

TABLE OF CONTENTS

1. Site Plan

**2. Declaration of Covenants, Conditions and
Restrictions for Kirkwood Park**

**3. First Amendment to the Declaration of Covenants,
Conditions and Restrictions for Kirkwood Park**

4. 2010 Budget

BK011870PG00185

WAKE COUNTY, NC 474
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
03/22/2006 AT 15:57:01

BOOK:011870 PAGE:00185 - 00223

Prepared by and hold for: Harold E. Russell, Jr., Box #167

STATE OF NORTH CAROLINA

COUNTY OF WAKE

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR KIRKWOOD PARK**

THIS DECLARATION, made on the date hereinafter set forth by FGW, LLC, a North Carolina Limited Liability Corporation hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, the Declarant has purchased certain property containing 4.379 inclusive of 0.431 acres West Millbrook right of way in the City of Raleigh, Wake County, North Carolina, as the same is described on Exhibit A attached hereto and made a part hereof by reference; and

WHEREAS, Declarant desires to impose pursuant hereto, certain easements, covenants and restrictions upon all of the Properties covered by this Declaration.

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

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and conceptual intent of Kirkwood Park, for the maintenance of

BK011870PG00186

Association Common Properties and improvements thereon as described herein, and accordingly desires to subject the Property, together with such additions and/or deletions as may hereafter be made, to the covenants, restrictions, easements, affirmative obligations, charges, and liens as hereinafter set forth, (the "Declaration" as herein defined) each and all of which is hereby declared to be for the benefit of said Property and each and every owner of any and all parts thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities of Kirkwood Park to create an agency to which shall be delegated and assigned the power and authority of owning, maintaining and administering the Association Common Properties as defined herein, administering and enforcing the covenants and restrictions governing said Association Common Properties, collecting and disbursing all assessments and charges necessary for such activities, and promoting the recreation, health, safety, and welfare of the residents;

NOW, THEREFORE, Declarant hereby declares that all of the Properties described on Exhibit A and any Additional Property 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 Properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I - DEFINITIONS

Section 1. "Amenities" shall mean the facilities and Stormwater Control Measures constructed, erected or installed on the Association Common Areas for the use, benefit and enjoyment of Members.

Section 2. "Additional Property" is defined as all real property subjected to or annexed to this Declaration subsequent to the recording of this Declaration in the Registry, either by Supplemental Declaration or by merger or consolidation, as provided herein.

Section 3. "Architectural Control Committee" shall be referred to herein as "ACC".

Section 4. "Association" shall mean and refer to KIRKWOOD PARK OWNERS ASSOCIATION, INC. its successors and assigns.

Section 5. Association Common Property, Association Common Area, Common Space, Common Area, Common Property Drainage Easement or Open Space Preservation and Protection Area (the terms being used interchangeably herein) is defined as all real property and improvements thereon owned by the Association for the use, enjoyment and benefit of the Members, and all rights in and to all easements in or on real property together with all associated Improvements in or on such easements granted to or reserved by or on behalf of the Association (or by or on behalf of the Declarant for the later transfer or assignment to the Association) for the enjoyment or benefit of its Members, Association Common Property typically will be established by an instrument or plat recorded in the Registry and identified in such instrument as "Association Common Area", "Association Common Property", "Common Space", "Association Private Street",

BK011870PG00187

"Association Private Open Space", "Association Common Open Space", "Association Greenway", "Association Drainage Easement", "Association Common Open Space", "Association Buffer", "Association Trail", or some other similarly descriptive term. Common Property also includes all "Association Landscape Easements" and "Sign Association Easements" as defined herein. Association Common Property also includes all Limited Association Common Property, which is a sub-classification of Association Common Property.

Section 6. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 7. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for maintenance of a portion of the front and side yards of Owners, as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair, or replacement of the Association Common Areas;
- (d) Expenses declared to be Association Common Expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;
- (f) Ad valorem taxes and public assessment charges, if any, lawfully levied against Association Common Areas owed in fee;
- (g) Expenses agreed by the members to be Association Common Expenses of the Association;
- (h) Unpaid assessments resulting from the purchase of a dwelling at a foreclosure sale of a first mortgage or first deed of trust (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).
- (i) Escrow payments to the City of Raleigh pursuant to the Stormwater Escrow Protection and Access Maintenance Agreement by and among Declarant, the Association and City of Raleigh recorded in Book _____, Page _____, Wake County Registry.
- (j) Maintenance of stormwater control measures, replacement contribution payments required to be paid by the Association to the City.
- (k) Replacing of trees and vegetation within the slope easement along West Millbrook Road in accordance with Raleigh City Code Section 10-2082.12(b) and 10-2082.5.

BK011870PG00188

Section 8. "Declarant" shall mean and refer to FGW, LLC and its successors and assigns.

Section 9. "Declarant Control Period" is defined as the period of time beginning at the time of recording of this Declaration in the Registry and ending on the first to occur of the following:

- (i) 5:00 p.m. on the date that is seven (7) years following the date of recordation of this Declaration in the Registry.
- (ii) The date on which the total number of votes entitled to be cast by the Class A Members of the association equal the total number of votes entitled to be cast by the Declarant as a Class B Member (the total number of votes of either of the two classes of the membership in the Association may be increased or decreased by the annexation of Additional Property or withdrawal of portions of the property as provided herein) and in such instances Class B Membership may be reinstated; or
- (iii) The date specified by the Declarant in a written notice to the Association.

Section 10. "Dwelling" shall mean and refer to a place of residence constructed upon a Lot within the Property.

Section 11. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties on which such plot appears (provided said map has been approved by Declarant and the City of Raleigh), with the exception of the Association Common Area and Association Limited Common Areas, if any. It is recognized that Association Common Area and Association Limited Common Areas and easements may be portions of a Lot.

Section 12. "Lot in Use" shall mean and refer to any lot on which a dwelling unit has been substantially constructed and made substantially ready for occupancy as a dwelling unit. It is the intent that when a dwelling is ready for occupancy, excepting final punch list items and decorative items to be selected by a home buyer, that the dwelling be subject to payment of full Association dues. In the event of a dispute, the ruling of the ACC shall be binding. In addition to the foregoing, a Lot may become a Lot in Use by contractual agreement between the Declarant and the Owner of such lot. Any dwelling for which a certificate of occupancy has been issued will be regarded as a "Lot in Use".

Section 13. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 14. "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 15. "Property" or "Kirkwood Park" shall mean and refer to that certain real property described on Exhibit A, and such Additional Properties thereto as may hereafter be brought within the jurisdiction of the Association.

BK011870PG00189

Section 16. "Stormwater Control Measures" shall mean and refer to the retention pond and associated control systems located on Lot 14 of the Property on recorded plats of the Property, together with drainage easements all other storm drainage pipes, which serve the Property and are located outside public street rights-of-way (excluding those pipes and measures serving a single Lot).

ARTICLE II- PROPERTY AND PROPERTY RIGHTS IN THE ASSOCIATION COMMON AREAS

Section 1. Property Made Subject to Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, used, occupied, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Annexation/Removal of Property. If Declarant is the owner from time to time of any property that is contiguous to the Property ("Additional Property") which it desires to add to the scheme of this Declaration, it may do so by filing of record a Supplemental Declaration (herein so called) which shall extend the scheme of this Declaration to such Additional Property; provided, however, that such Supplemental Declaration as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration; and if a person or entity other than Declarant desires to add property to the scheme of this Declaration, such property may only be added with the assent of two thirds (2/3) of the votes of Class A and Class B members, if any. If Declarant, in the development process, deems it appropriate not to include subsequent phases in the Association, the Declarant has such right under this Declaration. It is anticipated that the Declarant will annex all the land described in Exhibit A. Declarant reserves the right to annex other land contiguous to the land subject to this Declaration. All annexations undertaken by the Declarant of Additional Property must be undertaken on or before December 31, 2010, and approved by the City of Raleigh.

Section 3. Contents of Supplemental Declaration. Each Supplemental Declaration shall set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant and the Association, acting through its Board. In no event, shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the Property or to previously added Additional Property. All Association Common Properties contained in Additional Property will be conveyed to the Association in conformity with Article II, Section 7.

BK011870PG00190

Section 4. Merger or Consolidation. Upon a merger or consolidation of the Association with another association which is a nonprofit corporation composed of owners of Additional Property, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association and shall administer the terms and provisions of this Declaration and any applicable Supplemental Declarations, if any, affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the terms and provisions of this Declaration or any Supplemental Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 5. Members' Easements of Enjoyment. Subject to the provisions of these Covenants and the rules and regulations of the Association, every member shall have a right and easement of enjoyment in and to the Association Common Properties and such easement shall be appurtenant to and shall run with the title of every lot, subject to the following restrictions set forth in Section 8 hereof.

