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NORTH CAROLINA
WAKE COUNTY

DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
EVERGREEN

THIS DECLARATION, made on the date hereinafter set forth by THE NEW FORTIS CORPORATION, a North Carolina corporation, hereinafter referred to as the "Declarant;"

WITNESSETH: THAT WHEREAS, the Declarant is the owner of certain property lying within the Town of Cary, Wake County, North Carolina, which is more particularly described as Evergreen, Phase I as shown on a map recorded in Book of Maps 1987, Page 1936, Wake County Registry.

WHEREAS, said properties have been or will be subjected to a Declaration of Covenants, Conditions and Restrictions of the Parkway Community Association, Inc. (herein referred to as the Parkway Declaration).

WHEREAS, Declarant will convey the said properties, subject to certain additional protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described

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properties or any part thereof, and shall inure to the
benefit of each owner thereof.

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INDEX

Page No.

| | |
|--|----|
| ARTICLE I - DEFINITIONS | 7 |
| Section 1 - Evergreen Association | |
| Section 2 - Properties | |
| Section 3 - Lot | |
| Section 4 - Member | |
| Section 5 - Owner | |
| Section 6 - Declarant | |
| Section 7 - Person | |
| Section 8 - Building | |
| Section 9 - Board of Directors | |
| Section 10 - Common Expenses | |
| Section 11 - Parkway Association | |
| Section 12 - Parkway Declaration | |
| Section 13 - Evergreen Declaration | |
| Section 14 - Parkway Planned Unit Development | |
| ARTICLE II - ANNEXATION OF ADDITIONAL PROPERTIES. | 9 |
| Section 1 - Annexation By Members | |
| Section 2 - Annexation by Declarant | |
| Section 3 - Method of Annexation | |
| ARTICLE III - MEMBERSHIP. | 10 |
| ARTICLE IV - VOTING RIGHTS. | 11 |
| Section 1 - Voting Classes | |
| Section 2 - Suspension of Voting Rights | |
| ARTICLE V - COVENANT FOR ASSESSMENTS | 12 |
| Section 1 - Creation of the Lien and Personal Obligation of Assessments | |

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| | |
|---|----|
| Section 2 - Purposes of Assessments | |
| Section 3 - Amount of Annual Assessment | |
| Section 4 - Special Assessments for Capital Improvements | |
| Section 5 - Uniform Rate of Assessment | |
| Section 6 - Quorum for any Action Authorized Under Sections 3 and 4 | |
| Section 7 - Date of commencement of Annual Assessments: Due Dates | |
| Section 8 - Effect of Non-Payment of Assessments: Remedies of the Association | |
| Section 9 - Subordination of Liens to Mortgagee | |
| Section 10 - Two Months Assessment to be Collected at Closing | |
| ARTICLE VI - MAINTENANCE OF PROPERTIES | 19 |
| Section 1 - Maintenance of Lots | |
| Section 2 - Buffer Areas | |
| Section 3 - Landscape Easement Areas | |
| Section 4 - Medians | |
| Section 5 - Entrance Signs | |
| ARTICLE VII - ARCHITECTURAL CONTROL & INSPECTION . . . | 21 |
| ARTICLE VIII - RULES AND REGULATIONS. | 23 |
| ARTICLE IX - PROTECTIVE COVENANTS | 24 |
| Section 1 - Lot Size | |
| Section 2 - Land Use | |
| Section 3 - Building Location | |
| Section 4 - Temporary Structures | |
| Section 5 - Animals | |
| Section 6 - Garbage Cans | |
| Section 7 - Mail Box Posts | |

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| | |
|--|----|
| Section 8 - Signs | |
| Section 9 - Prohibition of Television Antennae, Satellite Dishes and Clotheslines | |
| Section 10 - Fences | |
| Section 11 - Parking | |
| Section 12 - Vehicles | |
| Section 13 - Burning | |
| Section 14 - Buffer Areas | |
| Section 15 - Landscape Easement Areas | |
| Section 16 - Cary Parkway | |
| ARTICLE X - RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES. | 27 |
| ARTICLE XI - GENERAL PROVISIONS. | 28 |
| Section 1 - Enforcement | |
| Section 2 - Insurance | |
| Section 3 - Severability | |
| Section 4 - FHA/VA Approval | |
| Section 5 - Amendment | |
| Section 6 - Certification of Amendment | |
| Section 7 - Restrictions Against Association Entering Into Contracts | |
| Section 8 - Conflict of Declarations | |
| Section 9 - Books and Records | |
| ARTICLE XII - EASEMENTS | 34 |
| Section 1 - Walks, Drives, Parking Areas and Utilities | |
| Section 2 - Drainage and Utilities | |
| Section 3 - Emergencies | |
| Section 4 - Easement for Governmental Agencies | |
| Section 5 - Buffer Areas, Landscape Easements | |

