

Return to:
Sutherland Investment Company
1000 Waterline Dr.
Wake Forest, NC 27587

Wake County, NC 518
Laura M Riddick, Register Of Deeds
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**DECLARATION OF
COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS FOR
SUTHERLAND SUBDIVISION, PHASE IV & V**

THIS DECLARATION, made on the date hereinafter set forth by Sutherland Investment Company, a North Carolina company, hereinafter referred to as "Declarant":

WITNESSETH :

WHEREAS, Declarant is the owner of certain property in or near New Light Township, County of Wake, State of North Carolina, commonly referred to as "Sutherland Subdivision, Phase IV & V", 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 improvements 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

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 insure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

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

Section 2. "Association" shall mean and refer to Sutherland Homeowners 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. "Building" shall mean and refer to a residential structure, single outbuilding or detached garage constructed or erected on said property.

Section 5. "Bylaws" shall mean the document for governance of the Association as adopted initially by the Board and as amended by the Members.

Section 6. "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. Common Properties shall include Permanent Open Space as defined below. The Common Properties to be owned by the Association at the time of the conveyance of the first Lot is all of that Property other than the Lots and public or private roads. The Declarant may recombine any portion of the Common Properties with a Lot pursuant to the terms of Article VII, Section 16 herein and with county or successor agency approval. Provided however, that should a portion of the Permanent Open Space be recombined with a Lot and if required by applicable governmental regulations, Declarant shall provide additional Permanent Open Space to compensate for the portion of Permanent Open Space that was recombined with the Lot.

"Permanent Open Space" shall mean land within the cluster subdivision site that is not contained in lots, or right-of-way or parcels devoted to accommodating necessary roads and utilities, in parcels reserved for future development, land shall be in one or more parcels dedicated or reserved as Permanent Open Space. The total area of parcels dedicated or reserved as Permanent Open Space shall make up at least twenty-five (25%) percent of the area of the cluster subdivision and shall remain undeveloped, conserving a natural or vegetated state. The Permanent Open Space shall be designated on a plat or plats of Sutherland Subdivision recorded or to be recorded in the office of the Wake County Register of Deeds.

Section 7. "Common Expenses" shall mean and include, as applicable:

- (a). All sums lawfully, assessed by the Association against its members;
- (b). Payments or obligations to reserve accounts established or maintained pursuant to this declaration;
- (c). Expenses for administration, maintenance, or repair of the roads, streets, rights-of-ways, Department of Transportation right-of-way easements, and, as determined by the Sutherland Homeowners Association, Inc., or the Board, maintenance of ditches within the right-of-way easements, and any elements as provided in this Declaration;
- (d). Expenses of administration, maintenance, repair or replacement of the Common Properties or its elements and Permanent Open Space, including expenses of maintenance of the signs, lighting, irrigation and landscaping located on the sign easements located at any entrance or entrances into Sutherland Subdivision as well as the expenses of maintenance of any sign, lighting, irrigation and landscaping located on any of the Common Areas of Permanent Open Space within Sutherland Subdivision.
- (e). Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (f). 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;
- (g). Ad valorem taxes and public assessment charges lawfully levied against Common Properties.
- (h). The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property and serve both the Property and lands adjacent thereto;
- (i). Maintenance of the open space so that it continues to effectively function for its intended use, and any dedication or conveyance of an open space parcel shall provide for such responsibility. The undeveloped open space shall be maintained in a vegetated or natural state.
- (j). Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

Section 8. "Declarant" shall mean and refer to Sutherland Investment Company, a North Carolina company, its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose, or any owner of the Property or Lots or remainder of those resulting from the sale of the Property, Lots or the remainder thereof at foreclosure

when held by Declarant or its Successors to the rights of Declarant or resulting from the transfer in lieu of foreclosure.

Section 9. "Lot" shall mean and refer to any plot or Tract of land shown upon recorded subdivision map of the Property, as such map or maps may be from time to time amended or modified, for detached single-family residential use; designated for residential use and for separate ownership and occupancy.

Section 10. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 11. "Notice" required to be given herein shall be in writing and mailed by US 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 12. "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.

