain such Common Areas pursuant to its powers and duties set forth in Section 4.2 hereof. Declarant hereby establishes and grants for the benefit of the Property perpetual easements for access, ingress and egress on, over and across the Common Area, together with access over the Property to the Common Areas, for the benefit of Declarant in order to effectuate the provisions of Section 2.1 of this Declaration. The Common Areas and the Improvements located on the Common Area, shall be used and enjoyed in common by the Owners of all or any part of the Property subject to the reservations, restrictions, covenants and conditions of this Declaration and the rules and regulations established in accordance with this Declaration. Each Owner, so long as all assessments due on its Site have been paid, shall have the authority to allow use of the Common Areas by their respective permitted tenants, agents, employees, customers, invitees and licensees subject to the terms and conditions of this Declaration. Declarant hereby establishes a perpetual easement on, over and across the Common Areas for the benefit of Declarant and other Owners of any part of the Property for a non-exclusive right of access, ingress and egress on, over and across the Common Areas.

Section 2.4. Additional Easements. If it becomes clear that additional utility or drainage easements, whether or not contemplated or mentioned in this Declaration, between or across portions of the Property are reasonable, necessary, and desirable to effectuate the purposes of this Declaration, then, upon the request of Declarant, and provided said proposed additional easements will not unreasonably interfere with the development, use and occupancy of any Site, unreasonably affect access to or operation of, any such Site, or materially increase the operating costs of any such Site, each Owner agrees to grant such additional easements across its Site, without charge therefor, subject to such reasonable terms and conditions as shall be agreed upon between Declarant and such Owner. Any such new easement or easements shall be signed by Declarant and or all Owners of portions of the Property which compose the land within such new easements and shall be recorded in the Real Property Records of Wake County, North Carolina.

Section 2.5. Landscaping and Maintenance of Common Areas. The Common Area located on an Owner's Site shall be landscaped and shall be maintained, unless otherwise expressly provided in this Declaration, by the Association for the common benefit of the Owners as a common expense pursuant to Article 5 of this Declaration. All landscaping and all maintenance of the Common Areas shall be done at the direction and under the supervision of the Association in accordance with landscaping plans and maintenance standards approved by the Committee and the Association shall maintain the Common Areas in good order and condition and shall manage all assessments paid to the Association pursuant to Article 5.

Section 2.6. Limitation on Use of Common Area. No Owner of Property, other than Declarant, shall use, construct Improvements on, alter, modify, add to or reduce the Common Areas nor shall any Owner at any time erect or permit to be erected any barrier to interfere in any way with the access, ingress and egress by Declarant or any other Owner, their respective permitted tenants, agents, employees, customers, invitees and licensees, on, over and across the Common Areas.

Section 2.7. No Assignment of Declarant's Rights, Powers or Authority. Title to any portion of the Common Area conveyed by Declarant by deed or other conveyance to any Owner shall not be held or construed to grant or assign to such Owner any of the rights, reservations, powers and authority of Declarant as set forth in this Article or elsewhere in this Declaration, such rights, powers and authority being hereby expressly retained by Declarant. Each Owner of any portion of the Property that is Common Area, by acceptance of a deed or other instrument transferring ownership of such portion of the Property, whether or not it shall be so expressed in any such deed or instrument, shall take title subject to such rights, easements, reservations, powers and authority of Declarant and the portion of the Property that is Common Area shall remain Common Area during the term of this Declaration.

### ARTICLE 3.

#### ASSOCIATION FUNCTION, MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Function of Association. The Association has been or will be formed as a North Carolina corporation under the North Carolina Nonprofit Corporation Code. The Association shall be the entity responsible for management, maintenance, operation and control of the Common Areas within the Properties. The Association shall be the primary entity responsible for enforcement of this Declaration and such rules regulating use of the Properties as the Board or the membership may adopt pursuant to

Article 7 hereof. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and North Carolina law.

Section 3.2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Site. If a Site is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to Board regulation and the restrictions on voting set forth in Section 3.3(a) and in the By-Laws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights and privileges may be exercised by the Owner, if a natural person, or in the case of an Owner which is a corporation, partnership or other legal entity, by any officer, director, partner, or trustee, or by any other individual designated by the Owner from time to time in a written instrument provided to the Secretary of the Association, but no Owner shall be permitted to relieve itself of the responsibility for fulfillment of all of the obligations of an Owner under this Declaration.

Section 3.3. Voting. The Association shall have two classes of voting membership, Class "A" and Class "B."

(a) Class "A." Class "A" Member shall be all Owners other than the Class "B" Member, if any. Each Class "A" Member shall be entitled to vote their respective Voting Units; provided, no votes shall be exercised for any property which is exempt from assessments under Section 5.9. Class "A" Owners shall include all Owners; provided, however, that so long as Declarant is a Class B Owner, it shall not be entitled to Class "A" membership, unless Declarant owns a site on which a building is being constructed, and the Declarant shall be entitled to Class "A" membership only as to such site.

If there is more than one Owner of any Unit, the votes for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. In the absence of such advice, the vote for such Unit may be exercised by any co-Owner but shall be suspended if more than one co-Owner seeks to exercise it.

Any Owner may assign the right to cast all or a portion of the votes allocated to its Unit to the lessee of any portion of such Unit by written proxy filed with the Secretary of the Association in accordance with Article 2 of the By-Laws.

(b) Class "B." The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve or withhold approval of actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a majority of the members of the Board during the Class "B" Control Period, as specified in Article 2 of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Article 2 of the By-Laws. The Class "B" membership shall terminate upon the earlier of:

- (i) the date upon which Declarant ceases to own more than 5 acres of land within the Property; or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member

entitled to its respective Voting Units, if any.

#### ARTICLE 4.

##### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 4.1. Common Areas. The Association has been formed to further the common interests of the Owners. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage, maintain and repair, operate and control the Common Areas and all improvements thereon (including, without limitation, landscaping, furnishings, equipment and other personal property of the Association used in connection with the Common Areas), and shall keep them in safe, good, clean, desirable, attractive, and sanitary condition, order, and repair, consistent with this Declaration and the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

Section 4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees may convey to the Association improved or unimproved real estate located within the Property, personal property, and leasehold or other property interests. Such property shall be accepted by the Association and thereafter shall be maintained as part of the Common Areas by the Association for the benefit of its members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

Section 4.3. Enforcement. The Association may impose sanctions for violations of this Declaration, any applicable Supplemental Declaration, the By-Laws, or Association rules in accordance with procedures set forth in the By-Laws, including monetary fines and suspension of the right to vote. In addition, in accordance with Section 4.16 of the By-Laws, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Site of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover from the violating Owner all costs, including, without limitation, attorneys' fees and court costs incurred in such actions.

