

Prepared by or return to
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DECLARATION OF COVENANTS AND RESTRICTIONS
OF THE DOWNING CREEK COMMUNITY ASSOCIATION, INC.
AND DOWNING CREEK ASSOCIATES,
A NORTH CAROLINA PARTNERSHIP

THIS DECLARATION, made this 22nd day of September,
1987, by DOWNING CREEK COMMUNITY ASSOCIATION, INC., a North
Carolina nonprofit corporation, called "Association," and DOWNING
CREEK ASSOCIATES, a North Carolina partnership, hereinafter
called "Company."

W I T N E S S E T H:

WHEREAS, the Company is the owner of the real property
described in Article II of this Declaration and desires to create
thereon a planned development community with a balanced
representation of residential, commercial, industrial and
recreational uses to be known as "Downing Creek;"

WHEREAS, the Company desires to provide for the preservation
of value and for the maintenance of common facilities and
services and for a vehicle for the administration and enforcement
of covenants and restrictions;

WHEREAS, the Company has caused to be incorporated under the
laws of the State of North Carolina a nonprofit corporation,
Downing Creek Community Association, Inc., for the purpose of
exercising the functions aforesaid which are hereinafter more
fully set forth;

NOW, THEREFORE, the Company declares that the real property
described in Article II, and such additions thereto as may
hereinafter be made pursuant to Article II hereof, is and shall
be held, transferred, sold, conveyed, given, donated, leased,
occupied and used subject to the covenants, restrictions,
conditions, easements, charges, assessments ("Assessments"),
affirmative obligations and liens (all hereinafter sometimes
referred to as "the Covenants") hereinafter set forth.

ARTICLE I
DEFINITIONS

The following words and terms, when used in this Declaration
or any supplemental declaration (unless the context shall clearly
indicate otherwise), shall have the following meanings:

(a) "Association" shall mean and refer to Downing Creek
Community Association, Inc., a North Carolina nonprofit
corporation, its successors and assigns.

(b) "Downing Creek" shall mean and refer to the lands in
Durham, North Carolina, which are shown as a part of Downing
Creek on the Company's Master Plan as revised from time to time.

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(c) "Company" shall mean Downing Creek Associates, a North Carolina partnership, its successors and assigns.

(d) "Developer" shall mean Downing Creek Associates, a North Carolina partnership, its successors and assigns.

(e) "Affiliate" shall mean any corporation more than fifty percent (50%) of the voting stock of which is owned or controlled by the Company or the Developer, and any partnership or joint venture in which the Company or the Developer has more than a fifty percent (50%) equity interest or an interest in fifty percent (50%) or more of the cash flow from such partnership or joint venture.

(f) The "Properties" shall mean and refer to the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any Supplementary Declaration under the provisions of Article II hereof.

(g) "Residential Lot" shall mean any subdivided parcel of land located within the Properties for which no building permit has been issued by the appropriate governmental authorities and which parcel is intended for use as a site for a Single Family Detached Dwelling, Single Family "D" Duplex Unit, or Patio Home (or Zero lot line) as shown upon any recorded final subdivision map or any part of the Properties. No parcel shall, however, be classified as a Residential Lot until the first day of the quarter of the year following after all of the following have occurred;

- (1) Recording of a Plat in the Office of the Register of Deeds of Durham County, North Carolina, showing such Residential Lot;
- (2) The Lot has been placed on an "Inventory List" (as defined in Section 3(c) of Article (v) of lots for sale submitted to the Association by the Company, the Company's Affiliates, the Developer or the Developer's Affiliates) in those cases where the Lot is owned by the Company, the Company's Affiliates, the Developer or the Developer's Affiliates.
- (3) The Lot is sufficiently developed to be subject to Assessment, in the sole and uncontrolled discretion of the Board of Directors, as a Residential Lot in those cases where the Lot is owned by any third party other than the Company, the Company's Affiliates, the Developer or the Developer's Affiliates.

(h) "Multiple-Family Tract" shall mean any unimproved parcel of land located within the Properties intended for development of Attached Residential Units, including Townhouses, Condominiums and Apartments as defined and controlled by the applicable zoning for Downing Creek. For the purposes of this Declaration, a parcel of land shall not be deemed a "Multiple-Family Tract" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or

designating such property for Multiple-Family use is recorded in the Office of the Register of Deeds of Durham County, North Carolina, provided, however, that any property within said parcel of land which also qualifies as an "Exempt Property" as defined in paragraph (n) of this Article I shall not be deemed part of said Multiple-Family Tract for the purposes of calculating Assessments or votes. A Multiple-Family Tract, or portions of said Multiple-Family Tract, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to Assessment, in the sole and uncontrolled discretion of the Board of Directors, as improved properties as defined in Section 3(d) of Article V.

(i) "Public or Commercial Site" shall mean any unimproved parcel of land within the Properties, intended for use as a site for improvements designed to accommodate commercial, governmental or business enterprises to serve Residents of Downing Creek and/or the public, including, but not limited to: business and professional office; facilities for the retail sale of goods and services; banks and other financial institutions; social clubs; restaurants; hotels, motels, inns; theaters; lounges; indoor and outdoor recreational facilities; hospitals and medical clinics; laboratories and other research and development facilities; commercial warehouses; transportation terminals or stations; automobile parking facilities, gasoline stations, industrial plants; and residential dwelling units within multi-use public or commercial buildings or facilities; provided, however, that a "Public or Commercial Site" shall not include property upon which improvements are to be built which also qualifies as a Multiple-Family Tract, nor shall it include any property which also qualifies as "Exempt Property" as defined in paragraph (n) of this Article I. For the purposes of this Declaration, a parcel of land shall not be deemed a "Public or Commercial Site" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property as a Public or Commercial Site is recorded in the Office of the Register of Deeds of Durham County, North Carolina. A Public or Commercial Site, or portions of said Site, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to Assessment, in the sole and uncontrolled discretion of the Board of Directors, as improved properties as defined in Section 3(e) of Article V.

(j) "Development of Unit Parcel" shall mean and refer to any parcel or tract of land within the Properties conveyed by the Company to any third party under Covenants and Restrictions permitting the division of such parcel or tract into smaller land units such as Residential Lots, Multiple-Family Tracts, or Public or Commercial Sites. For the purposes of this Declaration, a parcel of land shall not be deemed a "Development Unit Parcel" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property as a development Unit Parcel is recorded in the Office of the Register of Deeds of Durham County, North Carolina; provided, however, that a "Development Unit Parcel" shall not include any property which also qualifies as "Exempt Property" as defined in paragraph (n) of this Article I. A Development Unit Parcel, or portions