Section 13. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee or other legal entity.

Section 14. "Property" shall mean and refer to that certain real property herein before described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II PROPERTY RIGHTS

Section 1. Property Development Requirements. The property shall be developed in accordance with a plan that complies with the applicable governmental zoning regulations and the requirements for a Cluster Development as described in the Wake County Subdivision Regulations in effect at the time of initial development of the property and the following items:

- (a). A maximum of seventy-five percent (75%) of the area of the property shall be included within lots and associated off-street parking for such lots;
- (b). A minimum of twenty-five percent (25%) of the area of the property shall be designated as Permanent Open Space. Permanent Open Space may be used for utility areas and active and passive recreation areas and activities. Uses are permitted within the designated Permanent Open Space so long as it is retained in a vegetated or natural state. Off street parking, if any, for persons using the Permanent Open Space may also be included within the twenty-five percent (25%) area.
- (c). The recorded plat for Property shall show no less than twenty-five percent (25%) of the total area has been reserved for Permanent Open Space.
- (d). The entire subdivision shall at all times remain in compliance with the governing percentages of land area dedicated to individual lots and to Permanent Open Space.

Section 2. 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 charge reasonable admission and other fees for the use of common properties or its elements.
- (b). The right of the Association to suspend the voting rights and the right to use the Common Properties or its elements, if any, by an Owner for any period during which any assessment against his Lot remains unpaid, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and

regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment;

(c). 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 provisions of the Wake County Subdivision Ordinance and subject to such conditions as may be agreed upon by the members. No such dedication, sale, lease or transfer shall be effective unless it has been approved by two-thirds (2/3) 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 two-thirds (2/3) 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.

(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 the Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the initial Common Property and all the Common Properties included in subsequent phases.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, 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 4. Title to the Common Properties. While reserving the right to build and own facilities on the Permanent Open Space and to charge reasonable fees for use of said facilities, the Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Properties located within the Property as shown on each map of the properties recorded and to be recorded in the Wake County Registry to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot shown on a recorded map which designates the location of Permanent Open Space, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements. Similarly, the Declarant will convey to the Association, Common Properties which are a portion of any property as the same is annexed in the future at the time of conveyance of the first Lot located on that additional property. If such conveyance is made, this additional property will become Common Properties belonging to the Association.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. 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. Classification of Membership. The Association shall have two classes of voting membership.

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.

Class B. The Class B Member shall be the Declarant and Declarant shall be entitled to six (6) votes for each owned. Declarant shall be entitled to six (6) votes for each lot the Declarant presently owns, and contemplates developing as additional subdivision lots under applicable Wake County 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.

(a). 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,

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

Section 3. Suspension of Voting Rights. 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 2(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 therefore, 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. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Each Lot Owner must notify the Association of any change in personal mailing address other than that which is on record at the Wake County Tax Office.

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. The Board of Directors may authorize a billing agent to collect the assessments provided for herein.

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, 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 by the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment.

(a). **Initial Maximum Assessment.** To and including December 31, 1999, the maximum annual assessment shall not exceed One Hundred Fifty Dollars (\$150.00) per individual Lot .

(b). **Increase by Association.** From and after December 31, 1999, the annual assessment imposed by this Association, initially \$150.00, effective for any subsequent year may be increased the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed ten percent (10%) above the maximum assessment for the previous year.

(c). **Increase by Members.** From and after December 31, 1999, the annual assessment may be increased by a percentage greater than permitted by this Article 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 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, but it may not fix the annual assessment in an amount in excess of that permitted in Subsection (b) of this Section 3 above, without the consent of members required by Subsection (c).

(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 shall pay any Association expenses not otherwise covered by the assessment hereunder.

(g). **Assessment Billing.** Assessment shall be billed annually, quarterly, monthly or on such other basis as may be determined by the Board of Directors. Lot Owners are required to provide the Board of Directors with their current mailing or billing address to avoid the effects of non-payment as specified in Article IV, Section 9.

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 any 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 members who are voting in person or by proxy at a meeting duly called for this purpose.

