

be exempt from said assessments, and no exemption hereunder as to any Lot shall deprive the Owner(s) of said Lot from membership in the Association.

## ARTICLE VI

### ARCHITECTURAL CONTROL AND INSPECTION

No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, residences, buildings, outbuildings, fences, walls, signs, antennas, aerials, awnings, clotheslines, and other structures, and the placement of reflective or printed material in the windows of the residences on the Lots, shall be undertaken, commenced, or maintained upon the Properties unless the plans and specifications therefor, showing the nature, kind, shape, height, colors, materials, and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing as to harmony of external design and location in relation to surrounding structures and topography. No subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken, commenced, or maintained on any of the Properties without the prior review of plans and specifications as described above and express written approval of the Board of Directors or by any architectural committee composed of three (3) or more representatives appointed by the Board of Directors as to harmony and location as described above.

In the event that the Declarant, the Association, or said architectural committee, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within thirty (30) days after said plans and specifications therefor have been submitted and received, approval will not be required, and the approval requirements contained in this Article will be deemed to have been fully met as to said plans and specifications submitted; provided that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision. The Association shall have the right to charge all Members, other than the Declarant and any general contractors who are constructing (or who have constructed) the first home on any Lot and who are not then using said home as their principal resident, a reasonable fee for receiving each application not to exceed \$25.00. Neither the Declarant, the Board of Directors, nor the architectural committee shall approve any preparation, construction, erection, installation, alteration, or modification which would jeopardize or impair the soundness, safety, or appearance of any Lot or the Common Area, and said approved work shall be performed in a good and workmanlike manner, utilizing approved methods and good quality materials.

Nothing in this Declaration shall be construed to permit interference with the development of the Properties by the Declarant in accordance with its general plan of development.

The Declarant and/or the Association shall have the right, at their election, to enter upon any of the Properties during site preparation or construction, erection, installation, alteration, or modification or 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 VII

### EXTERIOR MAINTENANCE

Section 1. The maintenance of Lots and improvements constructed thereon shall be the duty of the Owners of such Lots (except where specifically provided otherwise in this Declaration as it may be amended from time to time) and normally shall not be interfered with by the Association or any Person. If, however, in the reasonable opinion of the Association any Owner shall fail to maintain any Lot owned by him, her, or it in a manner which is neat and orderly or shall fail to keep the exteriors of improvements constructed thereon in a state of repair and maintenance so as not to be unsightly, the Board of Directors, in its discretion, and following ten (10) days written notice to the Owner, shall have the right, through its agents and employees, to enter upon and make or cause to be made repairs and maintenance, replacement, or restoration to the exteriors of such improvements and perform such repair and maintenance, replacement, or restoration on the Lot as painting, repairing and maintaining gutters and exterior building surfaces (including patios, walks, roofs, and exterior glass), removing garbage and trash, cutting grass (and other vegetation), pruning shrubbery and trees, seeding, and performing measures of erosion control. The Association hereby has an easement in, across, on, under, and over the Properties (i.e., including the Lots) for the purpose of accomplishing the foregoing. The cost incurred by the Association in rendering all such services, plus a service charge of fifteen percent (15%) of such cost, shall be added to and become a part of such other assessments against the Owner and to which such Lot is subject, payment and remedies as to such assessment being as are contained in Article V of this Declaration.

Section 2. The maintenance and operation of the Common Area shall be the responsibility of the Association. The Association hereby has an easement across, on, under, and over the Properties for the purpose of accomplishing the foregoing.

Section 3. If the need for maintenance, repair, or replacement of any property (the maintenance of which is the Association's responsibility) is caused through the willful or negligent act or omission of an Owner of the Owner's family, tenant(s) contract purchaser(s), contractors, employees, or invitees, the cost of such maintenance, replacement, or repairs incurred by the Association shall be added to and become a part of the assessment of said Owner's Lot unless some other apportionment is required by law.