Section 6. Delegation of Use. Any Member may delegate in accordance with the By-Laws of the Association, his right to enjoyment to the Association Common Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on such Members' Lot.

Section 7. Title to Association Common Area. The Declarant hereby covenants, for itself, its successors and assigns that it shall convey fee simple title to the Association Common Area shown on the recorded plats to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except utility, drainage easements and easements to governmental authorities. Similarly, the Declarant will convey to the Association Common Areas which are parts of the Property as those portions are annexed in the future until all Association Common Areas, as shown on plats approved by the City of Raleigh have been conveyed to the Association.

Section 8. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Association Common Properties and in aid thereof to mortgage said properties subject to the provisions of Article XI, Section 2 of this Declaration. The right to borrow money must be subordinated to the Declaration. The Association may not use easement property as security for any loan.

(b) The right of the Association to take such steps as are reasonably necessary to protect the Association Common Properties against foreclosure; and

BK011870PG00191

(c) The right of the Association to give, sell or lease all or any part of the Association Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift, sale or lease shall be effective unless authorized by the vote of four-fifths (4/5) of the members of each class of Members at a duly called meeting and unless written notice of the proposed action is sent to every Member at least twenty (20) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken and a certificate of mailing executed by the Secretary of the Association or the managing agent and such certificate shall be annexed to any instrument affecting the Association Common Properties, prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

(d) That shown on the recorded plat(s) for Kirkwood Park certain areas are designated as "Protective Yard". The landscaping within all such designated areas are required by the City of Raleigh, and the removal of the removal of this landscaping without the prior approval of the City of Raleigh is a violation potentially subjecting each Lot violator to significant daily civil penalties and other enforcement actions. That within these natural protection years, it shall be the responsibility of the Association to replant per City of Raleigh Code Section 10-2082.12(b) and 10-2082.5. That within the permanently protected undisturbed open space areas, no land-disturbing activity, placement of impervious surfaces, removal of vegetation, encroachment, construction, or erection of any structure shall occur except in accordance with a water course buffer first being issued by the City of Raleigh.

Section 9. FHA, VA, FNMA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration, the Veterans Administration or the Federal National Mortgage Association: Annexation of Additional Properties, (excepting those properties described in Exhibit A) mergers or consolidations, mortgaging of Association Common Properties, dedication of Association Common Properties, and dissolution and amendment of this Declaration.

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 covenants of record and assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules as to proof of ownership of a Lot.

ARTICLE IV - VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership and fractional voting shall not be permitted.

BK011870PG00192

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.

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 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) At 5:00P.M. on the date that is seven (7) years following the date of recordation of this Declaration in the Wake County Registry.

(c) The date specified by the Declarant in a written notice to the Association.

Section 2. Voting Right Suspension. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and for any period during which any assessment of a member remains unpaid according to the provisions of Article IV, Section 8 of the By-Laws.

ARTICLE V - PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Association Common Area (including access, ingress, and egress to and from public streets and walkways) and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) The right of the Association, in accordance with its Articles and Bylaws and with the assent of members entitled to cast four-fifths (4/5) of the votes of the entire Class A membership and four-fifths (4/5) of the entire Class B membership, if any, to borrow money for the purpose of improving the Association Common Area and facilities and in aid thereof to mortgage said property unless prohibited by law, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(b) Exchange of open space common areas. Open space common areas shall not be subsequently subdivided or conveyed by the homeowners association. However, nothing herein

BK011870PG00193

shall prevent the mortgaging and hypothecating of open space common areas; provided, the rights of the mortgagee are subordinated to the rights of the residential site owners and the homeowners association. Furthermore nothing herein shall prevent the exchanging of common areas for other properties when all of the following are met:

- (i) Written notice of the exchange is given to each member of the association except in cases where the exchange is done to eliminate an encroachment;
- (ii) After the notice is given, if required, the association approves the exchange;
- (iii) The exchanged properties and other considerations are of like value and utility;
- (iv) The acreage and configuration of the remaining open space (including real property to be received by the association in such exchange) equals or exceeds the requirements of this Code; and
- (v) The exchange is approved by the Planning Director of the City.

Section 2. Restricted Parking Rights. No boats, trailers, campers, motor homes, limousines, trucks, tractors or similar personal property owned by a Member, family members or tenants shall be parked within the right of way of any public or private street, nor shall any of these be parked on the Properties except in an enclosed garage, or in areas, if any, designated by the Association. Members their family members and tenants shall keep their garage doors closed at all times excepting ingress and egress into and out of said garage. The Association shall have the right to adopt appropriate rules for the temporary parking of these items on the Properties, and to establish fines for violators.

Section 3. Trash cans and other waste containers shall be stored in garages and shall only be visible the day before and the day of garbage pickup by the City of Raleigh. The Association shall have the right, but not the duty, to adopt appropriate rules for the screening of trash containers not stored in garages, if any.

Section 4. Garages may not be enclosed for living space and shall remain as required parking.

ARTICLE VI- COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties for which a building permit has been issued, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- 1. Annual assessments or charges as they relate to the purposes herein recited for the Kirkwood Park , which assessments or charges as to the Declarant for lots which no certificate of

BK011870PG00194

occupancy has been issued shall be in the amount of twenty-five percent (25%) of that amount due from an Owner, and

2. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments: The assessments levied by the association shall be used exclusively for the purpose of promoting the beautification of the Property, the recreation, health, safety and welfare of the residents in the Property, for the improvement and maintenance of the Association Common Area, and, in particular, for the payment of governmental water and sewage disposal charges attributable to the Association Common Areas, as well as other like expenses, including but not limited to, operation, maintenance and repair of Stormwater Control Measures in accordance with Exhibit B attached hereto and incorporated herein by reference as if fully set forth, and for such other purposes permitted by the Planned Community Act Chapter 47F of the General Statutes of North Carolina. Assessments shall include, but not limited to, the payment of taxes, liability insurance and all assessments for the public improvements of the Association Common Area, and easements appurtenant thereto, the enforcement of these covenants and the rules of the Association and, in particular, for the improvement and maintenance of the Property, private streets and alleys, drives and parking areas, services and facilities devoted to this purpose and related to the use and enjoyment of the Association Common Area. The Association shall be required to maintain an adequate reserve fund for the stormwater periodic maintenance, repair, and replacement of improvements to the Association Common Area out of the assessment levied. A lawful purpose of the assessments shall be the funding of the escrow agreement entered into by FGW, LLC and Kirkwood Park Owners Association, Inc. with the City of Raleigh for the operation and maintenance of the stormwater facilities referred to therein and in Exhibit B attached hereto. The stormwater pond located on the Properties and being a portion of Association Commons Area, shall have located therein a floating fountain and sand filter system that extends beyond the boundaries of the stormwater pond. The maintenance of the stormwater pond, the floating fountain and the filter system shall be a Common Expense of the Association. The stormwater pond located on the Properties and being a portion of Association Common Area, shall have located therein a floating fountain, and a sand filter system that extends beyond the boundaries of the stormwater pond. The maintenance of the stormwater pond, the floating fountain and the filter system shall be a Common Expense of the Association.

Section 3. Maintenance of Yards. In addition to the maintenance of the Association Common Areas, the Association shall provide maintenance to the front yards of each Dwelling and to the side yards of each Dwelling to the line of the rear of each Dwelling (exclusive of garage) extends to each side line of that Lot. Such maintenance shall include mowing, replacement of dead trees and shrubs, seeding, sodding and strawing where necessary. Each Owner shall be responsible for watering his lawn and in the areas maintained by the Association. In the event any Owner, after

BK011870PG00195

approval of the ACC, provides his own maintenance service to the areas maintained by the Association, no credit shall be due for payment of Association dues.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

Section 4. Maximum Annual Assessments

The maximum annual assessment for the calendar year beginning January 1, 2006 and for successive calendar years thereafter shall be established by the Board of Directors subject to this Article VI. Within thirty (30) days after adoption of the yearly budget, the Board shall provide to all Owners a summary of the budget and a notice of the meeting to consider ratification of the budget. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at such meeting, and the budget is ratified unless at that meeting the Owners entitled to exercise fifty-one percent (51%) of the votes in the Association reject the budget. In no event may the Board or membership of the Association decrease the amount of the annual assessment for any calendar year from the amount of the annual assessment for the previous calendar year.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment 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 thirty (30) days nor more than sixty (60) days in advance of the meeting; a quorum as set forth in Section 5 shall be required. The amount of the proposed assessment need not be stated.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and Lots in Use, on a per Lot and per Lot in Use basis, and may be collected on either a monthly, quarterly, semi-annual or annual basis.