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and Sign Easements

Section 6 - Encroachments

Section 7 - Easement for Construction Purposes

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ARTICLE I
DEFINITIONS

Section 1. "Evergreen Association" shall mean and refer to EVERGREEN HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Evergreen Association.

Section 3. "Lot" shall mean and refer to any plot of land for use as a site for a single family detached residence shown upon any recorded map of a portion of the properties.

Section 4. "Member" shall mean and refer to every person or entity who holds membership in the Evergreen Association.

Section 5. "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 Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "Declarant" shall mean and refer to THE NEW FORTIS CORPORATION, and 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 the Declarant may impose.

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Section 7. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 8. "Building" shall mean and refer to a single family detached residential structure, constructed or erected on the Property.

Section 9. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Evergreen Association, unless a contrary intent is evident.

Section 10. "Common Expenses" shall mean and include:

(a) All sums lawfully assessed by the Evergreen Association against its members;

(b) Expenses of administration, maintenance, repair, or replacement of the property which the Evergreen Association is obligated to maintain by the provisions of this Declaration;

(c) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

(d) Expenses agreed by the members to be common expenses of the Evergreen Association; and

Section 11. "Parkway Association" shall mean and refer to The Parkway Community Association, Inc., its successors and assigns.

Section 12. "Parkway Declaration" shall mean and refer to that Declaration of Covenants and Restrictions of

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the Parkway Community Association, Inc., which have been recorded or will be recorded in the Wake County Registry and all subsequent valid amendments thereto.

Section 13. "Evergreen Declaration" shall mean and refer to this Declaration of Protective Covenants, Conditions and Restrictions, and all subsequent valid amendments thereto.

Section 14. "Parkway Planned Unit Development". Parkway Planned Unit Development shall mean that property shown on the Land Use Concept Plan entitled "Parkway Planned Unit Development" filed with the Town of Cary as amended.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Except as provided in §2 of this Article, annexation of additional Property shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any.

Section 2. Annexation by Declarant. If within 5 years of the date of incorporation of this Association, the Declarant should develop additional lands within the boundaries of the property described on Exhibit A attached hereto. Such additional lands may be annexed to said Properties without the assent of the Class A members:

Section 3. Method of Annexation. Annexation of additional Properties shall be accomplished by recording in the Wake County Registry a Declaration of Annexation, duly

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executed by the Declarant if the Declarant has the right to annex pursuant to Section 2 above (and by the Association if pursuant to Section 1 above), describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Evergreen Association or any other person or entity shall be necessary to accomplish the annexation except the Town of Cary if required by its ordinances.

ARTICLE III

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject to the Evergreen Declaration, including contract sellers, shall be a member of the Evergreen Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation; however, any creditor of an Owner of a lot who acquires title to the Property or any portion thereof pursuant to foreclosure or any other proceeding or deed in lieu of foreclosure shall be a member of the Association. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the

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Evergreen Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this Subdivision.

ARTICLE IV

VOTING RIGHTS

Section 1. Voting Classes. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article III, provided, that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B

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membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, such additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article II, Section 2 above, or

(b) on December 31, 1993.

Section 2. 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.

ARTICLE V

COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and every other owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Evergreen Association:

(a) Annual assessments or charges which are common expenses; and

(b) Special assessments for capital improvements.

Notwithstanding any provision herein to the contrary the assessment for each Lot owned by Declarant

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shall be twenty-five percent (25%) of the assessment which would have otherwise been due.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments shall be shared equally by the owners of each Lot, except as otherwise provided in this section.

Section 2. Purpose of Assessments. The annual assessment shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents of Evergreen; enforcing these covenants and the rules of the Evergreen Association; and maintenance of buffer areas and landscape easement areas located on Lots as provided in Article VII, Sections 3 and 4 of this Declaration; and paying all Common Expenses.