#### ARTICLE VIII

#### USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area and external appearance of the Lots. 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 Resolutions, which shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

Section 2. Use of Property. Each Lot, the Common Area and Amenities shall be for the following uses and subject to the following restrictions, in addition to those contained in the Bylaws of the Association:

(a) All Lots shall be used for residential purposes only, and only one (1) family may occupy a Lot as a principal residence at any one time; however, notwithstanding the foregoing, the Declarant and, with the Declarant's consent, any general contractor may maintain any and all sales offices, home models, and construction offices on one (1) or more Lots until all Lots shown on maps of the Properties recorded by Declarant at the Wake County Registry have been sold to buyers other than those general contractors who do not reside on the Properties.

(b) No animals, livestock, or poultry shall be kept or maintained on any Lot or in any dwelling on any Lot except that dogs, cats, or other household pets may be so kept or maintained provided they are not kept or maintained for commercial purposes.

(c) No structure of a temporary nature, other than sales offices, construction offices of temporary facilities required by law, as permitted by subsection (a) of this Section 2, shall be erected or allowed to remain on any Lot unless and until the Association, or its designated agent or representative, has granted permission therefor.

(d) The Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Association.

(e) No drying or airing of any clothing or bedding, and no clothes-hanging devices such as lines, reels, poles, frames, etc., shall be permitted outdoors on any Lot.

(f) No signs or other advertising devices other than political yard signs applicable to current political campaigns shall be displayed in a manner visible from the exterior of any dwelling on any Lot or from the Common Area or Amenities without prior written permission of the Association. Notwithstanding the foregoing, Owners may post temporary "For Sale" signs on their Lots; and any general contractor, as to initial construction of homes on Lots, may post temporary "For Sale" signs advertising the offer of sale of the applicable Lot(s) on the Properties until such time as all Lots have been sold to buyers other than general contractors who reside at the Properties.

(g) All trash and garbage shall be stored within the residence of each Owner or in clean, well-maintained, and tightly storage containers provided the Owner; however, notwithstanding the foregoing, nothing herein contained shall prevent the compliance of the Owners with applicable public rules and regulations if public health authorities, or any other public agency shall require a specific method of garbage disposal.

(h) No fences shall be permitted on the Lots other than fences constructed or installed pursuant to the Declarant's general plan of development.

(i) No immoral, improper, or unlawful use shall be made of the Properties, or any part thereof; and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulation of all governmental agencies having jurisdiction thereof, relating to any portion of the Properties, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Properties.

(j) No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Area or facilities or as to exterior portions of any Lot(s) except at the direction of or with the express written consent of the Declarant or the Association.

(k) No noxious or offensive activity shall be carried on upon the Properties or any dwelling thereon, nor shall anything be done thereon or therein which may be or may become a nuisance or annoyance to any residents at the Properties. Notwithstanding the foregoing, construction on the Properties shall not be deemed a nuisance or annoyance.

(l) The Association shall have those easements and access to Lots as are described in this Declaration.

(m) The Association has the power, right, and authority to require compliance with rules and regulations as established pursuant to this Declaration.

(n) All other restrictions shall be as contained in this Declaration, as it may be amended from time to time, and in the Association's Articles of Incorporation.

ARTICLE IX

EASEMENTS

Section 1. Walks, Drives, Parking Areas, Utilities, Etc.

All of the Properties, including Lots and Common Area shall be subject to such easements for installation and maintenance of walkways, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, cable television lines, and other public utilities as shall be established prior to subjecting the Properties to this Declaration by the Declarant or its predecessors in title; and the Association hereby has the power and authority to reserve, grant, and establish in, over, under, upon, and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Properties. Within any such easements above mentioned, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation of sewer disposal facilities and utilities, which may change the direction of flow or drainage channels in easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Association and its agents and contractors hereby have the continuing right and easement to maintain all sewer and water lines located on the Properties, including the right to go into homes located on the Lots and disturb the structures and floors thereof in order to maintain those lines located within or under said homes; the Association and its agents and contractors hereby have the continuing right and easement to go onto the Lots and Common Area without interference of any Owner or any Owner's property; and the Association and its agents and contractors hereby have the continuing right and easement in, on, over, under, and across the Properties for the Purpose of repairing, maintaining, and reconstructing the Common Area an Amenities, and for access to Lots and the homes located thereon in the event of emergencies so as to prevent damage to said Lot or other Lots. If ingress or egress to any Owner's residence is through the Common Area, any conveyance or encumbrance of such Common Area shall be subject to said ingress and egress easement of said Owner(s).