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 action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce city and county ordinances, if applicable, and permit the City of Raleigh and Wake County to enforce their respective ordinances on the Properties for the benefit of the Association and its Members.

Section 4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, and any right or privilege which could

be implied from or which is necessary to effectuate any express right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws or by North Carolina law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

Section 4.5. Governmental Interests. So long as the Declarant owns any of the Property, the Declarant may designate sites within the Property for fire, police, paramedic/rescue and utility facilities, public schools and parks, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

Section 4.6. Duty to Pay Taxes. The Association shall pay all ad valorem taxes and governmental assessments levied upon the Association properties to which the Association holds fee simple title. Nevertheless, the Association shall have the right to contest in good faith any such taxes or assessments provided such content does not subject the Association property to foreclosure proceedings.

Section 4.7. Insurance. To the extent deemed desirable by the Board, the Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, comprehensive public liability and property damage, casualty, fire and extended coverage insurance with respect to all insurable Improvements and personal property owned by the Association, for the interest of the Association, its Board, members of the Committee, officers, agents and employees, and all Owners, in such amounts and with such endorsements and coverages as the Board shall, in its sole discretion, determine from time to time.

Section 4.8. Insurance Proceeds. To the extent permitted by any mortgage or similar instrument which creates a lien against all or a portion of the Common Areas and to the extent reasonably practicable, the Association shall use the net proceeds of any property insurance to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required in this Section 4.8, remaining after satisfactory completion of repair and replacement, except as may be provided to the contrary in any mortgage or similar instrument which creates a lien against all or a portion of the Common Areas, shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Areas. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may either (a) levy a special assessment to cover the deficiency or (b) otherwise provide funds to cover such deficiency in such manner as the Board shall determine.

Section 4.9. Fidelity Coverage. To the extent reasonably obtainable, the Association may obtain and keep in full force and effect at all times a fidelity policy or bond providing fidelity coverage against dishonest acts on the part of directors, officers, employees and volunteers of the Association responsible for handling fund collected and held for the benefit of the Owners or otherwise belonging to or administered by the Association.

Section 4.10. Other Insurance and Bonds. The Association shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

Section 4.11. Power to Acquire Property and Construct Improvements. Other than property received from Declarant (the conveyance of which is governed by Section 4.2 hereof), the Association

may acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The Association may construct Improvements on property and may repair, maintain, remodel and demolish existing Improvements.

Section 4.12. Power to Adopt Rules and Regulations. The Association, acting through the Board, or the Development Review Committee may, from time to time, adopt, amend, repeal and enforce rules and regulations as may be deemed necessary or desirable with respect to the interpretation and the implementation of this Declaration or any supplemental declaration, the operation of the Association, the use and enjoyment of Association Properties. Any such rules and regulations shall be responsibly and uniformly applied. Each Owner shall comply with such rules and regulations. In the event of any conflict between the rules and regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 4.13. Power to Employ Managers; Management Contracts. The Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management duties and administrative functions for which the Association has responsibility, and the Association may delegate any of its duties, powers or functions to any such manager. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and the Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

Section 4.14. Power to Engage Employees, Agents and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, accounting and other services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration or any Supplemental Declaration.

Section 4.15. General Corporate Powers. The Association shall have all of the ordinary powers and rights of a North Carolina nonprofit corporation, including, without limitation, the power and right to enter into partnerships and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required or permitted to be done under this Declaration, under any Supplemental Declaration, or under the Articles of Incorporation, Bylaws or Rules and Regulations, and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or right of the Association under this Declaration, under any Supplemental Declaration or under the Articles of Incorporation, Bylaws or Rules and Regulations.

Section 4.16. Indemnification. To the extent consistent with the North Carolina Nonprofit Corporation Code, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions as to which liability is limited under this Section and North Carolina law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other

commitment made or action taken, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4.17. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to the City of Raleigh, to Wake County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity.

Section 4.18. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS IMPLEMENTED OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

## ARTICLE 5.

### COMMON AREA ASSESSMENTS

Section 5.1. Covenants for Assessments. Declarant, for all of the Property, covenants, and each subsequent Owner of any portion of the Property (including any purchaser at any judicial sale or non-judicial sale under power), by acceptance of a deed or other instrument transferring ownership of such portion of the Property, whether or not it shall be so expressed in any such deed or other instrument, covenants and agrees and shall be deemed to covenant and agree to pay to Declarant any annual assessments or charges and any special assessments for improvement or maintenance of the Common Area, which assessments are to be set, established and collected from time to time for the purposes of and as provided in this Declaration.

Section 5.2. Purpose of Assessments. The annual assessments shall be assessed, collected and administered by Declarant and shall be used for the maintenance, operation, repair and replacement of Improvements to the Common Areas, including, but not limited to, the cost of water, lighting, cleaning, insurance, utility bills, labor, equipment, materials, management and Declarant's administrative costs, which administrative costs shall be limited to seven percent (7%). The annual assessments shall not include any costs or expenses incurred by Declarant in the initial construction of any Improvements to the Common Areas. The special assessment shall be assessed, collected and administered by Declarant and

shall be used for the purpose stated in the written notice required under Section 5.4 of this Declaration. All sums received by Declarant pursuant to the annual or special assessments shall be segregated by Declarant from its general funds and held in trust for the benefit of the Owners for the purposes and uses designated herein. Declarant shall maintain records of all expenditures of funds and all assessments with regard to the Common Areas, which records shall be open for inspection by any Owner during normal business hours upon reasonable notice and at such Owner's cost and expense.

Section 5.3. Annual Assessments. Declarant shall determine the amount of each calendar year's annual assessment based on Declarant's financial needs for maintenance, operation, repair and replacement of Improvements to the Common Areas for that calendar year and Declarant's determination shall be final and binding on all Owners.

Section 5.4. Special Assessments. In addition to any annual assessments, Declarant may at any time levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or replacement of any capital improvements within the Common Areas, including the necessary fixtures and personal property related thereto; provided that any such special assessment shall not become effective if disapproved in writing by a majority of the Owners, computed on the basis of acreage, within the Property, within sixty (60) days after written notice of such special assessment from Declarant to all Owners setting forth the amount and purpose of the special assessment. Notwithstanding any provision of this Section 5.4 to the contrary, special assessments shall not be used for the purpose of defraying the cost of the initial installation of roads, landscaping, irrigation systems, lighting, project monuments and other signage in the Common Areas.