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Section 3. Amount of Annual Assessment.

(a) Initial Annual Assessment. To and including December 31, 1988, the initial annual assessment shall not be in excess of \$48.00 per Lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3.

(b) Increase by Evergreen Association. From and after December 31, 1988, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, to an amount which may not exceed the previous year's assessment (or the previous year's revised assessment determined pursuant to subparagraph (c) below) plus Ten (10%) percent.

(c) Increase by members. From and after December 31, 1988, 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, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. The limitations herein set forth in subparagraphs (b) and (c) shall not apply to an increase in assessments undertaken as an incident to a merger or consolidation in which the Evergreen Association is authorized to participate under its Articles

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of incorporation or to an increase in assessments necessary to cover the cost of hazard and/or liability insurance in the event the Evergreen Association is required to obtain such insurance on the areas it maintains.

(d) Criteria for Establishing Annual Assessment.

The Evergreen Association is required to set the annual assessment high enough to enable the Evergreen Association to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the areas the Association is obligated to maintain. The Evergreen fund shall be maintained out of the annual assessments for Common Expenses as provided for in this article. In establishing the annual assessment for any assessment year, the Board of Directors shall set the annual assessment high enough to cover all current costs and expenses of the Evergreen Association, any accrued debts, and reserves for future needs.

(e) Decrease of Annual Assessment. The Board of Directors may decrease the annual assessment from time to time if in its opinion such decrease is prudent.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Evergreen Association, may levy, in any assessment year, a special assessment applicable to that year only for the purposes of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the property maintained by the Evergreen Association, including the necessary fixtures and personal

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property related thereto, and to provide for facilities and equipment necessary to offer the services authorized herein. Any such special assessment proposed by the Evergreen Association shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. The amount of the proposed assessment need not be stated.

Section 5. Uniform Rate of Assessment. Both the annual assessment and special assessments must be fixed at a uniform rate for all Lots, on a per Lot basis, and may be collected on a monthly basis.

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided in Section 3 and 4 of this Article, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, subsequent meetings may be called, subject to the notice requirement set forth in sections 3 and 4 and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the next preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the next preceding meeting.

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Section 7. Date of Commencement of Annual

Assessments: Due Dates. The annual assessments provided herein for Lots may be paid in monthly installments and the payment of such shall commence as to any Lot subject to this Declaration upon recording this Declaration. Assessments shall commence as to any Lot made subject to this Declaration pursuant to Article II herein upon recording the Declaration of Annexation which subjects such Lot to this Declaration. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year or the Association's fiscal year as the Board deems appropriate. 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, upon demand at any time, shall furnish a certificate in writing 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 its issuance.

Section 8. Effect of Nonpayment of Assessments:

Remedies of the Association. Any assessment or portion thereof which are not paid when due shall be delinquent. If the assessment or portion thereof is not paid within thirty (30) days after the due date, the same shall bear interest from the date of delinquency at the rate of nine percent

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(9%). The Association may bring an action against the owner personally obligated to pay the same, and interest, costs, late payment charges and reasonable attorney's fees of any such action shall be added to the amount of such assessment. If any law permits the filing of a lien and the foreclosure of such lien, or other similar action, as a method of enforcement of the Association's right to collect assessments, the Association may use such remedy. No owner may waive or otherwise escape liability for the assessment provided for herein by abandonment of his Lot.

Section 9. Subordination of Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. A sale or any transfer of any Lot shall not affect the assessment liens; provided, however, that the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from the liability for any assessment thereafter becoming due or from the lien thereof.

Section 10. Two Months Assessments to be Collected at Closing. At the closing of each sale of a Lot, a sum shall be collected from the purchaser equal to the total assessment for such Lot for the succeeding two months and such sum shall be contributed to the capital reserve accounts of the Evergreen Association to be used by the

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Association to meet unforeseen expenditures. This contribution shall not be considered an advance against assessments to become due or a refundable deposit.

ARTICLE VI

MAINTENANCE OF PROPERTIES

Section 1. Maintenance of Lots.