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 Sections 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 15 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 votes of each class 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 subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate Assessment. Both annual and special assessments must be fixed at a 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 date of closing of the sale of a Lot from the Declarant, Lot Owner shall pay the pro rata amount of the annual assessment from the date of closing on any Lot until the first day of the first calendar year following closing of that sale to the Sutherland Homeowners Association, Inc. The first annual assessment shall be adjusted according to the number of days 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.

Section 9. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and shall bear interest for the due date at the highest rate then permitted by North Carolina law not to exceed twelve percent (12%) per annum. 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 attorney's 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.

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, attorney's 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 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 mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which become 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.

Section 12. Lot Owner's Maintenance Responsibilities. The maintenance responsibility of the grounds surrounding the improvements on each Lot shall rest with each Lot owner. This maintenance responsibility shall include, without limitation, grounds care such as maintaining grass in grassed areas along public road right-of-ways, shoulders, ditches and slopes adjacent to Lot, neat cutting grass and maintenance of shrubs, trees and flowers, with replacement of dead or diseased vegetation as necessary in the opinion of the Association to maintain the grounds surrounding the improvements on each Lot in a neat and attractive manner.

In the event an Owner fails to keep and maintain the grounds on his Lot in a neat and attractive manner, then the Association may maintain, repair, replace or generally keep up the Lot if such has been approved in advance by a vote of two-thirds of each class of members present and voting in person or by proxy at a meeting of members duly called for the purpose of making this determination or at any annual meeting at which this matter is announced as an agenda item.

In the event the Association must do any maintenance, repair, replacement or upkeep on any Lot, each Lot Owner hereby gives to the Association, and the same is hereby reserved unto the Association, its agents, servants or independent contractors, the right and easement for unobstructed access in, over and on each Lot at all reasonable times to perform such repair or replacement by the Association, any expenses incurred will become an assessment or lien against that lot.

ARTICLE V FUNCTIONS AND SERVICES OF THE ASSOCIATION

Section 1. Minimum List of Functions and Services. The minimum list of functions and services which the Association must furnish to its members are as follows:

- (a). The Association shall provide or procure the administrative services necessary to carry out the Association's obligations and business under the terms of this Declaration, the Articles of Incorporation of the Association, and the By-Laws of the Association, including, but not limited to, legal, accounting, financial and communication services.
- (b). The Association shall administer and enforce the covenants and restrictions established in this Declaration, including, but not limited to, the following:
 - i). the Association shall set Assessments, levy cash Assessments, notify the Members of such Assessments and collect such Assessments;
 - ii). the Association shall prepare accurate indexes of Members, Votes, Assessments, and the maximum annual Assessment;
 - iii). the Association shall operate an Architectural Committee if turned over to it by Declarant;
 - iv). the Association shall maintain and operate all Common Properties/Permanent Open Space;
 - v). the Association shall hold Annual Meetings, Special Meetings and Referendums as required, hold elections for the Board of Directors as required and give Members "proper notice" as required;
 - vi). the Association shall prepare Annual Statements and Annual Budgets and shall make the financial books of the Association available for inspection by the Members by appointment.
- (c). Should the Declarant appoint the Association its agent for the administration or enforcement of any of the provisions of the general property covenants or any other covenants and restrictions of record, the Association shall assume such responsibility and any obligations which are incident thereto.
- (d). Should the Declarant assign to the Association any of the rights reserved unto it in the general property covenants or any other covenants or restrictions of record, the Association shall assume the responsibility of administering and enforcing said rights and shall assume any obligations which are incident thereto.

(e). The Association shall provide appropriate liability and hazard insurance coverage as provided herein for improvements and activities on all Common Properties.

(f). The Association shall provide appropriate Directors and Officers Legal Liability Insurance and indemnify persons pursuant to the provisions of the Articles of Incorporation of the Association.

(g). The Association shall keep a complete record of all its acts and corporate affairs.

(h). The Association shall provide regular and thorough maintenance and clean-up of all Common Properties, including, but not limited to, mowing of grass, fertilization and seeding as needed, landscape maintenance as needed, pick up and disposal of trash, cleaning, painting, repairing or replacing any improvements as needed.