Section 7. Quorum for any Action authorized under Sections 4 or 5, when required. At the first meeting called, as provided in Section 4 or 5 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 4 or 5, 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.

BK011870PG00196

Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided herein for Lots in Use may be paid in installments and the payment of such shall commence as to each Lot in Use on the first day of the first month following the date on which the first lot has become a Lot in Use. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association, upon demand at any time, shall furnish a certificate in writing signed by an officer of the Association or by its management company, setting forth whether the assessments on a specified lot have been paid. A reasonable charge may be made for providing this information. A properly executed certificate of the Association or its Management Company as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Non-Payment of Assessment Remedies of the Association: Any assessments which are not paid within (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of the delinquency at the rate of eighteen percent (18%) per annum, or the highest rate allowed by law, shall be subject to late fees as approved by the Board of Directors, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or to foreclosure the lien against such Owner's Lot. Interest, late fees, costs, and reasonable attorney fees of any such action shall be added to the amount of such assessment. Each Owner, by acceptance of a deed to a Lot, hereby expressly vests in the Association, its agents or assigns, the right and power to bring all actions against such Owner personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust on real property and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien under Article 2A, Chapter 45 of the General Statutes. The lien provided for in this action shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid at foreclosure and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Association Common Area or abandonment of his Lot.

Section 10. Special Individual Assessments. The Board may impose fines against any Lot and such fines shall be treated as a Special Assessment otherwise due to the Association, and as such will be a lien against the Owner's Residential Unit or Lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fines. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner(s) shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such Owner.

BK011870PG00197

Section 11. Subordination of the Lien To Mortgages. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage or first deed of trust on such Lot. The transfer of any lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessment.

Section 13. Omission of Assessments. The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

Section 14. Responsibility for Maintenance of Private Streets and Alleys. The maintenance responsibility of the private streets and alleys as shown on all recorded plats made subject to the Declaration shall rest with the Association pursuant to the provisions of the City of Raleigh Code, which Code provided substantially in part that in no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police, or other public service to the property and/or occupants when there is a blocking of access routes, or any other factor within the control of the developer, the Association, or occupants. In no case shall the City or State be responsible for maintaining any private street or alley.

Section 15. Two Months of Assessments to be Collected at Closing: At the closing of each sale of a Lot with a Residential Unit completed thereon a sum equivalent to two months assessments shall be collected from the purchaser and such sum shall be contributed to the general operating fund of the Association to be used in the manner specified for annual assessments. This initial contribution shall not be considered an advance against assessments to become due.

ARTICLE VII - ARCHITECTURAL CONTROL

Section 1. The Architectural Control Committee ("ACC") shall consist of three (3) or more persons designated by the Declarant; however, one of said Members shall be an Owner. At such time as Declarant no longer owns any real property within the Properties (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), the Declarant shall assign to the Association the rights, powers, duties and obligations of the ACC, whereupon the Board shall appoint three (3) or more persons as the members of the ACC. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any real property subject to this Declaration or subject to annexation to this Declaration.

BK011870PG00198

Except for the initial dwelling structure constructed on a Lot by Declarant in accordance with Declarant's general plan of development and unity of development guidelines, which initial dwelling structure shall be exempt from the following approval process, so long as the plans and specifications therefor are in strict conformity with those previously approved by the City of Raleigh, the Federal National Mortgage Association, Veterans Administration or Federal Housing Administration, as the case may be, no building, flags, sign, except builder's signage, fence, outside lighting, hedge, wall, walk, antenna, clothesline or other structure or planting shall be constructed, erected or planted until their plans and specifications showing the nature, kind, shape, height, elevation, materials, floor plans, color scheme, and location with respect to the topography and finished ground elevation shall have been submitted to and approved in writing by the ACC. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable nor desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the ACC shall consider the suitability of the proposed building, improvements, structure or landscaping that is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on an adjacent or neighboring property and in conformity with the approved Unity of Development Guidelines on file with the City of Raleigh. In the event the ACC shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form within forty-five (45) days after written request is received by the ACC for final approval or disapproval, such plans and specifications shall be deemed approved.

There is specifically reserved unto the ACC, the right of entry and inspection upon any Lot for the purpose of determination by the ACC whether there exists any construction of any improvement which violates the terms of any approval by the ACC or the terms of this Declaration or of any other covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The ACC and the Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvements, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses and reasonable attorney's fees in connection therewith.

The Association, Declarant, ACC or any officer, employee, agent, director or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant or ACC to recover any such damages.

Section 2. If, in the event information submitted to the ACC is, in its opinion, incomplete or insufficient in any manner, it may request and require the submission of additional or supplemental information.

Section 3. Unless specifically excepted by the ACC, all improvements for which approval of the ACC is required under this Declaration shall be completed within a reasonable time from the

BK011870PG00199

date of commencement of said improvements or within the time set by ACC in the event that the approval is so conditioned.

Section 4. The ACC shall in all cases have the right to determine and designate building set back lines necessary to conform to the general plan of the Kirkwood Park project, in order to preserve the integrity of the Properties and the Master Plan. In this respect the ACC's judgement and determination shall be final and binding.

Section 5. A majority of the ACC may take any action of the committee and may designate a representative to act for it. In the event of death, disability or resignation of any member of the ACC, the Board of Directors shall designate a successor.

Section 6. The ACC may adopt additional guidelines along with rules and regulations as it deems necessary to carry out its functions and purposes hereunder, provided all such rules and regulations shall be approved by the Board of Directors and made a part of this Association's Book of Resolutions.

Section 7. The Association may impose reasonable fees and charges upon Owners applying for Architectural Control approval to enable it to carry out its functions.

Section 8. In an instance where a structure has been erected, or the construction thereof is substantially advanced, in such manner that the same violates the restrictions contained in this Declaration or any other covenants which the ACC has the power to enforce, or in such manner that the same encroaches on any easement area or setback line, the ACC reserves the right, but not the obligation, to release the property from the restriction which it violated and to grant an exception to permit the encroachment by the structure over the setback line or on the easement area, so long as the ACC, in the exercise of its sole discretion, determines that the release or exception will not materially and adversely affect the health, safety and appearance of the Properties.

The ACC has the right, but not the obligation, to grant waivers for minor deviations and infractions of this Declaration. The granting of any waiver for any portion of the Properties may be given or withheld in the ACC's sole discretion and a prior grant of a similar waiver shall not impose upon the ACC the duty to grant new or additional requests for such waivers.

Any exceptions granted by the ACC shall not relieve the property owner from the responsibility from obtaining the consent of easement holders and local governmental authorities.

ARTICLE VIII- STORMWATER FACILITIES

Section 1. The Stormwater Operation and Maintenance Agreement, Stormwater Facilities Operations and Maintenance Manual, and the Stormwater Facilities Budget are attached hereto by reference as Exhibit B, and incorporated herein as if fully set forth.

Section 2. The failure to maintain the Stormwater Control Measures is a violation of the Raleigh City Code, potentially subjection each Lot owner to significant daily civil penalties and

BK011870PG00200

other encroachment actions. Stormwater Control Measures shall be maintained by the Association in strict compliance with the Stormwater Operations and Maintenance Manual and Budget which Manual is attached hereto as an Exhibit.

Section 3. The City of Raleigh shall have the right to levy assessments as an assignee of the Association for monies owed to the City pursuant to the Stormwater Replacement Agreement and to file a lien for such unpaid assessments in accordance with N.C.G.S. 47F-3-116 and to foreclose the claim of lien in like manner as a mortgage on real estate under a power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina.

Section 4. That no amendment to this Declaration or any other legal documents affecting stormwater control measures or the replacement fund shall be made without the prior written consent of the Raleigh City Attorney.

ARTICLE IX - USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and the Common Area. 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 Dwelling, and the Common Area facilities shall be for the following uses and subject to the following restrictions and, in addition, to those set forth in the Bylaws:

(a) All dwellings and the Common Area and facilities shall be used for residential and related common purposes, except that the Declarant may use one or more dwellings for offices and/or models for sales purposes consistent with the City of Raleigh Code.

(b) No waste shall be committed on any portion of the Association Common Area and facilities.