Section 5.5. Due Date of Assessments.

(1) The Annual assessment under this Section shall be due and payable on March 1 of each year.

(2) The due date of any special assessment under this Section shall be as set by Declarant in the notice of special assessment sent to the Owners [which due date shall not be earlier than thirty (30) days after the lapse of the sixty (60) day period referred to in Section 5.4 of this Declaration].

Section 5.6. Apportionment of Assessment. Any annual or special assessment shall be allocated pro rata among the Owners in accordance with the amount of land owned. Subject to adjustment, as provided in the next succeeding sentence, an Owner's share of the assessment shall be determined by multiplying the total amount of the assessment by a fraction (rounded to nearest 100th) having as its numerator the acreage owned by the Owner within the Property including that portion situated within the Common Area, and having as its denominator the total acreage located within the Property.

Section 5.7. Owner's Personal Obligation for Payment of Assessments. The annual and special assessments provided for herein shall be the personal and individual debt of the Owner of the Property covered by such assessments. No Owner may exempt himself from personal liability for such assessments. Any assessment not paid within the time period specified in this Section shall bear, and the Owner of the Property shall be obligated to pay (i) a late fee equal to five percent (5.0%) of the amount of assessment, (ii) interest at the annual interest rate stated below on the amount of the assessment from the due date thereof, and (iii) all costs and expenses of collection, including actual attorney's fees and court costs. Declarant shall have the right to bring suit against the Owner to recover a money judgment for all



such amounts without foreclosing or waiving the liens securing same as provided in this Section. The annual interest rate from the due date until paid shall be equal to the lesser of (a) the maximum lawful rate that may be charged, or (b) twelve percent (12%) per annum.

Section 5.8. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Section but unpaid, together with late fees, interest thereon and the costs of collection, including attorney's fees as provided above, shall become a continuing lien and charge on the Site covered by such assessment, which shall bind such Site. Such lien shall be superior to all other liens and charges against the said site or portion of the Property, (i) except only the lien for ad valorem tax; and (ii) except for the lien and security title of a first priority deed to secure debt granted by the Owner on its Site, provided, however, from and after the date the holder of such deed to secure debt or its successor or assignee takes possession of the Site or succeeds to the Owner's interest in the Site, whether by deed-under-power, foreclosure, conveyance in lieu of foreclosure or otherwise, such holder or its successor or assignee shall be deemed an Owner of the Site and liable for all assessments on that Site due after that date. Declarant shall have the power to release the assessment lien or to subordinate it to any other lien and such power shall be entirely discretionary with Declarant. To evidence the assessment lien, Declarant shall prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the date that the unpaid indebtedness was due, the name of the Owner of the Site or portion of the Property covered by such lien and a description of the Site. Such notice shall be signed by Declarant and shall be recorded in the office of the Real Property Records of Wake County, North Carolina. Such lien for payment of assessments shall attach with the priority set forth above from the date that such payment becomes delinquent as set forth in this Section. Subsequent to the recording of a notice of assessment lien as provided above, Declarant may institute suit against the Owner to foreclose the assessment lien, and in addition or as an alternative, seek a personal judgment against the Owner for the amount of the unpaid assessment plus accrued interest thereon, all such remedies being cumulative. In any such suit or proceeding, the Owner shall be required to pay the costs, expenses and Declarant's actual attorney's fees incurred. Declarant shall have the power to bid on the Site or portion of the Property in question at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any grantee holding a deed to secure debt on any Site or part of the Property, Declarant shall report to said grantee any unpaid assessments remaining unpaid on that Site or portion of the Property for longer than thirty (30) days after the same are due. Any grantee holding a deed to secure debt on any Site or part of the Property affected by the assessment lien may, but shall not be required to, pay any unpaid assessment and upon such payment such grantee shall be assigned the debt and lien securing same, said assignment to be without recourse or warranty.

Section 5.9. Exempt Property. All portions of the Property owned by or otherwise dedicated to any political subdivision shall be exempt from the assessments and lien created herein.

## ARTICLE 6.

### DESIGN APPROVAL AND CONTROL

Section 6.1. Establishment of Design Review Committee. A Design Review Committee (the "Committee") shall be established by the Association. The Committee shall consist of three (3) regular members who shall be natural persons. During the Class "B" Control Period, the Declarant shall have the right to appoint such members of the Committee. Upon the end of the Class "B" Control Period, the Board of Directors shall meet and appoint the Members of the Committee. The vote or written consent of

any two (2) members shall constitute the action or decision of the Committee on any matter before it. Such vote may take place through polling of the members in writing or over the telephone or other means of communication.

Section 6.2. Function of the Committee. The Committee shall have the sole authority and responsibility to approve and regulate the design and construction of all Improvements within the Property so as to assure compliance with the intent and purpose of this Declaration. The Committee has adopted detailed standards, guidelines and application procedures (the "Development Guidelines") to govern the design and construction of all Improvements, building setback lines, parking requirements, requirements with respect to loading and receiving areas, outside storage, solid waste removal, landscaping, signage, utility connections, drainage, on-site detention facilities, exterior illumination, maintenance and such other matters as the Committee shall deem necessary or appropriate. The Committee shall have the power to amend, modify, supplement and replace the Development Guidelines; provided, however, no such amendment, modification, supplement or replacement of the Development Guidelines shall apply to plans and specifications for Improvements previously approved by the Committee or operate to revoke or modify any approval of plans and specifications for Improvements previously given by the Committee. The Development Guidelines shall be available for inspection at the address specified for notice to Declarant pursuant to Section 11.3 of this Declaration. All Improvements shall be designed and constructed substantially in accordance with the plans and specifications approved by the Committee pursuant to the Development Guidelines. No Improvement shall be made, installed, constructed, altered, rebuilt or demolished until the plans and specifications for such Improvement have been submitted to the Committee. Approval of plans and specifications shall be based, among other things, on the adequacy of Site dimensions, structural design, conformity and harmony of the external design with neighboring structures and Sites, the relation of finished grades and elevations to neighboring Sites, and conformity to both the specific and general purposes of this Declaration. The Committee shall have the right to employ, at Declarant's expense (or at the expense of the person or entity having the right to appoint the Committee if Declarant has relinquished said right), professional consultants to assist it in discharging its duties. Any decision of the Committee in its areas of responsibility shall be final, conclusive and binding upon all Owners and their tenants.