(i). The Association shall pay any and all taxes or public assessments on the Common Properties.

Section 2. Obligation of the Association. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or provide may be added or reduced at any time upon the affirmative vote of fifty-one percent (51%) of the votes casts by the Members at a duly called meeting of the Association.

Section 3. Maintenance of the Property Not Owned by the Association. The Association shall be authorized to render services of a governmental nature not furnished by the local government in the case of maintenance of property not owned by it.

ARTICLE VI ARCHITECTURAL CONTROL

The Declarant or His appointed Architectural Committee shall control approvals for all improvements and construction proposed on any Lot. Declarant, so long as he shall own at least one lot in Sutherland Subdivision, all phases combined, shall control all approvals. At such time as Declarant shall no longer hold a Class B Membership, or opts to voluntarily relinquish architectural control, he shall appoint an Architectural Committee of three (3) persons who own lots in the subdivision. Successors to this Committee shall be appointed by the Declarant so long as there is a Class B Membership, or if there is no Class B Membership, then the Architectural Committee shall be appointed by the Board.

No site preparation (including, but not limited to, grading, elevation work, landscaping, sloping or tree work) or initial construction, erections or installation of any improvements, including but not limited to, buildings, fences, signs, outside lighting, walls, bulkheads, screens, landscaping, plantings, swimming pools, equipment, lawn ornaments and decorations 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, landscaping or plantings shall have been submitted in person to, and approved in writing by, Declarant or Architectural Committee. In the event the Declarant or Architectural Committee fails to approve such submission made by any Lot Owner within thirty (30) days after said plans and specifications have been received by the Declarant or Architectural Committee, approval will be delayed or deemed to have been denied. 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 Declarant or Architectural Committee.

The Lot Owner shall personally submit a plot plan showing all proposed activity, and all plans and specifications for such, including, but not limited to: beginning and finished ground elevations, trees and shrubs to be planted, exterior design of structures, exterior materials, and all other matters affecting the appearance of the Lot and its improvements. All plans personally submitted for approval must include a self addressed postage paid envelope for the return of said plans and letter of response.

The Declarant or Architectural Committee shall have sole discretion as to the location, design, exterior materials used, and color of any dwelling, accessory building including but not limited to: storage building, greenhouses, play houses, dog houses, and dog runs, etc. Proposed location of an accessory building must conform to the zoning restrictions by the governmental body having jurisdiction over the area.

The further written approval of the Declarant or Architectural Committee shall be required for any alteration to approved plans, and the alteration and modification of existing structures and improvements made after a house shall be occupied.

Approval or disapproval by the Architectural Committee or Declarant of such plans, specifications or location may be based upon any grounds, including purely aesthetic and environmental, which in the sole discretion of the Architectural Committee or Declarant, it shall deem sufficient. Neither the Architectural Committee nor the Declarant 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 Declarant 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 Declarant or 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. No variance shall be permitted if it violates governmental minimum zoning standards. Notwithstanding the foregoing, Declarant shall have the power to grant the above variances and adjustments so long as there is a Class B membership.

In the event of the granting of any variance in the restrictions established herein, the Declarant for so long as there is a Class B membership, 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 and recorded 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 there is a Class B membership, shall defer architectural approvals and grants of variances to Declarant unless Declarant has voluntarily relinquished control to the Architectural Committee or the Board of Directors.

**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 and its elements. 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. The Property shall be used for single-family residential purposes and for purposes incidental or accessory thereto (Except for a

temporary office or building model to be used by Declarant or his agents). This herein excluding all Permanent Open Space as shown on the recorded plats which must remain undeveloped conserving a vegetated and natural state.

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

Section 4. Animals. No animals, birds, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners. There shall be a limit of no more than three (3) household pets per lot. The location of and the materials used in the construction of any dog houses, runs and fences are improvements which require the review and approval of the Architectural Committee as set out in Article VI herein.