If in the opinion of the Board, an Owner fails to maintain his Lot, buffer areas, or landscape easement areas located on a Lot as shown on a recorded map, in a neat and orderly condition or otherwise neglects his property and allows unsightly conditions to develop, the Board, after 30 days written notice to the Owner, may, but is not obligated to, take steps to remedy the problem. Such remedy may include, but shall not be limited to; the removal of debris or junked cars, the mowing of grass or cutting of brush and the painting or repair of structures located on the property. The Board may bill such Owner for all expenses incurred in correcting the problem. Every Owner by acceptance of a deed covenants to pay said bill. Failure to pay said bill shall allow the Board to file an action to collect the unpaid amount and such action may result in a lien against the Lot.

Section 2. Buffer Areas. The buffer areas located on Lots shown on recorded maps shall remain in an undisturbed, natural state. The Evergreen Association may, but is not obligated to, plant trees and shrubs in the buffer areas. All lots on which buffer areas are located

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are subject to an easement in favor of the Evergreen Association and the Parkway Association for ingress and egress, to plant trees and shrubs and to enforce the provisions of the Evergreen Declaration and Parkway Declaration as to the buffer areas. The cost of such maintenance shall be a Common Expense, which shall be paid from funds supplied from the annual assessment. An owner of Lot on which a buffer area is located may plant trees and shrubs in the buffer area only with the prior written approval of the Evergreen Association or an architectural committee.

Section 3. Landscape Easement Areas. Certain Lots in Evergreen are subject to a landscape easement as shown on recorded maps. Such landscape easement is in favor of the Association for ingress and egress over such Lot and for planting and maintenance of the areas. The cost of such maintenance shall be a Common Expense, which shall be paid from funds supplied from the annual assessment. The Owner of a Lot subject to the landscape easement may plant trees or shrubs in the landscape easement area only with prior written approval of the Evergreen Association or an architectural committee.

Section 4. Medians. Medians located on public streets will not be owned by the Evergreen Association; however, the maintenance of the medians shall be supervised by the Evergreen Association. The cost of such maintenance

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shall be a Common Expense, which shall be paid from funds supplied from the annual assessment.

Section 5. Entrance Signs. Certain Lots in Evergreen are subject to an easement for an entrance sign as shown on recorded maps. Any Lot subject to a sign easement is also subject to an easement in favor of the Association for ingress, egress and maintenance of the sign. The entrance sign shall be the property of the Association. The cost of maintenance of the entrance sign shall be a Common Expense and funds for such maintenance shall be supplied from the annual assessment.

ARTICLE VII

ARCHITECTURAL CONTROL & INSPECTION

Except for initial improvements by Declarant, no construction, erection, or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls, screens (whether by plants or structures) and other structures, shall be undertaken upon the Properties unless the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing. No subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the Properties without prior review and express written approval

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of the Board of Directors of the Evergreen Association, or by an architectural committee.

In general, no exterior alterations or additions to buildings or garages shall be considered for approval unless such alterations or additions are in harmony with existing structures, as to style, shape, color and size. However, this section shall not be construed to mean that the Architectural committee or Board shall have to approve a proposed alteration or addition that meets the above criteria.

In general, the construction of fences, walls, or other structures and planting of screens will not be permitted if in the opinion of the Declarant, Board, or architectural committee, as applicable, such construction or planting constitutes an unreasonable obstruction of the view of another owner.

Generally, approval or disapproval should be issued within thirty days. In the event that the Declarant or the Evergreen Association, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within sixty (60) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Evergreen Association if they contain erroneous data

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or fail to present adequate information upon which the Declarant or the Evergreen Association, as the case may be, can arrive at a decision.

The Declarant and/or the Evergreen Association (as applicable) shall have the right, at its election, but shall not be required, to enter upon any of the Properties 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 and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE VIII

RULES AND REGULATIONS

The Board of Directors of the Evergreen Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment Lots lying within Evergreen. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolution which shall be maintained in a place convenient to the owners and available to them for inspection during normal business hours.

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ARTICLE IX
PROTECTIVE COVENANTS

Section 1. Lot Size. A Lot shall have a width at the minimum building set back line and an area, that meets the minimum requirements of the ordinances of the Town of Cary. No recombination of Lots shall increase the number of Lots above the number existing before recombination, except as hereinafter set forth.

Section 2. Land Use. No Lot shall be used except for residential purposes; provided, however, that nothing herein shall prevent the conversion of portions of Lots to public or private streets. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling.

Section 3. Building Location. No building shall be located nearer than 10 feet to any road right of way. Dwellings shall not be located nearer to one another than 15 feet. For the purpose of this covenant, eaves, steps and open porches shall not be construed as a part of the building. The Declarant or the Evergreen Association reserve the right to waive a violation of the setback requirements provided herein. The waiver must be in writing and recorded in the Wake County Registry.