(c) No immoral, improper, offensive, or unlawful use shall be made of the Property, 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, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner or of the Association, whichever shall have the obligation to maintain or repair such portions of the Property.

(d) No industry, business, trade, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained or permitted on any part of the Property, except that the Declarant or its agents may use any unsold buildings for sales or display purposes. The purpose of this prohibition is to maintain the residential nature of the neighborhood.

BK011870PG00201

(e) No owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard or identifying name or number upon any dwelling or any portion of the Association Common Area and facilities, except as allowed by the Association pursuant to its Bylaws or as required by the ordinances of the City of Raleigh; provided, however, that the Declarant may authorize "For Sale" or "For Rent" signs the size and shape of which is commonly displayed by real estate firms in Raleigh on any unsold or unoccupied Dwellings in suitable places on the Association Common Area; provided, however, that during the development of the Property and the marketing thereof, the Declarant or its agents may maintain a sales office and may erect or display such signs as the Declarant deems appropriate as aids to such development marketing, provided that such signs do not violate any applicable laws.

(f) No person shall undertake, cause or allow any alteration or construction in or upon any portions of the Association Common Area and facilities except at the direction or with the express written consent of the Association and the City of Raleigh.

(g) The Association Common Area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the dwelling, subject to any rules and regulations that may be adopted by the Association pursuant to its Bylaws.

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

Section 4. Lease Restrictions. All of the Properties shall be owner occupied and no rentals shall be permitted.

Section 5. No garage area may be modified or used for living space; all garages shall remain as required parking.

Section 6. That restrictive covenants requiring that the homes be brick front and sides that the maximum building heights not exceed 35 feet, as measured by Section 10-2076(b) of the Raleigh City Code, and that the minimum floor area gross of the home not be less than 3,000 square feet. (ADDED PURSUANT TO OFFICIAL NOTICE FROM THE CITY OF RALEIGH 8/23/05, FILE NUMBER S-18-05, PAGE 10, NUMBER 22).

Section 7. The primary building material of all dwellings shall be brick.

ARTICLE X - EASEMENTS

Section 1. Walks, Drives, Parking Areas, and Utilities. All of the Property, including Lots and Association Common Area, shall be subject to easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage, gas lines, telephone and electric power lines, cable television lines, and other public utilities as shall be established prior to or subsequent to subjecting the Property to this Declaration by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Association Common

BK011870PG00202

Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 2. Easement for Government Agencies. An easement is hereby established over the Association Common Area 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 drainage facilities, electrical, telephone, gas, cable television lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 3. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his Dwelling. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable. Within such easements, no plantings of shrubs and trees or the erection of structures, including fences, shall be allowed unless approved by the ACC.

Section 4. Cross Access Easement. Vehicular and pedestrian access easements over the private streets and alleys has been granted to the owners, their family members, tenants and guests of the Property described in Deed Book 1159, Page 83, and Deed Book 7833, Page 813.

Section 5. Transit Easement. A transit easement has been granted to the City of Raleigh in the Association Common Area along Millbrook Road.

ARTICLE XI - RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders.

"Institutional Lender" or "Institutional Lenders" as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, other reputable mortgage lenders and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any first mortgage upon any Lot, or shall be the owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

(a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, prepared by an independent Certified Public Accountant designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the

BK011870PG00203

amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

(c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

(d) To inspect the books and records of the Association during normal business hours.

(e) To be given notice by the Association of any substantial damage to any part of the Association Common Area.

(f) To be given notice by the Association if any portion of the Association Common Area is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender desires the benefits of the provisions of this section, such lender shall serve written notice of such fact upon the Association by registered mail or certified mail addressed to the Association and sent to its address stated herein identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XII - GENERAL PROVISIONS

Section 1. Providing for Traffic Flow. It shall be the responsibility of the Association to maintain uninterrupted traffic flow along all private streets and alleys within the Properties. If it is necessary for "no parking" signs to be erected in order to accomplish this, this shall be done at the expense of the Association as a common expense. Vehicles parked in designated no parking areas may be towed at the expense of the owner of the vehicle. The owners of vehicles violating no parking restrictions shall pay a fine of seventy-five dollars per day for the first fine and one hundred and twenty-five dollars per day for subsequent violations. Fines shall be assessment secured by liens as set forth in Article VI. No fine shall be imposed without notice of the charge and opportunity to be heard before the executive board of the Association.

In no case shall the municipality or other agency which provides emergency or regular fire, police or other public service for the Properties, be responsible for failing to provide any such service to the Properties or any of its occupants when such failure is due to the lack of access to such areas or any other factor within the control of the developer, Association, or occupants.

Section 2. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association

BK011870PG00204

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 3. Insurance. The Board of Directors shall procure and maintain adequate liability and hazard insurance on Property owned by the Association, and also Directors and Officers coverage. Liability insurance shall be procured and maintained in the minimum amount of \$1,000,000.00.

Section 4. 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.

Section 5. Exchange of Association Common Area. The Association, acting through its Board, from time to time may exchange with the Declarant or any member a portion of the Common Area for a portion of the real property owned by such member within Kirkwood Park provided that the real property acquired by the Association in exchange: (a) is free and clear of all encumbrances except the Declaration, and easements for drainage, utilities and sewers; (b) is contiguous to other portions of the Association Common Area; (c) has approximately the same area and utility as the portion of the Association Common Area exchanged; and (d) has been approved by the City of Raleigh Planning Department to assure that the provisions of the City of Raleigh Code is not being violated. The real property so acquired by the Association shall be a part of the Association Common Area, and without further act of the Association or membership, shall be released from any provisions of the Declaration except those applicable to the Association Common Area. The portion of the Association Common Area so acquired by Declarant or a member, without further act of the Association or membership, shall cease to be Association Common Area and shall be subject to those provisions of the Declaration that were applicable to the real property conveyed to the Association by the member.

Section 6. FHA/VA Approval. Notwithstanding any provision 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, Veterans Administration, Fannie Mae or other similar agencies (but not otherwise), the following actions will require the prior approval of Federal Housing Administration, Veterans Administration, Fannie Mae or other similar agencies: Annexation of additional properties, dedication of Association Common Areas, exchange of Association Common Area for other portions of the Properties, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 7. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots; provided, however, that the Board of Directors may amend this declaration, without the consent of the Owners, to correct any obvious error or inconsistency in drafting, typing or reproduction. All

BK011870PG00205

amendments shall be certified as an official act of the Association and shall forthwith be recorded in the Wake County Registry. All amendments shall become effective upon recordation.

Section 8. If any amendment to these covenants, conditions and restrictions is executed, each amendment shall be delivered to the Board of Directors of this 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 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 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 KIRKWOOD PARK

By authority of its Board of Directors, Kirkwood Park Owners Association, Inc., hereby certifies that the foregoing instrument has been executed by the owners of _____ percent of the Lots of Kirkwood Park is, therefore, a valid amendment to the existing Covenants, Conditions and Restrictions of Kirkwood Park.

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the 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 this Association. When any 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 the Properties.

Notwithstanding the foregoing, no amendment shall be effective unless approved by the City of Raleigh (so long as this is required by the Raleigh City Code).

Section 9. Amendment of Declaration without approval of Owners. 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 any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental 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 such lots and improvements, or mortgage interest therein, as well as any other law or regulation relating to the control of the Property,

BK011870PG00206

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, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

Stormwater Control Measures and easements appurtenant thereto cannot be changed or modified by amendment except with City of Raleigh prior approval.

No amendment made pursuant to this Section shall be effective until duly recorded in the Register of Deeds of Wake County.

Section 10. Amendment to achieve tax-exempt status. The Declarant, for so long as it shall retain control of the Association, and thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 11. Stormwater Control Measures. The Raleigh City Code requires stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the Properties be reduced. To comply with the City Code, Stormwater Control Measures will be installed and maintained. Failure to maintain the Stormwater Control Measures is a violation of the Raleigh City Code potentially subjecting each Owner to significant daily civil penalties and other enforcement actions. Consequently, on behalf of each Owner, the Association shall maintain, repair, replace and reconstruct the Stormwater Control Measures so that all times the Stormwater Control Measures shall perform as designed and at all times shall comply with all applicable laws, ordinances, regulations, rules, and directives of governmental authorities. In addition, the Association shall perform maintenance of the Stormwater Control Measures as set forth on Exhibit B entitled "Kirkwood Park Subdivision, Raleigh, North Carolina Stormwater Operations and Maintenance Manual and Budget" prepared by FGW, L.L.C. dated October 12, 2005. In the event that the Association neglects or fails to maintain, repair, replace, or reconstruct the Stormwater control Measures, each Owner shall be jointly and severally responsible for such tasks, as required by the City of Raleigh. In the event that the Owner thereafter performs such maintenance, repair, replacement, or reconstruction, said Owner shall be entitled to reimbursement from the Association for the cost thereof, or, if the Association should fail to reimburse the Owner, said Owner shall be entitled to a pro-rata contribution for such costs from the Owner of every other Lot.