Section 5. Appearance. It shall be the responsibility of each Property Owner, tenant, contractor or sub-contractor to prevent the development of any unclean, unsightly, unkempt, unhealthy, or unsafe conditions of buildings or grounds on any Property which will tend to substantially decrease the beauty of Sutherland Subdivision, the neighborhood as a whole or the specific area. The Declarant and his agent shall have the right to enter upon any property for the purpose of inspecting or correcting such conditions including, but not limited to, the removal of trash which has collected on a Property, and the cost of such corrective action shall be paid by the Property Owner. Such action shall not be made until thirty (30) days after the Owner of the Property has been notified in writing of the need to take corrective action within said thirty (30) days. Provided, however, that should such conditions pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Declarant to take any such corrective action.

Section 6. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made on or of the Property, or any part thereof including roads and right-of-ways. 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 7. 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 that the Declarant or his agents may use any unsold Lots for sales or display purposes. Declarant may maintain a sales or rental office on the Property. Nothing herein shall be interpreted or construed to prevent the use of a portion of any structure as a home office or to prevent the occupant of the house from working from home, provided goods or services are not offered to the general public on the premises. No trade materials, inventories or equipment (except during construction on the premises) shall be stored or allowed on the premises.

Section 8. Signs. No Lot Owner shall display, or cause, or allow to be displayed, to public view any signage, signs, placard, poster, billboard, or identifying name or number upon any Lot, vehicle, 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 Lot for sale; 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 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 approximately thirty-five (35) feet from the edge of pavement of the road or as Declarant otherwise deems necessary.

Section 9. 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 VI herein.

Section 10. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Properties except as to the direction or with the expressed written consent of the Association.

Section 11. Common Properties Use. The Common Properties or Permanent Open Space as shown on recorded plat 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, avoiding development and conserving its vegetated and natural state subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 12. Parking. Adequate off street parking shall be provided by the Owner of each Lot for the parking of automobiles owned or used by the Owner, his family, tenants, guests or contract purchasers. No watercraft (ie. boats, jetskis, etc.), other recreational machinery (ie. four wheelers, gocarts, motorcycles, etc.), trailers, campers, motorhomes, trucks, tractors or heavy equipment shall be parked on any Lot, on the Common Properties, or on any streets or right-of-ways of any roads within the Subdivision, except inside an enclosed garage or accessory building located on the Lot or as otherwise permitted by the Rules and Regulations of the Association. Delivery and maintenance vehicles are permitted temporarily while providing such services only.

Section 13. Trailers, etc. No trailer, camper, tent, mobile home, modular home or other structure of a temporary character shall be placed upon the Lot at any time, provided, however, that this prohibition shall not apply to temporary storage trailers or a portable toilet facility 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 the completion of construction. However, this does not prevent Declarant or his agents from maintaining a temporary sales or rental office of this nature on the Property.

Section 14. 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 of tanks, or other apparatus, on the Property for uses related to the provision of utility or other service.

Section 15. Accessory Buildings. Without prior written approval of Declarant or Architectural Committee, no detached accessory building or detached garage, for no more than three cars, may be constructed upon any Lot subject to these covenants. Only one detached structure subject to building restrictions in Article VIII, Section 3 shall be permitted and shall not be used for human habitation temporarily or permanently. Any approved accessory building must comply with these covenants and Wake County zoning requirements.

Section 16. 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 and/or Common Properties to create a larger Lot; to eliminate from this Declaration Lots that are not otherwise buildable or Lots and/or Common Areas that are needed for access to any area of the Property or are needed for use as private roads or access areas, and to take such steps as are necessary to make such replatted Lots suitable and fit as a building site or access area or roadway, said steps to include, but not limited to the relocation of

easements, walkways, and rights-of-way to conform to the new boundaries of said replatted Lots. If any of the Common Properties are recombined with a Lot, the Association shall execute all necessary documents to effect the recombination.