Section 4. Temporary Structure. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

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Section 5. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets may be kept, subject to the rules and regulations of the Evergreen Association, provided that they are not kept, bred or maintained for any commercial purpose. If dogs, cats or other household pets are kept outdoors, such animals shall be kept in the rear yard, enclosed by a fence approved by the Evergreen Association.

Section 6. Garbage Cans. Garbage cans shall be kept in the rear yard and not visible from the street except on trash pick-up days.

Section 7. Mail Box Posts. All mail box support posts shall be of material and design as initially approved by Declarant or architectural committee.

Section 8. Signs. No sign of any kind, except an owner and street number identification, shall be displayed to the public's view on any Lot except one professional sign of not more than 5 square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period. The Declarant or the Evergreen Association shall have the right to enter any Lot and summarily remove any sign which violates this provision if the violation has not been removed after 5 days, written notice to the Lot Owner.

Section 9. Prohibition of Television Antennae, Satellite Dishes and Clotheslines. Television antennae,

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satellite dishes, and outdoor clotheslines are prohibited on the Property unless approved in writing by the Evergreen Association or an architectural committee.

Section 10. Fences. No fence of any kind may be erected on Lots adjacent to the Cary Parkway. Fences of a type specified and approved by the Declarant or architectural committee may be erected in the rear yard of Lots not adjacent to the Cary Parkway.

Section 11. Parking. Parking of all vehicles of any type on Lots shall be governed by the Rules and Regulations established by the Association as provided in Article IX of this Declaration.

Section 12. Vehicles. No junked or disabled vehicles may be stored on any Lot or street. No maintenance or repair may be performed on any vehicle except in an enclosed garage attached to a dwelling. No boats, trailers, or unlicensed vehicles of any kind shall be parked on any Lot or street.

Section 13. Burning. Burning of trash on any lot is prohibited.

Section 14. Buffer Areas. Subject to the provisions of the Parkway Declaration and the Evergreen Declaration areas designated as buffer areas on recorded maps shall be left in their undisturbed, natural state. No improvements may be placed, erected or constructed on the buffer areas.

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Section 15. Landscape Easement Areas. No improvements may be placed, erected or constructed in areas designated as "landscape easement" areas on recorded maps other than those constructed by the Declarant or approved in writing by the Declarant or the Evergreen Association.

Section 16. Cary Parkway. No lot shall have direct vehicular access to the Cary Parkway.

ARTICLE X

RIGHTS OF FIRST MORTGAGEES AND INSURERS OF FIRST MORTGAGES

Any institutional holder of a first mortgage on a Lot will, upon request in writing to the Evergreen Association, be entitled to (a) inspect the books and records of the Evergreen Association during normal business hours, (b) receive written notice of all meetings of the Evergreen Association and the right to designate a representative to attend all such meetings (c) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage, (d) receive written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (e) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Evergreen Association, (f) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, (i) be furnished with a copy of any

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insurance policy owned by the Evergreen Association and (j) receive an audited financial statement for the preceding fiscal year. The Evergreen Association may require the payment of expenses incurred in preparing copies and mailing of documents furnished to first mortgage holders pursuant to this Article.

ARTICLE XI
GENERAL PROVISIONS

Section 1. Enforcement. The Evergreen Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenant, reservations, liens, and charters now or hereafter imposed by the provisions of this Declaration, and the Parkway Declaration as it applies to Evergreen. Failure by the Evergreen 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. Insurance. In the event the Evergreen Association becomes the owner of any buildings or other improvements or personal property the Board of Directors shall obtain hazard insurance in an amount equal to the maximum insurable replacement value as determined by the Board of Directors. In the event the Evergreen Association becomes the owner of any real property, the Board of Directors of the Evergreen Association shall obtain liability insurance coverage on the Common Area in the

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amount of \$1,000,000 for bodily injury and property damage for any single occurrence or if such coverage is not reasonably available, in an amount deemed appropriate by the Board of Directors. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Evergreen Association as a Common Expense from the annual assessment.