Section 6.3. Submission of Plans and Specifications. Plans and specifications shall be submitted for Improvements in accordance with the procedures set forth in the Development Guidelines.

Section 6.4. Form of Committee Action. All actions of the Committee, including approval of plans and specifications and the granting of waivers or variances, shall be in writing, and signed by at least two (2) members of the Committee. No approval, waiver or variance in any other form shall be binding on the Committee or Declarant. However, if the Committee fails either to approve or to disapprove an Owner's plans and specifications, within thirty (30) days after such plans and specifications have been submitted to it (provided that all required information has been submitted), it shall be conclusively presumed that said plans and specifications have been approved, subject, however, to the conditions, covenants, restrictions and reservations contained elsewhere in this Declaration. The Committee shall notify the Owner in writing upon receipt of all required plans and specifications and the thirty (30) day period shall commence on the date of such notification. Declarant shall have the right to condition its approval of landscaping, to be installed by an Owner in the Common Area situated within such Owner's Site, on the requirement that the Owner maintain all or any part of such landscaping at the expense of such Owner.

Section 6.5. Limitation of Liability. Neither Declarant, the Committee nor any of the members of such Committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval to any Owner affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications. The construction of any Improvement on a Site shall be the sole responsibility of the Owner and any recommendation with respect to any plans or specifications or the means or method of construction made by the Committee or any member thereof shall not alter the Owner's responsibility for the safe and proper design and construction of said Improvement nor shall it give rise to any claims by anyone against Declarant or the Committee or any member thereof for any defect in design or construction of any Improvement.

Section 6.6. Enforcement by Committee. No Improvement shall be constructed, erected, placed, modified, altered (by addition or deletion), rebuilt or reconstructed, maintained or permitted to remain on any Site except substantially in accordance with the approved plans and specifications. Any Improvement not designed, erected, placed, modified, altered, rebuilt and constructed or maintained substantially in accordance with approved plans and specifications shall conclusively be deemed in violation of this Declaration and shall be removed or corrected by the Owner in conformance with approved plans and specifications to the reasonable satisfaction of the Committee. The Committee shall have the right, without liability to any Owner, and is hereby granted an irrevocable license, to enter on such Owner's Site during construction of the Improvements by such Owner, to determine if such construction complies with this Declaration. In addition to any other remedy provided for in this Declaration, Declarant may bring suit to enjoin the commencement or continuation of construction of any Improvement for which the Committee has not previously approved plans and specifications and may also bring suit to enjoin the continuance of construction of any Improvement that is not being constructed substantially in accordance with Plans and Specifications.

#### ARTICLE 7.

##### REGULATION, USE AND IMPROVEMENTS WITHIN THE PROPERTY

Section 7.1. Permitted Uses. Unless otherwise specifically prohibited herein, any use will be permitted if it is specifically permitted by the Wake County Zoning Ordinance as of the date of this Declaration.

Section 7.2. Prohibited Uses and Compliance. The following operations and uses, together with all uses prohibited by law, shall not be permitted on any property subject to this Declaration:

1. Single-family residential.
2. Trailer Courts.
3. Labor Camps.
4. Junk Yards.
5. Commercial Storage of building or construction materials.
6. Distillation of bones.

7. Dumping, disposal, incineration or reduction of garbage, sewage, dead animals or refuse.
8. Fat rendering.
9. Stockyard or slaughter of animals.
10. Smelting of iron, tin, zinc or other ores.
11. Refining of petroleum or of its products.
12. Cemeteries or mausoleums.
13. Jail, penal, detention or correction farms.
14. Gasoline service stations except at Lots specifically designated by Grantor.
15. Any operation or use which is dangerous to others or which constitutes a nuisance.
16. Commercial or other advertising.
17. Temporary or portable sawmill.
18. Community Fair.
19. Radio, television or other transmission tower.
20. Noncommercial club or lodge.
21. Privately operated sanitary landfill.
22. Sewage or treatment plant.
23. Boarding and breeding kennels.
24. Temporary religious meetings.
25. Construction Contractor.
26. Funeral home.
27. Sanatorium, convalescent, rest or retirement home.
28. Adult bookstore or other establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials.

29. A so-called "head shop."
30. Game Room or arcade.
31. Off-track betting parlor.
32. Pawn shop.
33. Junkyard.
34. Flea market.
35. Recycling Facility.
36. Auditorium, sports or other entertainment viewing facility.
37. Dance hall or night club.
38. Billiard parlor.
39. Bars and lounges.
40. Any heavy industrial use.

Section 7.3. Development Guidelines. No Site shall be developed in a manner that is in violation of the Development Guidelines.

Section 7.4. No Subdivision of Sites. No Site shall be subdivided or resubdivided, or combined with any other Site by any Owner without the prior written consent of the Committee, except for the Retained Parcels.

Section 7.5. Approvals, Waivers and Variances. It is the intent of this Declaration that the regulation of Sites within the Property as set forth in this Article 7 be strictly adhered to. Notwithstanding that intent, it is recognized that particular circumstances may from time to time and on a case-by-case basis necessitate the waiving or varying of certain of the requirements set out in this Article 7. Therefore, for good cause shown, the Committee may, in its sole discretion, waive or vary the requirements and standards set forth in this Article 7 on a case-by-case basis so long as such waiver or variance does not violate the overall scheme and intent of this Article 7. Any waiver or variance, when granted by the Committee, shall be final and binding upon all Owners. The granting of a waiver or variance to one Owner shall not automatically entitle another Owner to the same waiver or variance, it being understood that each request for a waiver or variance shall be treated on its own merits. Further, the granting of a waiver or variance to an Owner shall not automatically entitle that Owner to any subsequent or additional waiver or variance. All approvals, waivers and variances by the Committee shall be in writing and signed by at least two (2) members of the Committee and, if requested by the applicant, shall be in recordable form. No approval, waiver or variance in any other form shall be binding on the Committee or Declarant.

Section 7.6. Zoning. No Owner shall seek to rezone its Site or seek to modify or amend in any respect the zoning applicable to its Site without the prior written approval of the Committee.