Section 17. Delivery Receptacle. No mail box, paper box or other receptacle of any kind for use in the delivery of mail, newspapers, magazine or similar materials 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 18. Antennas and Satellite Receiving Devices. No satellite reception dish, or similar device for the reception of electromagnetic signals, having dimensions greater than thirty (30) inches in height, width and depth shall be located on any Lot in the subdivision. Such devices having dimensions thirty (30) inches or less shall be located so they cannot be seen from street, and no closer to street than front of dwelling. Any person desiring to install an exterior television antenna shall first obtain written approval of Declarant or Architectural Committee regarding size, shape, location, proportion and all other matters regarding the impact of the proposed antenna on the appearance of the house. The Declarant or Architectural Committee shall exercise at its sole discretion any granting or withholding of such approval. Nothing herein shall be construed to give any person the right erect an antenna or satellite receiving device without the written approval of Declarant or Architectural Committee. No other antennas, aerials, disks and dishes (for example, without limitation, amateur short wave or ship to shore) shall be permitted on any Lot without permission of the Declarant or Architectural committee as to design, appearance and location or pursuant to Regulations issued for that purpose.

Section 19. Construction Limitations. During construction, all vehicles involved, including those delivering supplies, must enter the Lots on a driveway only, as approved by the Declarant or Architectural Committee so as not to damage unnecessarily shoulders in right-of-way, street paving and driveway pipes. During construction builders must keep the homes, garages, building sites and road right-of-ways in front of Lot clean and free of debris. All building debris, stumps, trees, etc. must be removed from each Lot by builder or Lot Owner as often as necessary to keep the house and Lot attractive. Such debris shall not be dumped in any area of the Property. No lumber, brick, block or other building materials, equipment, mechanical devices or any other object shall be stored on any Lot in an exposed location except for the purpose of construction on said Lot and shall not be stored for longer than the length of time reasonably necessary for the construction in which the same is to be used.

Section 20. 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 21. 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, as set forth in Regulations established for that purpose.

Section 22. Unsightly Growth or Objects. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or allowed to remain thereon, including vacant parcels. No disposal or burning of debris or organic matter shall be permitted within any drainageway ditches on any Property or along any road right-of-way within the Subdivision.

Section 23. 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 24. 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 25. Streets. No Lot or portion thereof shall be dedicated or used for a public or private street without written consent of Declarant or their heirs or assigns.

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 1800 square feet for one (1) story structures, 2000 square feet for one and one half (1 1/2) story structures, and 2200 square feet for two (2) story structures, exclusive of basements, decks, porches, breezeways, steps, carports and garages. 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, provided however, that the term specifically does not include basements, breezeways, garages, terraces, open porches, decks, stoops and like areas regardless of heating or cooling.

Section 2. Lot, Area and Setback Lines. No dwelling including garage or other approved structure in R-80-W Cluster Zoning shall be located on any building site nearer to the front property line (road or street right-of-way) than 30 feet, and no dwelling shall be located less than fifteen (15) feet from any side property line, or less than 30 feet from any rear lot line or as indicated on recorded plat by building envelope. On corner lots the structure may be no less than 30 feet from either street line. There is a special perimeter setback of 30 feet all around the cluster subdivision. This allows for adequate space between the dwellings or other approved structures on the cluster and non-cluster lots. No dwelling shall be built on or placed on any building site zoned R-80-W cluster having a width of less than 110 feet at the minimum building setback line, nor shall any dwelling or structure be erected or placed on any building site having less than 40,000 square feet. For the purpose of this covenant, eaves, steps, and open porches shall not be considered as part of the building, provided, however, that this shall not be construed to permit any portion of a dwelling or structure on a building site to encroach upon another building site or Permanent Open Space.

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 three (3) stories in height, or one detached garage for no more than three (3) cars, or one accessory building, provided the use of such accessory building does not, in the opinion of the Declarant or Architectural Committee, overcrowd the site. Such accessory building may not be constructed prior to the construction of the primary dwelling. All garages must be attached to the main dwelling, unless the Declarant or the Architectural committee pursuant to Article VI hereof, approves in writing a permitted detached garage. All buildings shall maintain the same architectural continuity as main dwelling, specifically relating to exterior style and materials used.