The Evergreen Association shall maintain blanket fidelity bonds for all officers, directors and all other persons handling or responsible for funds of or administered by the Evergreen Association. The fidelity bonds shall name the Evergreen Association as the obligee and the premiums should be paid as a common expense by the Evergreen Association. The fidelity bond should cover the maximum funds that will be in the custody of the Evergreen Association at any given time during the term of the bond. In any event, the fidelity bond must at least equal the sum of three months assessments on all lots plus reserve funds.

The Board may secure Officers and Directors insurance in such amounts as the Board deems appropriate. Premiums shall be paid by the Evergreen Association as a Common Expense from of the annual assessment.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect..

BK 4158 PG 0344

Section 4. FHA/VA Approval. Notwithstanding any provisions in this instrument to the contrary, as long as there is a Class B membership, and if Declarant desires to qualify sections of this subdivision for Federal Housing Administration or Veterans Administration approval (but not otherwise), the following actions will require the prior approval of Federal Housing Administration or the Veterans Administration, if approval is required by these agencies: Annexation of additional properties, amendment of this Declaration of Covenants, Conditions and Restrictions, merger and consolidations and dissolution.

Section 5. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for an unlimited number of successive periods of ten (10) years each. This Declaration may be amended by an instrument signed by the owners of not less than sixty six and two thirds percent (66 2/3%) of the Lots that have been made subject to this Declaration.

Furthermore, the Declarant, for so long as it controls the Board, and thereafter, the Board of Directors, may amend this Declaration without the consent of the owners and hereby reserves the right to act on behalf of the owners to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots therein for

BK4158PG0345

mortgage or improvement loans made, guaranteed or insured by a governmental agency, including, without limitation, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association, Housing and Urban Development and Federal Home Loan Mortgage Corporation, or to comply with the requirements of law or regulations of any governmental corporation or agency regarding purchase of mortgage interests in Lots by such agency. A letter from any such agency stating that a change is desired or necessary in order to qualify the Property or any Lots for loans eligible to be guaranteed by, insured by or purchased by such agency, shall be sufficient authority for the amendment of this Declaration.

Such amendment shall be executed in the name of the Association by the President (or Vice-President) and by the Secretary (or Assistant Secretary) of the Association and recorded in the Office of the Register of Deeds of Wake County.

Section 6. Certification of Amendment. If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of the Evergreen Association. Thereupon, the Board of Directors, shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster

BK4158PG0346

of members and shall not be required to cause any title to any Lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Evergreen Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS,
CONDITIONS AND RESTRICTIONS OF EVERGREEN

By authority of its Board of Directors, Evergreen Homeowners Association hereby certifies that the foregoing instrument has been duly executed by the Owners of _____ percent of the Lots of Evergreen and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Evergreen.

EVERGREEN HOMEOWNERS
ASSOCIATION, INC.

BY: _____
President

ATTEST:

Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of the Evergreen Association. When any

BK4158PG0347

instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots in Evergreen.

Section 7. Restrictions Against Association

Entering Into Contracts. Furthermore, the Evergreen Association, shall not enter into contracts or leases (including a management contract) either directly or indirectly unless there is a right of termination of any such contract or lease, without cause, which is exercisable without penalty at any time upon not more than 30 days notice to the other party thereto and if a professional management contract, such contract may not extend beyond a term of 3 years.

Section 8. Conflict of Declarations. In the event of a conflict between the provisions of this Declaration and matters intended to be dealt with by the Parkway Declaration, the provisions of the Parkway Declaration shall take precedence and be controlling.

Section 9. Books and Records. Current copies of the Declaration, Bylaws, rules and regulations and books of the Evergreen Association shall be available during normal business hours for inspection and copying by Lot owners.

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ARTICLE XII

EASEMENTS

Section 1. Walks, Drives, Parking Areas and Utilities. All of the Property shall be subject to such easements for driveways, walkways, parking areas, water lines, irrigation systems, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, cable television and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant.

The Declarant reserves the right to subject the real property covered by this Declaration to a contract with a power and light company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to the power and light company by the owner of each building.

Declarant reserves the right to subject Lots, prior to the sale of such Lots, to a joint driveway easement to provide such Lots with access to a public right-of-way.

Section 2. Drainage and Utilities. Easements for installation and maintenance of utilities and drainage facilities are reserved over the rear ten feet of each lot. In the event that the Owner of any Lot shall acquire land adjacent to and in the rear of such Lot, such Lot Owner may relocate the easement herein established over the rear line to conform to the increase in the size of his Lot, provided that alteration in drainage does not thereby adversely the

BK 4158 PG 0349

affect the drainage of any other Lot or interfere with the rights of the Owners of other property within this subdivision to services rendered by the easement herein created. Such relocated easement shall be the same width as the original easement.