Section 2. Encroachments. All Lots and the Common Area shall be subject to easements for the encroachment of initial

improvements constructed on adjacent Lots by the Declarant or its grantee general contractor to the extent that such initial improvements actually encroach, including, without limitations, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, driveways, bay windows, steps and walls. If any encroachment shall occur subsequent to subjecting the Properties to this Declaration as a result of settling or shifting or 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 and/or Declarant's agent or grantee general contractor 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, and/or Declarant's agent or grantee general contractor, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 3. Easement for Declarant and Its Grantee General Contractors. The Declarant, its successors and assigns, hereby reserves, and Declarant, its successors and assigns, and its grantee and general contractors, shall have temporary easements for themselves, their agents, their independent contractors, and their employees over the Common Area and Lots for the purpose of constructing improvements, the Amenities, and the initial dwellings thereon, including completing the development of the Properties as approved by the City of Raleigh and warranty work related thereto, and selling the Lots and homes thereon.

Section 4. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. If any dwelling is located closer than five (5) feet to a Lot line, the Owner thereof shall have a perpetual access easement over the Lot adjoining said Lot line to the extent reasonably necessary to perform repair maintenance, or reconstruction shall be done expeditiously and, upon completion of the work the Owner shall restore said adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 5. Easement for Governmental Agencies. An easement is hereby established over the Properties for the benefit of applicable governmental agencies for the setting, removing, and reading of water meters; maintaining and replacing water, sewer, facilities; fire fighting; law enforcement; garbage collection; and the delivering of mail.

Section 6. Reservation of Right to Grant Utility Easements over Lots. The Declarant hereby reserves the power and right to grant easements to utility companies over any and every Lot for

installation, operation, maintenance, and other purposes of utilities and utility companies.

ARTICLE X

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Amendments. Except as to amendments pursuant to Article XI, Section 4(b), the prior written approval of each institutional holder of a first mortgage or deed of trust on any Lot(s) will be required for any material amendment to this Declaration or to the Bylaws of the Association.

Section 2. Professional Management. Professional management of the Association is selected by Declarant for the period during which Declarant maintains voting control of the Association. Whenever Declarant does not maintain said voting control, professional management of the Association shall be continued by the Owners. Self-management of the Association by the Owners is allowed only with the prior written consent of each institutional holder of a first mortgage or deed of trust on any Lot or property within TRAILWOOD HILLS.

Section 3. Inspection and Notice. Upon written request, any Owner and institutional holder of a first lien on a Lot will be entitled to:

(a) inspect the books and records of the Association during normal business hours; and

(b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year; and

(c) written notice of all meetings of the Association and be permitted to designate a representative to attend such meetings; and

(d) written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(e) written notice of any proposed action that requires the consent of a specified percentage of mortgage or deed of trust holders; and

(f) 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 or deed of trust.

Section 4. Condemnation or Default.

(a) If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional holder of any first mortgage or deed of trust on a Lot will be entitled to timely written notice of any such proceeding or proposed acquisition.

(b) The holder of a first mortgage or deed of trust on any Lot shall be given prompt notice of any default in the Lot mortgagor's obligations hereunder not cured within thirty (30) days of said default, provided that the holder shall have given notice to the Association that it is a holder as to the Lot of such mortgage or deed of trust and shall have requested the notice of default as herein set forth.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association and any Owner shall have the right to enforce, by any proceeding at law or in equity, all of the restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the 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 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.

Section 3. Binding Effect. The covenants, conditions and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, each Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years unless the Owners of at least seventy-five (75%) percent of the Lots execute an amendment terminating all or any portion of said covenants, conditions, and restrictions, in which event the covenants, conditions, and restrictions so terminated shall, upon compliance with Section 4 of this Article XI, be null and void.

Section 4.

(a) Amendment by Owners and Declarant, and by Board of Directors. By a majority vote of the Board of Directors, the Board

of Directors may amend this Declaration to correct any obvious error or inconsistency in drafting, typing, or reproduction without action or consent of the Owners, and such amendment shall be certified as an official act of the Board of Directors and recorded in the Wake County Registry. For purposes of this Section, additions to the Properties as provided in Article II, Section 2 and 3 of this Declaration shall not be deemed an amendment.