Declarant reserves the right to rezone the Property then owned by Declarant or have the existing zoning applicable to the Property then owned by the Declarant modified or amended (each a "Rezoning") without the consent of the Owners. Declarant and each subsequent Owner, by acceptance of a deed or other instrument transferring ownership of such portion of the Property, whether or not it shall be so expressly stated in any such deed or other instrument, agrees to cooperate in any Rezoning of the Property then owned by Declarant, and each Owner appoints Declarant its attorney-in-fact to act, sign any applications or petitions and appear at any hearing, for and on behalf of the Owner in support of such Rezoning, which appointment is coupled with an interest and is irrevocable. Notwithstanding the provisions of the two immediately preceding sentences to the contrary, if an Owner determines, in the exercise of commercially reasonable judgment, that a proposed Rezoning will materially and adversely affect ownership or use of its Site, that Owner shall not be obligated to consent to, or support, the proposed Rezoning and may elect, to the extent permitted by applicable law, to oppose such proposed Rezoning.

#### ARTICLE 8.

##### SITE MAINTENANCE

Section 8.1. Duty of Maintenance. Each Owner of any Site, at its sole cost and expense, shall keep such Site, including the Improvements, and in dividing any area between the property line of that Site and any adjacent street curbs, but excluding any portion of such Site situated within a Common Area (except as provided in subsection 8.1(g) below), in a safe, clean, neat and attractive condition at all times and shall comply with all governmental health, fire and safety statutes, ordinances, regulations or requirements applicable from time to time to the Site and Improvements thereon. Owner's obligations include, but shall in no way be limited to, the following:

(a) All rubbish, trash and other waste shall be stored in clean and sanitary solid waste receptacles and shall be promptly removed from the Site prior to its accumulation.

(b) All exterior lighting and mechanical facilities shall be kept in good working order.

(c) All parking areas shall be striped and all parking areas, driveways and roads shall be kept in good repair and swept to the extent necessary to keep such areas clean and clear of debris.

(d) All exteriors to any Improvements shall be kept in good repair, including replacements, if necessary, and the exterior of all Improvements shall be repainted as reasonably needed.

(e) All lawn areas shall be timely mowed and edged at least once a week during the growing season of March through October and as needed to keep an even, well groomed appearance during the months of November through February. Lawn areas shall be watered and

fertilized at such times and in such quantities as required to keep the grass alive and attractive and shall be kept free of weeds.

(f) All trees, plants and ground cover shall be timely and properly trimmed (including the removal of deadwood) according to their plant culture and the landscape design and shall be watered and fertilized at such times and in such quantities as are required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately. All bed areas shall be kept free of weeds and cultivated periodically, as needed.

(g) The provision of this Section 8.1 shall apply to any landscaping by any Owner in any portion of a Site situated in the Common Area which the Owner is required to maintain.

Section 8.2. Enforcement of Maintenance Duties. If, in the reasonable opinion of the Association, any Owner has failed in any of the foregoing obligations or duties, then the Association may give the Owner written notice of such failure and the Owner must within ten (10) days after receiving such notice, perform the obligation or duty required. Should any Owner fail to fulfill this obligation or duty within such ten (10) day period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the Owner's Site and perform such obligation or duty without any liability for damages for wrongful entry, trespass or otherwise to any person or entity. Notwithstanding the foregoing notice requirement, in the event of an emergency, as determined by the Association, the Association through its authorized agent or agents, shall have the right and power to enter onto the Owner's Site and perform such work as is necessary to abate the emergency without prior notice to Owner and, thereafter, as soon as is reasonably practicable, the Association shall notify Owner of these circumstances. Each Owner of any Site on which such work is performed shall be liable for the cost of such work and shall promptly reimburse the Association, and said indebtedness shall be a debt of Owner and shall constitute a lien against the Site on which said work was performed. This debt shall bear interest at the rate and be subject to the costs as provided for in Article 5 above, which provisions are incorporated herein by reference, and the Association shall have identical powers and rights with respect to said lien as it has with respect to the lien described in Article 5, including, but not limited, to the right to release, subordinate or foreclose the same.

## ARTICLE 9.

### DECLARANT'S RIGHT OF REPURCHASE

Section 9.1. Right of Repurchase. If any Owner of a Site, or the Owner's successors and assigns, fails to commence construction of a building on the Site within one (1) year from the date of the deed conveying the Site from Declarant, then Declarant, its successors and assigns, at any time thereafter shall have the continuing right to repurchase the Site by giving the Owner written notice of its election to repurchase ("Repurchase Notice"), at a repurchase price equal to the price paid by the Owner to Declarant when the Site was purchased by the Owner from Declarant. On the date which is thirty (30) days from and after the date of the Repurchase Notice ("Repurchase Date"), Declarant shall pay to the Owner the repurchase price in cash and the Owner shall reconvey the Site to Declarant by delivery of a Limited Warranty Deed duly executed and acknowledged by the Owner in recordable form, conveying good and indefeasible fee simple title to the Site to Declarant, containing no exceptions to title other than the exceptions contained in the original deed from Declarant, at the Owner's expense, an ALTA Form B Owner's Title Insurance Policy in the amount of the repurchase price insuring fee simple, indefeasible title to the Site to Declarant, containing no exceptions to title other than those contained in the original title policy delivered from Declarant to the Owner when the Site was purchased from Declarant by the original Owner. Ad valorem taxes and general assessments against the Site for the calendar year in which the repurchase occurs shall be prorated on and as of the Repurchase Date. Owner and Declarant covenant and agree to execute and deliver to each other such additional documents as may be reasonably necessary to consummate the reconveyance of the Site to Declarant. The right of Declarant to repurchase the Site shall be binding upon the original Owner and the Owner's successors and assigns, and shall be considered a covenant running with the Site. If the Owner fails to reconvey the Site to Declarant as provided for in this Section, Declarant shall have the right to any and all remedies at law or equity, including the right to

specifically enforce the conveyance of the Site to Declarant and shall be entitled to recover reasonable attorney's fees and court costs incurred in connection with enforcement of its rights under this Section.

Section 9.2. Release and Waiver. Upon commencement of construction of a building on the Site within the one (1)-year period set forth in Section 9.1, the repurchase right provided in Section 9.1 shall terminate and Declarant shall, upon receipt of a written request from the Owner, execute a waiver and release of such repurchase right in recordable form. In addition, by written instrument executed by Declarant, Declarant may in its sole discretion, but shall have no obligation to do so, extend the one (1)-year period within which construction of a building must commence or otherwise limit or waive entirely its right of repurchase under Section 9.1.