Section 3. Emergencies. Every Lot shall be subject to an easement for entry by the Evergreen Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any building or portion of the Common Area.

Section 4. Easement for Governmental Agencies. An easement is hereby established over the Lots for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 5. Buffer Areas, Landscape Easements, Sign Easements. All Lots are subject to easements for ingress and egress for purposes of planting and maintaining buffer areas, landscape easement areas and sign easement areas as shown on recorded maps and as provided in Article VII of this Declaration.

Section 6. Encroachment. All Lots shall be subject to easements for the encroachment of initial

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improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms and walls. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any Building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 7. Easement for Construction Purposes.

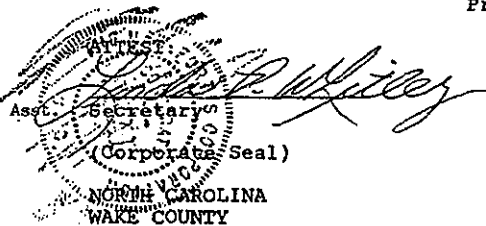
The Declarant reserves an easement for ingress and egress over Lots for purposes of constructing buildings on adjacent Lots and performing activities related to the construction of buildings on adjacent Lots.

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IN WITNESS WHEREOF, the undersigned, being the
Declarant herein, has executed this instrument this the 23rd
day of November, 1987.

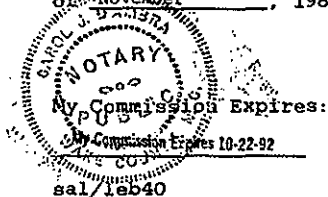
THE NEW FORTIS CORPORATION

BY: [Signature]
President



I, the undersigned, a Notary Public in and for
said State and County, do hereby certify that
Linda P. Whitley personally appeared before me this day
and acknowledged that she is Asst. Secretary of THE NEW
FORTIS 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 by herself as its Assistant
Secretary.

WITNESS my hand and notarial seal this the 23rd day
of November, 1987.



Carol J. D'Ambra
Notary Public

NORTH CAROLINA - WAKE COUNTY

The foregoing certificate _____ of _____

Carol J. D'Ambra

Notary 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

KENNETH C. WILKINS, Register of Deeds

By: Kenneth C. Wilkins
Register of Deeds

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EXHIBIT A TO DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR EVERGREEN

BEGINNING at a point having North Carolina Coordinates North = 734,223.057, East = 2,050,442.259; runs thence along and with the northern edge of the 106 foot right of way of the proposed Cary Parkway on a curve to the right, said curve having a radius of 1,066.29 feet and an arc length of 123.65 feet; thence leaving said right of way North 70° 05' 25" East 5.02 feet to a point; thence South 83° 58' 04" East 192.22 feet to a point; thence North 73° 06' 53" East 167.79 feet; thence North 45° 50' 35" East 51.59 feet to a point; thence North 69° 48' 43" East 204.49 feet to a point; thence South 01° 27' 53" West 260.14 feet to a point; thence South 88° 46' 28" East 832.91 feet to a point; thence along and with the western edge of Lot M-5 South 28° 12' 54" West 253.34 feet to a point; thence South 13° 12' 05" West 276.95 feet to a point; thence leaving the line of Lot M-5 South 88° 12' 43" West 268.69 feet to a point; thence North 77° 04' 51" West 214.62 feet; thence South 28° 11' 03" West 51.43 feet to a point; thence along and with the northern edge of the 106 foot right of way of the proposed Cary Parkway on a curve to the right, said curve having a radius of 1,066.29 feet and an arc length of 881.03 feet to the point and place of beginning, and being approximately 13.687 acres designated as Lot M7 as shown on a map entitled "A Part of Parkway" by Kenneth Close, Inc. dated March 24, 1986, last revised November 13, 1987.

SAVE AND EXCEPT all of that area designated as "Common Open Space" as shown on a map recorded in Book of Maps 1987, page 1936, entitled Evergreen Phase I, Parkway PUD by Dewberry and Davis, dated August 1987.

lhs/JWM/jwm9