Section 12. Open Space Preservation and Protection Areas. Some of the Association Common Property is designated as Open Space Preservation Association Common Property. No land-disturbing activity, development, removal of trees except unsafe or dead trees, placement of impervious surfaces encroachments nor construction shall occur within any Open Space Preservation and Protection Area without first obtaining a watercourse buffer permit from the City of Raleigh.

BK011870PG00207

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument this the 30th day of JAN, 2006.

FGW, LLC

By: [Signature]

(SEAL)

Member/Manager

NORTH CAROLINA

Wake COUNTY

I, Mariellen DeLellis, a Notary Public of the County and State aforesaid, do hereby certify that Ronald C. Fowler, Member/Manager of FGW, L.L.C., a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 30th day of January, 2006.

[Signature]
Notary Public

My Commission Expires: 4-8-2009



BK011870PG00208

EXHIBIT A

BEGINNING at a new iron pipe located in the northern edge of the right of way of West Millbrook Road, said pipe being located South 77° 02' 12" East 536.73 feet from the intersection of the centerlines of Hedgemoor Drive and Millbrook Road and said pipe being a corner with the property of the now or formerly Mayine Eliason designated as Lot 10 of the O. W. Hillstrom Subdivision shown on plat of survey recorded in Book of Maps 1952, Page 18, Wake County Registry and running thence with the property line of said Mayine Eliason property North 10° 35' 00" West 412.25 feet to an existing iron pipe located in the property line of Lot 9, Kings Mill Subdivision as shown on plat of survey recorded in Book of Maps 1982, Page 948, Wake County Registry; thence with the property lines of Lots 9 and 10 of said Kings Mill Subdivision North 45° 00' 00" East (passing through an existing iron pipe at 150.95 feet) 223.65 feet to an existing iron pipe, a corner with Lot 11 of said Kings Mill Subdivision; thence with the property line of said Lot 11 Kings Mill Subdivision North 80° 36' 15" East 131.05 feet to an existing iron pipe, a corner with the property of the now or formerly Robert Jacobs; thence with the property line of said Robert Jacobs property three calls as follows: (1) South 10° 29' 57" East 190.91 feet to an existing iron pipe; (2) South 10° 40' 44" East 185.92 feet to an existing iron pipe; and (3) South 10° 34' 33" East 246.20 feet to a new iron pipe located in the northern edge of the right of way of West Millbrook Road; thence extending into the right of way of West Millbrook Road seven (7) calls as follows: (1) South 12° 26' 12" East 24.07 feet to a point; (2) South 09° 20' 28" East 35.91 feet to a point; (3) North 86° 10' 00" West 62.50 feet to a point; (4) North 84° 03' 35" West 136.08 feet to a point; (5) North 84° 03' 35" West 129.89 feet to a point; (6) North 10° 35' 00" West 33.56 feet to a point; and (7) North 10° 35' 00" West 23.29 feet to the point and place of BEGINNING, containing 4.379 acres (inclusive of 0.431 acres West Millbrook Road right of way) and designated as Lots 8 and 9 on plat survey entitled "Survey of Lots 8 & 9 Hillstrom Subdivision for FGW, LLC, a North Carolina Limited Liability Company, Raleigh, N.C." dated October 31, 2001, prepared by Albert E. Prince, Professional Land Surveyor, of Al Prince & Associates, P.A. and being all of Lots 8 and 9 of the O. W. Hillstrom Subdivision as shown on plat of survey recorded in Book of Maps 1952, Page 18, Wake County Registry.

BK011870PG00209

EXHIBIT B

**KIRKWOOD PARK SUBDIVISION
RALEIGH, NORTH CAROLINA**

**STORMWATER
OPERATIONS
AND
MAINTENANCE MANUAL
AND BUDGET**

Prepared for:

**FGW, LLC
3001 WESTON PARKWAY
CARY, NORTH CAROLINA 27513**

Prepared by:

**KIMLEY-HORN AND ASSOCIATES, INC.
P. O. BOX 33068
RALEIGH, NORTH CAROLINA 27636**

**October 12, 2005
012232003**

BK011870PG00210

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Rouse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

BK011870PG00211

Introduction

This manual establishes procedures and guidelines for the operation and maintenance of the Kirkwood Park Subdivision stormwater facilities per the City of Raleigh's Stormwater Management Design Manual. Any repairs that become necessary as a result of periodic inspections shall be completed within (30) calendar days of filing the report unless written approval of an extension is obtained from the City of Raleigh Conservation Division of the Inspections Department. The entire stormwater facility should be inspected after each rainfall event greater than one inch.

A. Dry Detention Basin

The dry detention basin is located behind lots number 6 and 7. The overall volumetric capacity of the pond is approximately 3,789 cubic feet. The pond has a top bank elevation of 363.0 and a bottom elevation of 356.0. Side swells above the bottom pond elevation of 356.0 and below the top of bank elevation of 363.0 are set at a 3:1 ratio. The pond outlet control structure design consists of a 30" RCP riser set at an elevation of 362.0, an 18-inch RCP outlet set at an invert elevation of 356.0, and four 8-inch drawdown orifices set at an invert elevation of 356.0. The dry detention pond was designed to reduce post-development peak discharges to pre-development levels for the 1-, 2-, 10- and 100-year storms.

B. Stormwater Facility Construction Drawings

Name of Plans:	Construction Plans For Kirkwood Park Subdivision
Dated:	September 27, 2005
Job Number:	012232003
Prepared By:	Kimley-Horn & Associates, Inc. 3001 Weston Parkway Cary, NC 27513 Phone: (919) 677-2000 / Fax: (919) 677-2050 Attn: Peter Bishop, P.E.

Approved by City of Raleigh Stormwater Management Section on: _____

City Transaction # _____, City Permit # _____

To obtain a copy of the Construction Plans contact Mr. Peter Bishop, P.E. at Kimley-Horn & Associates, Inc. at (919) 677-2000.

I. Maintenance of Stormwater Pond Embankments

The regular inspection of the dry detention basin shall be the responsibility of the Owners and shall include the inspection of the integrity of the detention facility embankment. Inspections should occur twice a year and after every rainfall event greater than one-inch over a 24-hour period. After each inspection a copy of the inspection, operation and maintenance checklist shall be completed and filed in accordance with Section VI of this manual. Annual inspections shall be performed by a licensed North Carolina professional engineer qualified in this area of expertise.

A. Vegetation

- Grass will be most difficult to maintain in the area subject to water level fluctuation below the top of the riser. Grass should be fertilized every October and April.
- Re-Seeding – Periodic re-seeding may be required to establish grass on areas where seed did not take or has been destroyed. Before seeding, fertilizer (12-12-12) should be applied at a minimum rate of 12 to 15 pounds per 1,000-SF. The seed should be covered with soil to the depth of approximately ¼". Immediately following the seeding, the area should be mulched with straw.
- Trees & Brush- Trees and brush should not be permitted on embankment surfaces or in vegetated spillways. Brush and trees provide a haven for burrowing animals (like muskrats or groundhogs) and extensive root systems can weaken an earth fill dam or provide a pathway for excessive water flow through the dams. Tree growth adjacent to concrete walls and structures will eventually cause damage to footings creating cracks and possible structure failure.
- Mowing – Grass mowing, brush cutting and removal of weed vegetation will be necessary for the proper maintenance of the embankment. All embankment slopes and vegetation of spillways should be mowed when the grass exceeds 6" in height. Acceptable methods include the use of weed whips or power brush cutters and mowers. The embankment and side slopes should be mowed twice a year.

B. Erosion

- Erosion occurs when the water concentrates causing failure of the vegetation or when vegetation dies and sets up the environment for erosion, and eventually gullies, from the stormwater runoff. The embankment slopes should be inspected once a year or after every rainfall event greater than one-inch for these areas. Proper care of vegetation areas that develop erosion is required to prevent more serious damage to the embankment. Gullies should be filled with suitable soil, compacted, and then seeded. Methods described in Section I-A, on vegetation,

BK011870PG00213

should be used to properly establish the grass surface. Where eroded areas are detected, the cause of the erosion should be addressed to prevent a continued maintenance problem. Frequently occurring problems result from the distribution of runoff. This can be corrected by reshaping the crest to more evenly distribute the runoff to areas that are not experiencing erosion problems. The top of the dam should not be allowed to be used for bicycle traffic.

