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Prepared by and return to  
Robert O. Belo  
P.O. Box 51579  
Durham, N.C. 27717-1579

DECLARATION OF RIGHTS, RESTRICTIONS,  
AFFIRMATIVE OBLIGATIONS AND CONDITIONS  
APPLICABLE TO ALL PROPERTY IN DOWNING CREEK

WHEREAS, DOWNING CREEK ASSOCIATES, a North Carolina Partnership (the "Company"), is the owner of certain lands located within a community known as "Downing Creek" in Durham, North Carolina.

WHEREAS, the Company wishes to declare certain restrictive covenants affecting certain lands in Downing Creek.

NOW, THEREFORE, the Company does hereby declare that the covenants contained herein shall be covenants running with the land and shall apply to the lands described in Exhibit "A" attached hereto (the "Properties"), and such additions thereto as may hereinafter be made pursuant to paragraph (8) of Part VI hereof. The Company reserves in each instance the right to add additional restrictive covenants in respect to lands to be conveyed in the future within the Properties, or to limit therein the application of this Declaration.

DEFINITIONS

"Downing Creek" when used herein shall refer to the lands in Durham County, North Carolina, which are shown as a part of Downing Creek on the Company's Master Plan as revised from time to time.

Whenever used herein, the term "Company" or "the Company" shall refer to Downing Creek Associates, a North Carolina Partnership, its successors and assigns, and any agent or agents appointed by Downing Creek Associates, its successors and assigns, to act on its behalf for the purpose of administering or enforcing, in whole or in part, the rights reserved unto the Company in this Declaration.

Whenever used herein, the term "Association" shall refer to Downing Creek Community Association, Inc., a North Carolina nonprofit, non-stock corporation, its successors and assigns, and any other community or owners association within Downing Creek organized by the Company or by others with the consent of the Company.

The terms "Property" and "Properties" when used herein shall refer to any tract of land or subdivision thereof in Downing Creek which has been subjected to the provisions of this Declaration of any Supplemental Declaration under the provisions of paragraph (8) of Part VI hereof, as may be referenced in deeds issued by the Company or any third party with the consent of the Company, including, without limitation, all that tract or parcel of land, situate, lying and being in Durham County, North Carolina, which is more particularly described in Exhibit "A" attached hereto and by specific reference made a part hereof.

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The terms "Property Owner," "Owner of Property" and "Owner" when used in this Declaration shall mean and refer to all owners of an interest in real property in Downing Creek which has been subjected to the provisions of this Declaration, including, but not limited to, owners of property or tracts of land and owners of condominium units, whether such property, tracts or units are used or intended to be used for residential, commercial or recreational purposes.

The term "Master Plan" when used in this Declaration shall mean and refer to the drawing which represents the conceptual plan for the future development of Downing Creek. Since the concepts of the future development of Downing Creek are subject to continuing revision and change by the Company, present and future references to the "Master Plan" shall be references to the latest revision thereof.

The term "Open Space" when used in this Declaration shall mean and refer to all those parcels and tracts of land within the Properties designated on the Master Plan or on recorded plats as "Open Space" (hereinafter sometimes referred to as "Open Space Areas").

The term "Private Open Space" when used in this Declaration shall mean and refer to all those parcels and tracts of land within the Properties designated on the Master Plan or on recorded plats as "Private Open Space" (hereinafter sometimes referred to as "Private Open Space Areas").

The covenants and restrictions below will be referred to as the General Property Covenants of Downing Creek, and will be recorded in the Office of the Register of Deeds, Durham, North Carolina, and may be incorporated by reference in deeds to real property issued by the Company by reference to the book and page of recording in the land records of said Office of the Register of Deeds.

PART I.  
COVENANTS, RESTRICTIONS AND AFFIRMATIVE  
OBLIGATIONS APPLICABLE TO ALL  
PROPERTIES IN DOWNING CREEK

The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of certain objective standards relating to design, size and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of Property and of technological advances and environmental values. In order to implement the purposes of these covenants, the Company shall establish and amend from time to time objective standards and guidelines, including, but not limited to, Architectural Standards and Construction Specifications, Uniform Sign Regulations, Uniform Mailbox Regulations, Landscape Guidelines and Environmental Rules and Regulations as defined hereinafter, which shall be in addition to and more restrictive than said

Conditional Use and which shall be binding on all Property Owners within Downing Creek.

1. No building, fence or other structure shall be erected, placed or altered nor shall a building permit for such improvement be applied for on any Property in Downing Creek until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives and parking areas), the land management plan described in paragraph 1 of Part II and construction schedule shall have been approved in writing by the Company. In addition, the Company may, at its election, require prior written approval of a landscape plan. The Company further reserves the right to promulgate and amend from time to time architectural standards and construction specifications (hereinafter referred to as the "Architectural Standards and Construction Specifications") for specific neighborhoods and areas or for all Properties within Downing Creek, and such Architectural Standards and Construction Specifications shall establish, define and expressly limit those standards and specifications which will be approved in said neighborhoods and areas or within the Properties, including, but not limited to, architectural style, exterior color or finish, landscape design and construction technique. Refusal or approval of plans, location, exterior color or finish or specifications may be based by the Company upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Company shall seem sufficient. No alteration in the exterior appearance of any building or structure, including exterior color or finish, shall be made without like prior written approval by the Company. One (1) copy of all plans and related data shall be furnished the Company for its records. In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt by the Company of written demand for approval, the provisions of this paragraph shall be thereby waived.

2. In order to assure that buildings and other structures will be located and staggered so that the maximum view, privacy, sunlight and breeze will be available to each building or structure within the confines of each Property, and to assure that structures will be located with regard to the topography of each Property, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Company reserves the right to control absolutely and solely to decide (subject to the provisions of the Zoning Ordinance of the County of Durham and City of Durham, North Carolina) the precise site and location of any building or structure on any Property in Downing Creek for reasons which may, in the sole and uncontrolled discretion and judgment of the Company, seem sufficient. Such location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site. The provisions of this paragraph shall in no way be construed as a guarantee that the view, privacy, sunlight or breeze available to a building or structure on a given Property shall not be affected by the location of a building or structure on an adjacent Property.