(b) Amendment by Declarant. Notwithstanding any provision in this Declaration to the contrary, the Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of law, the City of Raleigh, or any governmental agency having legal jurisdiction over the Properties or to qualify the Properties or any Lots and any other properties and improvements for loans made by, guaranteed by, sponsored by, or insured by 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 of the Properties, any Lot(s), or other property and improvements, or mortgage or deed of trust interests therein, as well as any other law or regulation relating to the control of the Properties, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety, and general welfare. A letter from an official of any such corporation or agency, including without limitation, the Veterans' Administration ("VA"), U.S. Department of Housing and Urban Development ("HUD"), the Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal National Mortgage Association, the City of Raleigh, or any agency of the State of North Carolina requiring an amendment as a condition of approval, or suggesting an amendment, shall be sufficient evidence of the requirement of such amendment by the VA, HUD, the City of Raleigh, and/or such corporation or agency.

(c) Procedure for Certification and Recordation of Amendment by Owners. Any instrument amending this Declaration (other than an amendment by the Board of Directors to correct an error or inconsistency of drafting typing or reproduction) shall be delivered, following execution by the assenting Owners, to the Board of Directors. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(1) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots as provided in Section 3 or 4(a) of this Article. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined);

(2) Attach to the amendment a certification as to its validity, which certification shall be executed by the 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

By authority of its Board of Directors, TRAILWOOD HILLS HOMEOWNERS ASSOCIATION hereby certifies that the foregoing instrument has been duly executed by the Owners of \_\_\_\_\_ percent of the Lots of \_\_\_\_\_ and is therefore a valid amendment to the existing covenants, conditions and restrictions of TRAILWOOD HILLS.

This the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

TRAILWOOD HILLS HOMEOWNERS ASSOCIATION

By: \_\_\_\_\_  
\_\_\_\_\_ President

ATTEST:  
  
\_\_\_\_\_  
Secretary

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

(d) Effective Date of Amendments. All amendments shall be effective from the date of recordation in the Wake County Registry. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors and recorded as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all Lots.

(e) Raleigh City Attorney's Consent to Amendments. No amendment to this Declaration shall be effective without the consent of the Raleigh City Attorney or his deputy, provided, however, if the Raleigh City Attorney fails to approve or disapprove a proposed amendment within thirty (30) days after submission for consent, the proposed amendment(s) so submitted shall be deemed consented to by the Raleigh City Attorney.

Section 5. Gender. All masculine, feminine, and neuter references as used in this Declaration shall include all other genders as context requires.

Section 6. Conflicts. In the event of any irreconcilable conflict between this Declaration and the Bylaws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the Bylaws of the Association and the Articles of Incorporation of the Association, the provisions of the Articles of Incorporation shall control.

Section 7. Exchange of Common Area for Other Portions of the Properties. Notwithstanding any provision herein to the contrary, it is expressly provided that, subject to the consent of the City of Raleigh Planning Director, the Association may convey to the Declarant, as well as any other Member, in exchange for other portions of the Properties conveyed by the Declarant or other Member, any portion of the Common Area theretofore conveyed to the Association as provided hereinafter.

The Association, acting through the Board of Directors, from time to time may exchange with any Member a portion of the Common Area for a portion of the real property owned by such Member within the Properties, provided that the real property acquired by the Association in the exchange:

(a) is free and clear of all encumbrances except Protective Covenants of Record, this Declaration as it may be amended from time to time, and easements for drainage, utilities, and sewers;

(b) is contiguous to other portions of the Common Area; and

(c) has approximately the same area and utility as the portion of the Common Area exchanged.

The real property so acquired by the Association shall be a part of the Common Area, and, without further act of the Association or its membership, shall be released from any provisions of this Declaration as it may be amended from time to time, except those applicable to the Common Area. The portion of the Common Area so acquired by the Member, without further action of the Association and its membership, shall cease to be Common Area and shall be subject to those provisions of this Declaration as it may be amended from time to time that were applicable to the real property conveyed to the Association by the Member.

Upon such conveyance, the area thus conveyed to the Association shall become Common Area and subject to the provisions of this Declaration as it may be amended from time to time relating to the Common Area.