C. Seepage

- Seepage may vary in appearance from a soft wet area to a flowing spring. It may show up first as only an area where the vegetation is more lush and darker green. Cattails, reeds, mosses and other marsh vegetation often become established in a seepage area. The downstream abutment areas where the embankment fill and natural ground interface are very common locations for seepage. Also the contact between the embankment and the conduit is a common location that is generally attributed to poor compaction around the conduit. Due to the way in which conduits are put in, this is generally most evident on the underside of the conduit. Slides may result from excessively saturated embankment slopes. The natural foundation area immediately downstream of the dam abutment should also be inspected to ensure that "piping" is not occurring underneath the embankment. "Piping" may appear as a "boil" evident as spring carries soil. The soil usually deposits around the boil area and is evident by the sedimentary deposits accompanying it. Seepage can also occur into the conduit through cracks in the pipe or improperly sealed joints. These can be seen by observing the conduit when the water level is high. The movement of the water itself is not dangerous, but if soil particles are being carried with it, then it can create a shortcut for the piping of soil. This might show up on the upstream face of the embankment roughly along the line of the conduit itself.

D. Cracks, Slides, and Settlement

- Cracks – the entire embankment should be inspected for cracks. Short isolated cracks are usually not significant, but larger cracks (wider than 1/4"), well-defined cracks indicate a serious problem. There are two types of cracks: transverse and longitudinal.

Transverse cracks appear crossing the embankment and indicate a difference of settlement within the embankment. These cracks provide avenues for seepage and piping could develop.

Longitudinal cracks run parallel to the embankment and may signal the early stages of a slide. In recently-built structures, these cracks may be indicative of poor compaction or poor foundation preparation resulting in consolidation after construction.

- Slides – Slides and slumps are serious threats to the safety of an embankment. Slides can be detected easily unless obscured by vegetation. Arch-shaped cracks

BK011870PG00214

are indications that slides are slipping or beginning to slip. These cracks soon develop into large scarps in the slope at the top of the slide.

- **Settlement** – Settlement occurs both during construction and after the embankment has been completed and placed in service. To a certain degree this is normal and should be experienced. It is usually the most pronounced at the location of maximum foundation depth or embankment height. Excessive settlement will reduce the free board (difference in elevation between the water surface and the top of the dam). Any area of excessive settlement should be restored to original elevation and condition to reduce the risk of overtopping. A relatively large amount of settlement (more than 6") within a small area could indicate serious problems in the foundation or perhaps the lower part of the embankment. Settlement accompanied by cracking often precedes failure.
- **What to do if seepage, cracks, slides or settlement are detected:** If any of the above items are detected, there may be significant problems present that could lead to the failure of the structure. A geotechnical or civil engineer should be consulted regarding the origin of these problems and for the assessment of the appropriate solutions for correcting them. If the professional is not immediately able to inspect the dam, then the pond should be pumped and the water level lowered to remove the risk of failure until a professional can observe these problems.

E. Rodent/Insect Control

- Rodents such as groundhogs, muskrats, and beavers are attracted to dams and reservoirs and can be quite dangerous to structural integrity and proper performance of the embankment. Groundhogs and muskrats thrive on burrowing in the manmade earth embankments, which become pathways for seepage. In the event that burrows are detected within the dam, then the rodents should be dealt with by removal. Insects are naturally attracted to stagnant water. Proper maintenance of the stormwater pond will reduce the amount of insects attracted to the pond.

F. Sedimentation & Dredging

- Sedimentation from establishing areas tributary to the pond will eventually result in the reduction of the pond volume and therefore must be removed. Ensuring that the site areas around the facility are stabilized with a vegetative ground cover that restrains erosion can reduce the frequency of sediment removal. This would include a periodic application of fertilizer and other treatments necessary to promote a stable groundcover and minimize sedimentation to the stormwater pond. The maintenance requires that when the sediment level is restricting the flow of the lowest orifice of the riser (elevation 356.0) that the sediment must be removed and the original pond restored.
- For aesthetic purposes it may be desirable to maintain it prior to this point. Generally, the dredging process begins with the removal of as much water as possible from the deposited silt and so the material can be excavated with

BK011870PG00215

conventional equipment for trucking off-site. The removed material should be hauled off-site to a suitable landfill site or mounded somewhere on-site and stabilized with a ground cover sufficient to restrain erosion.

II. Maintenance of Control Structure

A. Inspection of Conduits

- Conduits should be inspected thoroughly once a year. Conduits should be visually inspected between the riser structure and the outlet to check all the joints. Conduit should be inspected for proper alignment (sagging), elongation and displacement at joints, cracks, leaks, surface water, surface wear, loss of protective coating, corrosion, and blocking. Problems with conduits most often occur at joints, and special attention should be given to them during inspection. Joints should be checked for gaps caused by elongation or settlement and loss of joint filler material. Open joints can permit erosion of the embankment material and possibly the piping of soil material through the joints. A depression in the soil surface over the pipe may be signs that soil is being removed from around the pipe.
- If problems are detected with the spillway, retain the assistance of a civil engineer or geotechnical engineer qualified in the design of embankments to perform an inspection of the dam.

B. Trash Racks on Riser Pipe/ Drawdown Orifices

- The intake structure has been fitted with a trash rack to prevent debris from entering the spillway structure. Most of the runoff entering the detention facility comes in through grated curb inlets, which essentially provide filtration of the runoff and should limit the size of the debris that enters the basin to floating debris that will most likely pass through the trash rack.
- The trash rack should be checked monthly or after every rainfall event greater than one-inch to ensure that it is properly functioning and to remove accumulated debris. At the same time the drawdown orifices should be inspected for clogging and cleaned as required.

III. Maintenance of Conveyance Systems

The conveyance system—which includes storm sewer piping, inlets, and junction boxes—should be inspected for structural and functional integrity. Evidence of seepage, restricted flow, or turbid discharges should be noted. Structures with sediment sumps should be cleaned annually with proper disposal of collected sediments.

IV. Maintenance of Vegetated Swales

Swale conveyance and detention areas, designed to transport and/or temporarily detain stormwater during a rainfall event, should be inspected to assure that they are kept mowed and

BK011870PG00216

free from stagnant water conditions. Refer to Section I-A for proper maintenance of non-riparian vegetated areas.

V. Operation:

A. Record Keeping

Operation of dry detention basin, vegetated swales, and conveyance system should include a recording of the following:

- Annual Inspection Reports – A collection of written inspection report should be kept on record using the forms included within Section VI of this manual. Inspection should be conducted annually. Copies should be provided to the City of Raleigh Stormwater Management Section of the Engineering Division.
- Observations – All observations should be recorded. Where periodic inspections are performed following significant rainfall events (1" storm event), these inspections should be logged into the Periodic Inspection, Operation & Maintenance Form in Section VI of this manual.
- Maintenance – Written records of maintenance and/or repairs should be recorded on the Periodic Inspection, Operation & Maintenance Form in Section VI of this manual.
- Other Operation Procedures – The owner should maintain a complete and up-to-date set of plans (as-built drawings) and all changes made to the dam over time should be recorded on the as-builts.

VI. Inspection, Operation & Maintenance Checklists

See attached form.

BK011870PG00217

STORMWATER FACILITY INSPECTION CHECKLIST

**DRY DETENTION BASIN
KIRKWOOD PARK SUBDIVISION
RALEIGH, NORTH CAROLINA**

Inspector: _____
 Date of Last Inspection: _____
 Last Inspector: _____
 Type of Inspection: _____
 Date and Time of Inspection: _____

ITEM	CONDITION		RECOMMENDED MAINTENANCE
	Satisfactory	Unsatisfactory	
Grassed Areas			
No Evidence of Erosion			
Area Mowed			
Drainage Area Stabilized			
Sediment Level Not >12 inches High			
No Evidence of Pond Leakage			
Riser Condition			
Weir Condition			
Trash Rack Condition			
Trash Rack Clear of Debris			
No Noticeable Odors from Pond			
Inlets Clean of Debris			
Conduits Condition			

Signature of Inspector

Name of Organization Being
Represented

DRY DETENTION BASIN
KIRKWOOD PARK SUBDIVISION
RALEIGH, NORTH CAROLINA

[illegible][illegible]

DATE	EQUIPMENT OPERATED	COMMENTS

VII. Major Repair

Major repairs include any repairs whose cost exceeds (\$22,000.00) one-third of the original cost to construct the Stormwater Management System. Examples of major repairs include rehabilitation or replacement of the dam (to correct seeps, cracks, settlement and other items listed in Sections I.C and I.D.), substantial replacement of the storm sewer system upstream of the pond, and/or replacement of the pond's outlet control structure, pipe and spillway. Major repairs are eligible to be funded by withdrawal from the Replacement Fund, which must then be replenished in accordance with schedule of contributions specified by the City of Raleigh prior to withdrawal of funds.