Section 4. Building Restraints. Within two (2) years of date of closing upon Lot, each Lot Owner or his builder with his approved plans (see Article IV) must apply to the Wake County Permits and Inspections Office for a Building Permit for the construction of the dwelling on said Lot. Once a Building Permit is issued to Lot Owner or Builder, construction of dwelling must be completed within two (2) years of date of issuance.

Section 5. Multi-Family Use Prohibited. No multiple 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 not be altered or converted into a multiplex residence or apartment house.

Section 6. 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 a notice of lien 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 attorney' fees. Any changes in plans or specifications must first be reapproved by the Declarant or the Architectural Committee in accordance with the procedure hereof specified for Architectural Control, see Article VI.

Section 7. Trash Receptacles. Each Lot Owner shall provide receptacles for garbage in a screened area not generally visible from the road.

Section 8. Exteriors and Driveways. All structures in the subdivision shall meet the following criteria:

(a). Exterior siding shall be one of the following: brick, veneer, stone, stucco, wood, hardboard, aluminum, vinyl, masonite, or concrete siding.

(b). Exterior chimneys shall be brick, masonry, stone, stucco or veneer.

(c). Each residential structure on a Lot adjacent to a proposed Wake County public road shall have a paved driveway of asphalt or concrete extending to the dwelling. It shall be a minimum of 16 feet wide at the street and may narrow down to no less than 10 feet. Any additional driveways off a proposed Wake County public road to dwelling or accessory building must be constructed as stated hereof. No lighting, structure, bulkhead, driveway pipe headwall, etc. (mailboxes excluded) is permitted within road right-of-way.

(d). During construction of the dwelling or any other type of construction carried out on a Lot, any damage or littering caused by such construction, contractors, sub-contractors, deliveries, etc. must be cleaned up and repaired by the party causing it, the Lot Owner, or building contractor. This includes, but is not limited to the damaging or littering of any Lot, road shoulders, ditches, or the road right-of-ways within Sutherland Subdivision. Any mud clods, gravel or other debris which get into the right-of-way area of the street must be cleaned up within 48 hours. At all times during construction, there shall be a regularly maintained clean gravel area of at least 40 feet in length leading from the street, this gravel area being the entrance to the Lot. The purpose of this gravel area is to prevent mud and another debris from being tracked into the street. During construction it is the responsibility of the Lot Owner and building contractor to keep all construction trailers and vehicles off the shoulder and right-of-way of the road at all times. It is the Lot Owners' and building contractors' responsibility to see that each construction vehicle enters onto the Lot upon which construction is being carried out.

Section 9. Pools. No above ground pools are allowed. All pools must be approved in advance of their construction by the Declarant or Architectural Committee.

ARTICLE IX EASEMENTS

Section 1. Utility Easements. All of the property including Lots and Common Properties shall be subject to such easements for installation and maintenance of water lines, storm drainage facilities, cablevision lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessor 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, proper maintenance and enjoyment of the property without approval of the membership as provided in the Articles of Incorporation and this Declaration. Easements are reserved as shown on the recorded plat and over the rear ten feet and five feet on either side and real lot lines; and fifteen feet wide along the front lot line unless these are in excess of such distances on the recorded plat, in which case, the plat shall control. Within these easements, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and

drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, for those improvements for which a public authority or utility company is responsible. Any recombination of Lot areas that results in a different side lot or rear Lot line shall change the area subject to the easements; provided, however, that no such recombination shall affect the rights of any person, firm, corporation or government entity resulting from the physical location of utility lines or facilities in any such easement area prior to the recombination, then the easement along this line shall become void. Declarant reserves for a period of five years from the date hereof an easement to go on any Lot whereon a sediment control basin is located for the purposes of maintaining, covering up, or removing such basin. The Declarant reserves the right to subject the real property covered by this Declaration to a contract with Wake Electric Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require a continuing monthly payment to Wake Electric Company by the Owner of each Lot.

Section 2. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recording 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.

Section 3. Right of Entry In Event of Emergency. Every Lot and all Common Properties shall be subject to an easement for entry by police officers, fire fighters, ambulance personnel and similar emergency personnel in the performance of their respective duties.