Section 9.3. Definition of "Commencement of Construction". For purposes of Sections 9.1 and 9.2 above, "commencement of construction of a building" shall mean that the Owner of the Site has obtained approval of the Committee of approved plans and specifications as set forth in Article 6 of this Declaration, has obtained building permits from the appropriate governmental authorities authorizing construction of a building and improvements in accordance with approved plans and specifications, has entered into a construction contract for the construction of a building with a contractor licensed to do business in North Carolina, and has completed the pouring of a foundation for the Improvements on the Site pursuant to such construction contract for on-site construction work and pursuant to the approved plans and specifications.

Section 9.4. Time of the Essence. Time is of the essence with respect to the terms and provisions of this Declaration.

Section 9.5. Deed Waiver or Modification. If Declarant, in its deed to an Owner, waives or modifies the terms of this Article 9, such waiver or modification contained in any deed shall be binding on Declarant, the other Owners and their respective successors or assigns, including without limitation, the association to be formed pursuant to Article 3 of this Declaration.

#### ARTICLE 10.

##### ENFORCEMENT OF COVENANTS AND ASSIGNMENT OF DECLARANT'S RIGHTS AND DUTIES

Section 10.1. Abatement and Suit. The conditions, covenants, restrictions and reservations contained in this Declaration shall run with the Property and be binding upon and inure to the benefit of Declarant, as Owner, Declarant, and subsequent Owners of every Site within the Property. Violation of any condition, covenant, restriction or reservation herein contained shall give to Declarant the right to enter upon the portion of this Property where such violation or breach exists and to abate and remove at the expense of the Owner any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions of this Declaration, or to institute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these conditions, covenants, restrictions and reservations, to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation, or to cause the completion or repair of any work required by this Declaration to be completed or repaired. Damages shall not be deemed adequate compensation for any breach or violation of any provision of this Declaration, and the Declarant, Committee and each Owner, subject to the next paragraph, shall be entitled to relief by way of injunction, as well as any other remedy either at law or in equity.



The conditions, covenants, restrictions and reservations of this Declaration may be enforced as herein provided only by Declarant or the Committee; provided, however, that if an Owner notifies Declarant of a claimed violation of these conditions, covenants, restrictions and reservations and Declarant fails to act within sixty (60) days after receipt of such notification, then and in that event only, an Owner may separately, at his own cost and expense, enforce the conditions, covenants, restrictions and reservations herein contained.

Section 10.2. Deemed to Constitute a Nuisance. Every violation of this Declaration or any part thereof is hereby declared to be and constitute a nuisance, and every public or private remedy allowed therefor by law or equity against an Owner, tenant or occupant shall be applicable against every such violation and may be exercised by Declarant. In any legal or equitable proceeding for the enforcement of, or to restrain the violation of, this Declaration or any provision contained in this Declaration, the losing party or parties shall pay the reasonable attorneys' fees and court costs of the prevailing party or parties in the amount as actually incurred.

Section 10.3. Remedies Cumulative. All remedies provided herein or at law or in equity shall be cumulative and not exclusive. The failure of Declarant to enforce any of the conditions, covenants, restrictions or reservations herein contained shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other conditions, covenants, restrictions or reservations and Declarant shall not be liable for such failure.

Section 10.4. Assignment of Declarant's Rights and Remedies. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person, corporation, limited liability company, trust, association or other entity which will assume any or all of the duties of Declarant hereunder. To be effective, such assignment must be in writing and in recordable form and specifically refer to the rights, powers and reservations of Declarant hereunder which are being assigned. Upon acceptance of such assignment by any such person or entity, said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder and shall have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations and duties hereunder arising from and after the date of such assignment. The terms "Declarant", as used herein, includes all such assignees and their heirs, successors and assigns.

Anything contained elsewhere herein to the contrary notwithstanding, the mere conveyance or transfer of ownership of land within the Property by Declarant to any person or party, whether by deed or other instrument of conveyance, shall in no way convey any right, power or reservation to Declarant hereunder.

## ARTICLE 11.

### MISCELLANEOUS PROVISIONS

Section 11.1. Term. This Declaration, every provision hereof and every covenant, condition, restriction and reservation contained herein, shall continue in full force and effect for a term beginning on the date this Declaration is recorded and continuing until the twentieth (20th) anniversary of such date of recordation, whereupon this Declaration shall automatically unless terminated by the agreement of all

Owners. Notwithstanding the foregoing, any easement granted pursuant hereto are and shall be perpetual, except to the extent, if any, otherwise provided in the creation of any such easement, and except that any dedication to and acceptance by an appropriate governmental authority or any conveyance or grant to any appropriate public utility of the facilities that are the subject of any such easements shall terminate those easements if such dedication, conveyance or grant so provides.

Section 11.2. Termination and Modification. This Declaration, or any provision thereof, may be terminated, modified or amended upon the affirmative vote in writing of the Owners owning a majority of the acreage within the Property effective ninety (90) days after written notice of such termination, modification or amendment is given to all Owners; provided, however, that until such time as Declarant is relieved of its liabilities, obligations and duties under this Declaration as provided in Section 10.4 of this Declaration, no such termination, modification or amendment shall be effective without the written approval of Declarant in its sole discretion. Notwithstanding the foregoing, until such time as Declarant is relieved of its liabilities, obligations and duties under this Declaration as provided in Section 10.4 of this Declaration, Declarant shall have the absolute right to modify or amend this Declaration if express provision is made in this Declaration for such modification or amendment. Any such termination, modification or amendment shall be immediately effective upon recording a proper instrument in writing, executed and acknowledged by such Owners (and by Declarant) as required herein in the recording office where this Declaration is filed.

Section 11.3. Notices. All notices, approvals or other communications required or permitted to be given under this Declaration shall be in writing and shall be considered as properly given or made: (i) on the second (2nd) day after being mailed from within the United States by certified mail, return receipt requested, postage prepaid and addressed to the person to whom it is intended at the address of said person as set forth below, whether actually received or not; or (ii) when actually received by the person to whom it is intended if given in any other manner. The mailing address for an Owner shall be the most recent address of said Owner designated in writing to Declarant, or if not so designated, as shown on the tax rolls of Wake County, North Carolina. The mailing address for Declarant shall be Duke Realty Limited Partnership, Attention: Senior Vice President, Raleigh Industrial Group, 1800 Perimeter Park Drive, Suite 200, Morrisville, North Carolina 27560, with a copy to Legal Department, Duke Realty Corporation, 3950 Shackleford Road, Suite 300, Duluth, Georgia 30096. Declarant may change its address by filing a written instrument in the recording office where this Declaration is filed stating its new address.