VIII. Budget

- A. The owner will cover the cost associated with the maintenance of this facility per the terms of the recorded Declaration of Easements, Covenants and Restrictions. Based on the activities outlined in this manual, the initial yearly maintenance budget estimate for this facility is \$15,517. The breakdown for the \$15,517 budget will be as follows:

Annual Maintenance:

Re-seeding/grass mowing	\$2,400
Rodent/Insect removal (annualized cost)	\$500
Two semi-annual inspections by engineer	\$1,200
Clean-up after storm events (annualized cost)	\$1,200
Sedimentation Removal from pond (annualized cost)	\$500
Premiums for liability insurance with a maximum policy limit of not less than one million dollars in aggregate and casualty insurance for full replacement cost	\$2,000
Rip-rap replenishment (annualized cost)	\$200
Payment of catastrophic replacement	
<u>Fund to City of Raleigh</u>	<u>\$7,517</u>
Total:	\$15,517

IX. ESTIMATED COST ANALYSIS AND STORMWATER CONTROL MEASURE REPLACEMENT SCHEDULE

KIMLEY-HORN & ASSOCIATES, INC.

3001 Weston Parkway
 Cary, North Carolina
 TEL: (919) 677-2000 FAX: (919) 677-2050

OPINION OF PROBABLE
 COST OF
 STORMWATER SYSTEM

PROJECT: KIRKWOOD PARK SUBDIVISION
 CLIENT: FGW, LLC
 PREPARED BY: JPK

JOB NUMBER: 012232003
 FILE: N:\P\012232003\Drainage\Maintenance Manual\StormCost.xls
 DATE: 8/8/2005
 REVISED DATE: 10/12/2005

DESCRIPTION	QUANTITY	UNIT	COST/UNIT	TOTAL COST
STORMWATER POND	645	CY	5.00	\$3,225
RETAINING WALL	375	SP	20.00	\$7,500
OUTLET STRUCTURE	1	LS	4,000.00	\$4,000
DRAINAGE STRUCTURE	8	EA	2,500.00	\$20,000
15" RCP	251	LF	45.00	\$11,295
18" RCP	343	LF	53.00	\$18,179
18" FLARED END SECTION	2	EA	400.00	\$800
CLASS "B" STONE APRON	38	TON	29.00	\$1,102
FILTER FABRIC	27	SY	2.50	\$68
TOTAL				\$66,000

Notes:

1. This cost opinion is based on Construction Plans prepared by Kimley-Horn & Associates, Inc.
2. Unit costs used in this cost opinion are representative of typical market costs for this area as of the date of this cost opinion, and do not account for inflationary cost escalation during the time period from the date of this cost opinion to the start of construction.
3. This cost opinion does not include contractor's bonding, insurance, and geotechnical/materials testing.

The Engineer has no control over the cost of labor, materials, or equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs, as provided here, are made on the basis of the Engineer's experience and qualifications and represent the Engineer's judgement as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from opinions of probable cost prepared for the Owner.

ESTIMATED COST ANALYSIS AND STORMWATER CONTROL MEASURE REPLACEMENT SCHEDULE

Stormwater Control Measure Replacement Schedule

Total Escrow Amount \$66,000

Estimated Inflation Rate 3.5 %

Estimated Rate of Return 3.5 %

Initial Contribution (15%) \$ 9,900.00

May 1 payment to the City of Raleigh

Year 1 \$7,517.40 + initial contribution

May 1 payment to the City of Raleigh

Year 2 \$7,517.40

May 1 payment to the City of Raleigh

Year 3 \$7,517.40

May 1 payment to the City of Raleigh

Year 4 \$7,517.40

May 1 payment to the City of Raleigh

Year 5 \$7,517.40

May 1 payment to the City of Raleigh

Year 6 \$3,702.60

May 1 payment to the City of Raleigh

Year 7 \$3,702.60

May 1 payment to the City of Raleigh

Year 8 \$3,702.60

May 1 payment to the City of Raleigh

Year 9 \$3,702.60

May 1 payment to the City of Raleigh

Year 10 \$3,702.60

and each year thereafter unless the
total on deposit for Stormwater Control
Replacement already exceeds \$ 66,000.00

1 - 5 yearly contribution = $(\$66,000 \times 0.85 \times 0.67)$ divided by 5

6 - 10 yearly contribution = $(\$66,000 \times 0.85 \times 0.33)$ divided by 5



BOOK:011870 PAGE:00185 - 00223

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



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

This Customer Group _____ # of Time Stamps Needed

This Document _____ New Time Stamp
39 # of Pages

12.004-10066

BK013164PG02160

WAKE COUNTY, NC 496
LAURA H RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
07/01/2008 AT 15:55:06

BOOK:013164 PAGE:02160 - 02163

Prepared by and hold after recording for: Russell Law Group, PLLC #167

NORTH CAROLINA

WAKE COUNTY

**FIRST AMENDMENT TO THE
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR KIRKWOOD PARK**

THIS AMENDMENT TO DECLARATION, made on the date hereinafter set forth by
FGW, LLC, the "Declarant", Five Points Development, LLC and David L. and Cynthia A
Wagner.

WITNESSETH:

THAT WHEREAS, David L. and Cynthia A. Wagner are the owners of Lot 1, Kirkwood
Park Subdivision, as shown on plat thereof recorded in Book of Maps 2006, Page 481, Wake
County Registry; and

WHEREAS, Five Points Development, LLC is the owner of Lots 5 and 9, Kirkwood Park
Subdivision, as shown on said plat recorded in Book of Maps 2006, Page 481, Wake County
Registry; and

WHEREAS the Declarant is the owner of all other lots as shown on said plat recorded in
Book of Maps 2006, Page 481, Wake County Registry.

NOW, THEREFORE, the parties hereto desire to amend the Declaration of Covenants,
Conditions and Restrictions recorded in Book 11870, Page 185, as follows:

1. Article VI, Section 3 is hereby deleted in its entirety and a new Article VI, Section 3.
Maintenance of Yards shall read as follows: Each owner shall be responsible
for the maintenance of his lot and any landscaping or lot changes shall be subject to approval in
writing by the ACC as hereinafter provided.

BK013164PG02161

In the event that the need for maintenance or repair of any portion of the Association Common Property is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

2. In Article XII, Section 8(c) of the Declaration, the following language shall be deleted in its entirety:

"Notwithstanding the foregoing, no amendment shall be effective unless approved by the City of Raleigh (so long as this is required by the City Code)."

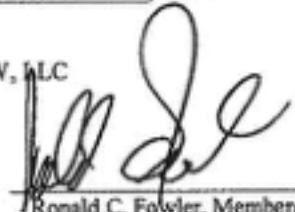
and the following shall be substituted therefor:

"Notwithstanding the foregoing, no amendment affecting either provisions of this Declaration involving stormwater or the maintenance or operation of Stormwater Control Measures or any provisions of this Declaration required by the Raleigh City Code shall be effective unless approved by the City of Raleigh, as evidenced by the signature of the City's Director of Public Works (or their deputy) or the City's Director of Planning (or their deputy) on the recorded original or copy of the amendment."

Except as herein amended, the Declaration shall remain in full force and effect.

This 23rd day of June, 2008.