Section 8. Notices to New Owners. The notice periods contained in this Declaration shall not apply to those who have been owners for less than the applicable days preceding the event

for which notice is given, but a good faith effort shall be made to give such Members as much notice as reasonably possible.

ARTICLE XII

INSURANCE

The Declarant suggests that each Owner secure and maintain in full force and effect, at such Owner's expense, one or more insurance policies insuring such Owner's Lot(s) and the improvements thereon for the full replacement value thereof against loss or damage from all hazards and risks normally covered by a standard "Extended Coverage" insurance policy, including fire, lightning, vandalism, and malicious mischief.

Each Owner, at Owner's expense, shall secure and maintain in full force and effect comprehensive personal liability insurance for damage to Persons or property of others occurring on such Owner's Lot(s) in an amount not less than the amount designated by the Association. Each Owner shall provide the Association with satisfactory evidence that such insurance as herein required is in full force and effect and that the Association will be given thirty (30) days notice prior to the expiration or cancellation of such Owner's insurance coverage for such Owner's benefit, and the cost or expense thereof shall be deemed a special assessment levied by the Association against such Owner and such Owner's Lot(s) in accordance with the other provisions of this Declaration, and such Owner covenants and agrees to pay to the Association such special assessment upon demand.

This Article XIII may be modified or amended to substitute one or more comprehensive insurance policies covering all Lots provided the approval of a majority of the Owners is obtained and approval by seventy-five (75%) percent of the Owners and holders of first deeds of trust on the Lots is obtained. Such approvals shall be in writing but need not be acknowledged and shall be attached to an amendment to this Declaration which amendment shall be executed only by the Associations and recorded in the Wake County Public Registry.

The Board of Directors shall secure and maintain in full force and effect liability insurance for damage to Persons or property of others occurring on the Common Area in an amount of not less than \$1,000,000.00.

IN WITNESS WHEREOF, the undersigned, Lineberry Associates Limited Partnership, Declarant, by virtue of the provisions of Article I, Section 11 of this Declaration, has caused this instrument to be executed and sealed on its behalf by its general partners as of the \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

~~BK6135PG0428~~

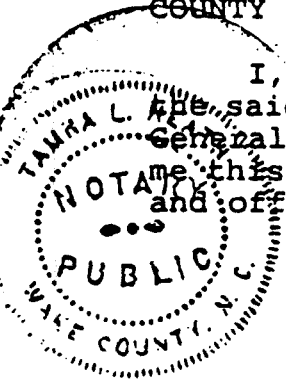
LINEBERRY ASSOCIATES (SEAL)  
LIMITED PARTNERSHIP, North  
Carolina Limited Partnership

By: *James S. J. Wang* (SEAL)  
James S. J. Wang  
General Partner

By: *John P. Berent* (SEAL)  
John P. Berent  
General Partner

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STATE OF NORTH CAROLINA

COUNTY OF WAKE



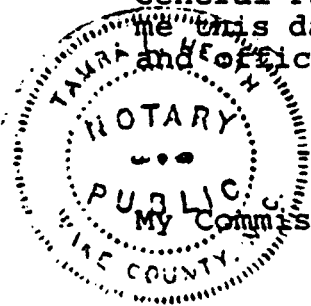
I, Tamra L. Heath, a Notary Public in and for  
the said County and State, do hereby certify that James S. J. Wang,  
General Partner of Lineberry Associates personally appeared before  
me this day and executed the foregoing instrument. Witness my hand  
and official seal, this 20<sup>th</sup> day of May, 1994.

*Tamra L. Heath*  
NOTARY PUBLIC

My Commission Expires: 8/16/98

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STATE OF NORTH CAROLINA

COUNTY OF WAKE



I, Tamra L. Heath, a Notary Public in and for  
the said County and State, do hereby certify that John P. Berent,  
General Partner of Lineberry Associates personally appeared before  
me this day and executed the foregoing instrument. Witness my hand  
and official seal, this 20<sup>th</sup> day of May, 1994.

*Tamra L. Heath*  
NOTARY PUBLIC

My Commission Expires: 8/16/98

BK6436PG0146

EXHIBIT "A"

BEING all of that certain 55.26 Acre Tract of land more particularly described on that certain Plat recorded in Book of Maps 1994, Page 0173, Wake County Registry.