Section 11.4. Parties Bound. This Declaration and the terms and provisions contained in this Declaration shall run with the Property and each and every part thereof, shall bind Declarant, the Owners of all Sites located within the Property and all persons or entities having or acquiring any interest in the Property or any part thereof, and their respective heirs, successors, personal representatives and assigns and shall inure to the benefit of and be enforceable by, Declarant, its successors and assigns, and each Owner, and his, her or its successors and assigns. Any Owner or any successor or assignee of any Owner, by acceptance of title to any part of the Property, covenants and agrees to abide by the terms and provisions of this Declaration. Notwithstanding the above, upon the sale of a Site, the Owner so selling shall not have any further liability for the obligations thereon which shall accrue against that Site after the date of the conveyance; provided, however, that nothing herein shall be construed so as to relieve any Owner of any site from any liabilities or obligations incurred prior to such sale. Any such sale shall not enlarge or extend the time for commencement of construction of a building upon a Site nor modify Declarant's right of repurchase pursuant to Article 6 hereof.

Section 11.5. Severability of Provisions. If any Article, Section, subsection, paragraph, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining Articles, Sections, subsections, paragraphs, sentences, clauses and phrases will continue to remain in full force and effect irrespective of the fact that any one or more of the other Articles, Sections, subsections, paragraphs, sentences, clauses or phrases shall become or be illegal, null or void.

Section 11.6. Number and Gender. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number (singular or plural) and any other gender (masculine, feminine or neuter) as the context requires.

Section 11.7. Titles. The titles, heading and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration, or any part thereof.

Section 11.8. Applicable Law, Venue and Jury Trial Waiver. This Declaration and the rights and obligations created hereby shall be construed in accordance with the laws of the State of North Carolina and venue for the enforcement of same shall lie exclusively in Wake County, North Carolina, and any person or entity affected hereby waives the right to be sued elsewhere. **EACH OWNER HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY.**

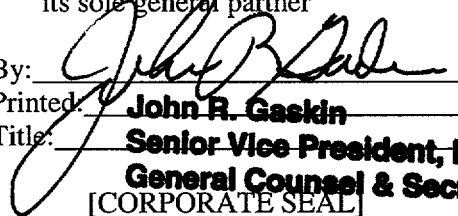
(SIGNATURES CONTAINED ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the Declarant has executed this Declaration under seal as of the 26th day of July, 2002.

DECLARANT:

DUKE REALTY LIMITED  
PARTNERSHIP,  
an Indiana limited partnership doing business  
in North Carolina as Duke Realty of Indiana  
Limited Partnership

By: DUKE REALTY  
CORPORATION,  
an Indiana corporation,  
its sole general partner

By:   
Printed: John R. Gaskin  
Title: Senior Vice President, Deputy  
General Counsel & Secretary  
[CORPORATE SEAL]



STATE OF GEORGIA

COUNTY OF GWINNETT

I, Dolores E. Lewellen, a Notary Public within and for said County and State, do hereby certify that John R. Gaskin, personally came before me this day and acknowledged that he is Senior Vice President, Deputy General Counsel & Secretary of Duke Realty Corporation, an Indiana corporation, the general partner of Duke Realty Limited Partnership, an Indiana limited partnership doing business in North Carolina as Duke Realty of Indiana Limited Partnership, and that by authority duly given and as the act of the corporation on behalf of the limited partnership, the foregoing instrument was signed in its name by its Senior Vice President, sealed with its corporate seal, and attested by himself as its Secretary.

WITNESS my hand and official seal, this the 26th day of July, 2002.

*Dolores E. Lewellen*  
Notary Public

My Commission Expires:



**EXHIBIT A**

Approximately 92 acres, located in the City of Raleigh, Wake County, North Carolina, and known as Walnut Creek Business Park, and more particularly described on that plat thereof entitled "Walnut Creek Business Park - Recombination and Subdivision Plat, Phase 3 & 4, Lots 3 - 7" recorded in Book of Maps 2002, Page 1117, Wake County Registry as Phase 3, Lots 3 and 4, Phase 4, Lots 5, 6 and 7; Phase I, Lot 1 as per that certain plat recorded in Book of Maps 2001, Page 575, Wake County Registry; Phase 2, Lot 2 as per that certain plat recorded in Book of Maps 2001, Page 575, Wake County Registry; Phase 5, Lot 1 as per the plat thereof recorded in Book of Maps 2000, Page 2047, Wake County Registry; and identified as Lot 2 now or formerly owned by Ella Mae Jones, Heirs Book of Maps 2000, Page 2047, Wake County Registry, as more particularly described on Exhibit A-1, A-2, A-3 and A-4.

**EXHIBIT A-1**  
**DESCRIPTION OF**  
**LOT 1 - WALNUT CREEK BUSINESS PARK**  
**PIN - 1723.07-77-2654**

**DESCRIPTION** of a 45.4069 acre parcel of land located in the Township of St. Matthews, County of Wake, State of North Carolina in accordance with a plan entitled "Exempt Subdivision Plat - Tract A & B - Coggins Property", dated 10/11/2000 and last revised 10/11/2000.

Said 45.4069 acre parcel being more fully described as follows:

**BEGINNING AT A POINT**, said point being a NCDOT Spike set in the eastern right-of-way of the I-440 Beltline, said point being located South  $01^{\circ} 03' 51.6''$  E a grid distance of 3,546.37' feet from NCGS Monument "Crabtree" (NAD 83: N: 225979.178 Meters, E: 648175.481 Meters), and said spike bearing NC Grid Coordinates (NAD 83): N: 224,898.432 Meters, E: 648195.559 Meters.