Section 4. Declarant Easement. If any encroachment shall occur subsequent to the 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 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 or as near to the original condition as practicable.

Section 5. 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.

ARTICLE X

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of Additional Properties by Declarant. If within ten (10) years of the date of conveyance by Declarant of the first Lot, the Declarant or a Member of Declarant should develop additional land which Declarant or a Member of Declarant owns or may hereafter acquire which land is contiguous to the boundaries of the property described in Exhibit "A", or such land as Declarant or Member of 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 or member of the Declarant without the consent of the Association and, in doing so, Declarant or member of the Declarant may file and record such amendments to this Declaration as are necessary without the consent of the Association in order to subject additional lands to the terms of this Declaration and the jurisdiction of the Association provided the additional land is not in conflict with any legal documents of Sutherland Subdivision or Wake County.

Section 2. Recording of Annexation. 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 Sections 1, Article X 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. 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 3. Conveyance of Common Properties. Subsequent to the recordation of the Declaration of Annexation, and prior to the conveyance of the first Lot therein, there shall be delivered to the Association, one or more deeds conveying any Common Properties within the lands annexed as such additional lands are developed. Such Common Properties shall be conveyed to the Association in the same manner as set forth in Article II, Section 4 of this Declaration.

Section 4. Changes Due to Annexation. 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 authorized in the properties, and, therefore, may alter the relative maximum potential voting strength of the various types of memberships of the Association.

ARTICLE XI 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 and property damage insurance in such amounts and in such forms 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 or other insurance required by law.
- (d). Fidelity bonds for officers having control over Association funds.

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 policies shall be purchased by the Association for the benefit of the Association and the Owners.

ARTICLE XII 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, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association and other reputable mortgage lenders and insurers of 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 members to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and By-Laws 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 by the Association 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 during normal business hours by appointment.

(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 desires the benefits of the provisions of this section, 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 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.

ARTICLE XIII **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, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, 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 judgement 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 Declarant or not less than ninety percent (90%) 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). Declarant may amend this Declaration upon annexation of additional lands as specified in Article X, Section 1, hereof.

(c). The Declarant or Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction.

(d). 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 public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, US 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, provided that the changes made substantially conform to such request or suggestion.

(e). 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 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.

(f). 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 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 fully complied with.

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

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 5th day of January, 2000.

SUTHERLAND INVESTMENT COMPANY
A North Carolina Company

BY: Catherine C. Cawthorne
Catherine C. Cawthorne, President

ATTEST:

BY: W. Graham Cawthorne, Jr.
W. Graham Cawthorne, Jr., Secretary

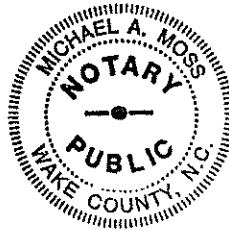
NORTH CAROLINA

WAKE COUNTY

The undersigned Notary Public of the State and County aforesaid, certify that W. GRAHAM CAWTHORNE, JR., appeared before me this day and acknowledged that he is the Secretary of Sutherland Investment Company, a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested her as its Secretary.

Witness my hand and notaries seal, this 5th day of January, 2000.

Michael A. Moss
NOTARY PUBLIC



My Commission Expires:

July 3, 2001

Exhibit "A"

BEING all of Lots 61 through 81, inclusive, as shown on plat thereof entitled Sutherland Subdivision Cluster, Phase IV, and duly recorded in Book of Maps 1999, Pages 1041-1043, Wake County Registry.

BEING all of Lots 82 through 140, inclusive, as shown on plat thereof entitled Sutherland Subdivision Cluster, Phase V, and duly recorded in Book of Maps 2000, Pages ~~43 - 48~~, Wake County Registry.

BEING all of that 162.583 ac. tract shown on that plat recorded in Book of Maps 1997, Page 2167, Wake County Registry.

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CONDITIONS, EASEMENTS AND RESTRICTIONS FOR
SUTHERLAND SUBDIVISION, PHASE IV**

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

North Carolina - Wake County

The foregoing certificate ___ of _____

_____ 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: [Signature]
Assistant/Deputy Register of Deeds

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