Thence from said NCDOT spike leaving the existing right-of-way of I-440 along the proposed right-of-way of the highway 64-Bypass project (NCDOT R-2547BA, PROJECT: 8.1402202), N  $20^{\circ} 14' 36''$  E, 138.08 feet to a new iron pipe; Thence, N  $05^{\circ} 19' 21''$  W, 125.53 feet to a new iron pipe; Thence, along a non-tangent curve to the right with a radius of 1033.46 feet, a tangent length of 485.05 feet, a central angle of  $50^{\circ} 17' 06''$ , the radius which bears S  $79^{\circ} 44' 04''$  E, the chord of which bears N  $35^{\circ} 24' 29''$  E, for a distance of 878.18 feet; Thence along the arc of said curve for a distance of 907.01 feet to a new iron pipe, said pipe being set in the common property line with Ella Mae Jones, Heirs property (Deed Book 3360 Page 472); Thence leaving the proposed right -of-way of the Highway 64-Bypass with the line of Jones, S  $00^{\circ} 22' 27''$  E 1011.96 feet to an existing iron pipe; Thence with the Jones line, N  $89^{\circ} 54' 33''$  E, 1076.04 feet to an iron pipe set in concrete; Thence with the common property line of the Ammons East Corporation (Deed Book 3403 Page 732), S  $01^{\circ} 30' 09''$  W for a distance of 966.36 feet to a new iron pipe set in the northerly property line of the Wake County Community Development Property as shown in book of Maps 1993 Page 564 and Book of Maps 1984 Page 1643; Thence with the common property line of the Wake County Community Development Property, S  $89^{\circ} 57' 14''$  W, 21.73 feet to a new iron pipe; Thence continuing with said property line, S  $89^{\circ} 57' 14''$  W, 1624.83 feet to an existing concrete monument set in the existing eastern right-of-way of I-440, said monument being stamped "Wake County Eng. 13; Thence along the existing right-of-way of I-440, N  $02^{\circ} 31' 08''$  E, 1008.25 feet to an existing NCDOT spike, said spike being the **POINT OF AND PLACE OF BEGINNING**.

Containing: 1,977,928376 square feet or 45.4069 acres of land, more or less.

**EXHIBIT A-2**  
**DESCRIPTION OF**  
**LOT 1 – JONES PROPERTY**  
**a portion of PIN – 1723.08-88-3958**

**DESCRIPTION** of a 21.7199 acre parcel of land located in the Township of St. Matthews, County of Wake, State of North Carolina in accordance with a plan entitled "Exempt Subdivision Plat – Lot 1-4 Jones Property", dated 10/13/2000 and last revised 11/06/2000.

Said 21.7199 acre parcel being more fully described as follows:

**BEGINNING AT A POINT**, said point being the northwest corner of lot 1 and being located South 13° 20' 26.43" E a grid distance of 2,646.98' feet from NCGS Monument "Crabtree" (NAD 83: N: 225979.178 Meters, E: 648175.481 Meters), and said point bearing NC Grid Coordinates (NAD 83): N: 225,194.151 Meters, E: 648361.642 Meters.

Thence from said point and with a curve to the right with a radius of 1033.46 feet, a central angle of 18° 28' 11", the chord of which bears N 69° 47' 08" E, for a distance of 331.71 feet to a new iron pipe; Thence S 69°54' 14" E 66.73 feet to a new iron pipe; Thence N 85°04' 01" E 392.04 feet to a new iron pipe; Thence S 79°17' 20" E 92.54 feet to a new iron pipe; Thence S 00°22' 27" E 1118.80 feet to a new iron pipe; Thence S 89°54' 33" W 856.15 feet to an existing iron pipe (bent); Thence N 00°22' 27" W 1011.96 feet to the **POINT OF AND PLACE OF BEGINNING**.

Containing: 946,120.04 square feet or 21.7199 acres of land, more or less.



**EXHIBIT A-3**  
**DESCRIPTION OF**  
**LOT 2 – JONES PROPERTY**  
**a portion of PIN – 1723.08-88-3958**

**DESCRIPTION** of a 12.8824 acre parcel of land located in the Township of St. Matthews, County of Wake, State of North Carolina in accordance with a plan entitled "Exempt Subdivision Plat – Lot 1-4 Jones Property", dated 10/13/2000 and last revised 11/06/2000.

Said 12.8824 acre parcel being more fully described as follows:

**BEGINNING AT A POINT**, said point being the southwest corner of Lot 2 and the southeast corner of Lot 1 and being located South 22° 20' 13" E a grid distance of 3,876.97' feet from NCGS Monument "Crabtree" (NAD 83: N: 225979.178 Meters, E: 648175.481 Meters), and said point bearing NC Grid Coordinates (NAD 83): N: 224,886.144 Meters, E: 648,624.590 Meters.

Thence from said point of beginning N 00°22'27" W 1118.80 feet to a new iron pipe; Thence S 79°17'20" E 336.03' feet to a new iron pipe; Thence S 66°30'31" E 219.12 feet to a new iron pipe; thence with the western line of Lot 3 S 00°22'27" E 966.98 feet to a new iron pipe; Thence S 89°41'19" W 300.24 feet to a concrete monument; Thence S 89°46'21" W 10.02' feet to a EIP set in concrete; Thence S 89°54'33" W 219.89' feet to the **POINT OF AND PLACE OF BEGINNING**.

Containing: 561,159.41 square feet or 12.8824 acres of land, more or less.

**EXHIBIT A-4**  
**DESCRIPTION OF**  
**LOT 3 – JONES PROPERTY**  
**a portion of PIN – 1723.08-88-3958**

**DESCRIPTION** of a 10.3545 acre parcel of land located in the Township of St. Matthews, County of Wake, State of North Carolina in accordance with a plan entitled “Exempt Subdivision Plat – Lot 1-4 Jones Property”, dated 10/13/2000 and last revised 11/06/2000.

Said 10.3545 acre parcel being more fully described as follows:

**BEGINNING AT A POINT**, said point being the southwest corner of Lot 3 and the southeast corner of Lot 2 and being located South 29° 12' 22" E a grid distance of 4,106.04' feet from NCGS Monument “Crabtree” (NAD 83: N: 225979.178 Meters, E: 648175.481 Meters), and said point bearing NC Grid Coordinates (NAD 83): N: 224,886.761 Meters, E: 648,786.165 Meters.

Thence from said point of beginning N 00°22'27" W 966.98 feet to a new iron pipe; Thence S 66°30'31" E 644.36' feet to a new iron pipe; Thence S 09°12'02" W 716.78 feet to a new iron pipe; thence S 89°41'19" W 470.04 feet to the **POINT OF AND PLACE OF BEGINNING**.

Containing: 451,044.70 square feet or 10.3545 acres of land, more or less.

**END OF EXHIBIT A**

Laura M Riddick  
Register of Deeds  
Wake County, NC



Book : 009515 Page : 02641 - 02675

**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 Dolores E Lewellen

\_\_\_\_\_ 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

Dan Stewart

By: DEPUTY  
Assistant/Deputy Register of Deeds

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