FGW, LLC

BY: 

(SEAL)

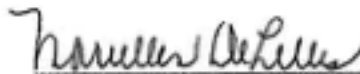
Ronald C. Fowler, Member/Manager

NORTH CAROLINA

Wake COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Ronald C. Fowler

Date: 6/23/08


Signature of Notary Public

Printed Name: Mariellen DeLellis

My Commission Expires: 4/8/2009



BK013184PG02102

FIVE POINTS DEVELOPMENT, LLC

BY: [Signature] (SEAL)
 Printed Name: RONALD C. FORTSON
 Title: MEMBER

NORTH CAROLINA

Wake COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Member - Five Points Dev. LLC

Date: 6/23/08

[Signature]
 Signature of Notary Public
 Printed Name: Mariellen DeLellis
 My Commission Expires: 4/8/2009

[Signature] (SEAL)
 David L. Wagner

[Signature] (SEAL)
 Cynthia A. Wagner

NORTH CAROLINA

Wake COUNTY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: David L. and Cynthia A. Wagner

Date: 6/25/08

[Signature]
 Signature of Notary Public
 Printed Name: Mariellen DeLellis
 My Commission Expires: 4/8/2009

REVIEWED AS TO FORM:

By: _____
 Printed Name: _____
 (Associate) (Deputy) City Attorney

BK013164PG02163



BOOK:013164 PAGE:02160 - 02163

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages

22.004-1/2008

BYLAWS
OF
KIRKWOOD PARK OWNERS ASSOCIATION

ARTICLE I
NAME AND LOCATION

The name of the corporation is KIRKWOOD PARK OWNERS ASSOCIATION (hereinafter referred to as "Mill Towne"). The principal office shall be located at 3001 Weston Parkway, Cary, Wake County, North Carolina, 27513. The location of the principal office of the Association may be changed by the Board of Directors. Meetings of Members and directors shall be held at such places within Wake County, North Carolina as shall be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

(a) "Amenities" shall mean the facilities and Stormwater Control Measures constructed, erected or installed on the Association Common Areas for the use, benefit and enjoyment of Members.

(b) "Additional Property" is defined as all real property subjected to or annexed to this Declaration subsequent to the recording of this Declaration in the Registry, either by Supplemental Declaration or by merger or consolidation, as provided herein.

(c) "Architectural Control Committee" shall be referred to herein as "ACC".

(d) "Association" shall mean and refer to KIRKWOOD PARK OWNER ASSOCIATION, INC. its successors and assigns.

(e) "Association Common Property, Association Common Area, Common Space, Common Area, Common Property Drainage Easement or Open Space Preservation and Protection Area" (the terms being used interchangeably herein) is defined as all real property and improvements thereon owned by the Association for the use, enjoyment and benefit of the Members, and all rights in and to all easements in or on real property together with all associated improvements in or on such easements granted to or reserved by or on behalf of the Association (or by or on behalf of the Declarant for the later transfer or assignment to the Association) for the enjoyment or benefit of its Members. Association Common Property typically will be established by an instrument or plat recorded in the Registry and identified in such instrument as "Association Common Area", "Association Common Property", "Common Space", "Association Private Street", "Association Private Open Space", "Association Common Open Space", "Association Greenway", "Association Drainage Easement", "Association Common Open Space", "Association Buffer",

"Association Trail", or some other similarly descriptive term. Common Property also includes all "Association Landscape Easements" and "Sign Association Easements" as defined herein. Association Common Property also includes all Limited Association Common Property, which is a sub-classification of Association Common Property.

(f) "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

(g) "Common Expenses" shall mean and include:

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

(ii) Expenses for maintenance of a portion of the front and side yards of Owners, as provided in this Declaration;

(iii) Expenses of administration, maintenance, repair, or replacement of the Association Common Areas;

(iv) Expenses declared to be Association Common Expenses by the provisions of this Declaration or the Bylaws;

(v) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;

(vi) Ad valorem taxes and public assessment charges, if any, lawfully levied against Association Common Areas owed in fee;

(vii) Expenses agreed by the members to be Association Common Expenses of the Association;

(viii) Unpaid assessments resulting from the purchase of a dwelling at a foreclosure sale of a first mortgage or first deed of trust (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).

(ix) Escrow payments to the City of Raleigh pursuant to the Stormwater Escrow Protection and Access Maintenance Agreement by and among Declarant, the Association and City of Raleigh recorded in Book _____, Page _____, Wake County Registry.

(h) "Declarant" shall mean and refer to FGW, LLC and its successors and assigns.

(i) "Declarant Control Period" is defined as the period of time beginning at the time of recording of this Declaration in the Registry and ending on the first to occur of the following:

(a) 5:00 p.m. on the date that is seven (7) years following the date of recordation of this Declaration in the Registry.

(b) The date on which the total number of votes entitled to be cast by the Class A Members of the association equal the total number of votes entitled to be cast by the Declarant as a Class B Member (the total number of votes of either of the two classes of the membership in the Association may be increased or decreased by the annexation of Additional Property or withdrawal of portions of the property as provided herein) and in such instances Class B Membership may be reinstated; or

(c) The date specified by the Declarant in a written notice to the Association.

(j) "Dwelling" shall mean and refer to a place of residence constructed upon a Lot within the Property.

(k) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties on which such plot appears (provided said map has been approved by Declarant and the City of Raleigh), with the exception of the Association Common Area and Association Limited Common Areas, if any. It is recognized that Association Common Area and Association Limited Common Areas and easements may be portions of a Lot.

(l) "Lot in Use" shall mean and refer to any lot on which a dwelling unit has been substantially constructed and made substantially ready for occupancy as a dwelling unit. It is the intent that when a dwelling is ready for occupancy, excepting final punch list items and decorative items to be selected by a home buyer, that the dwelling be subject to payment of full Association dues. In the event of a dispute, the ruling of the ACC shall be binding. In addition to the foregoing, a Lot may become a Lot in Use by contractual agreement between the Declarant and the Owner of such lot. Any dwelling for which a certificate of occupancy has been issued will be regarded as a "Lot in Use".

(m) "Member" shall mean and refer to every person or entity who holds membership in the Association.

(n) "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.

(o) "Property" or "Kirkwood Park" shall mean and refer to that certain real property described on Exhibit A, and such Additional Properties thereto as may hereafter be brought within the jurisdiction of the Association.

(p) "Stormwater Control Measures" shall mean and refer to the retention ponds and sand filters located on the Property designed as Drainage Easement on recorded plats of the Property, together with drainage easements all other storm drainage pipes, which serve the Property and are located outside public street rights-of-way (excluding those pipes and measures serving a single Lot).

ARTICLE III MEMBERS

Section 1. Members. Declarant, for so long as it shall be an Owner, and every person or entity who is a record Owner of a fee simple or undivided fee simple interest in any dwelling unit or site that is subject by the Declaration to assessments by the Association shall be a Member of the Association; provided, however, that any such person or entity who holds such title or interest merely as security for the performance of an obligation shall not be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any dwelling unit or site which is subject to assessment by the Association. Ownership of a dwelling unit or site shall be the sole qualification for Membership. The Board of Directors of the Association may make reasonable rules relating to the proof of ownership of a dwelling unit or site in KIRKWOOD PARK. No Owner shall have more than one Membership, except as expressly provided hereinafter.

Section 2. Member Class and Voting Rights. The Association (the "Board of Directors") or the "Board" shall have two (2) Class of voting Members:

Class A. Class A Members shall be all Owners with the exception of the Declarant, until its Class B Membership has converted to Class A Membership. Class A Members shall be entitled to one (1) vote for each dwelling unit or site in which they hold the required ownership interest.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each dwelling unit or site in which it holds the required ownership interest, 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) The total votes outstanding in Class A Membership equals the total votes outstanding in the Class B Membership; provided, that the Class B Membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B Membership to Class A Membership, as provided hereunder, and before the time stated in sub-paragraph (b) below, additional lands are annexed to the Properties without the assent of the Class A Members on account of the development of such additional lands by the Declarant, all within the times and as provided for herein, or

(b) 5:00 P.M. on the date that in seven (7) years after the recording of the Declaration in the Wake County Registry. Thereafter, the Declarant may be entitled to one (1) vote per dwelling unit or site owned by it.

(c) The date specified by the Declarant in a written notice to the Association.

Section 3. Voting Right Suspension. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and for any period during which any assessment of a Member remains unpaid according to the provisions of Article IV, Section 8.

Section 4. Voting. The total vote of the Association shall consist of the sum of the votes of the Class A Members and the votes of Class B Members present in person or by Proxy at a legally constituted meeting at which a quorum is present. The number of votes present at a meeting that will constitute a quorum shall be as set forth in the By-Laws, as amended from time to time. Notice requirements for all action to be taken by the Members of the Association shall be as set forth herein as the same may be amended from time to time. Quorum and notice requirements shall be as provided in By-Laws except when otherwise specified in the Declaration.

When more than one person holds an interest in any dwelling unit or Lot, all such persons shall be Members; and the vote for such dwelling unit or Lot shall be exercised as they among themselves determine; however, in no event may more than one vote be cast with respect to any one dwelling unit or Lot owned by Class A Members and in no event shall fractional votes be allowed. When one or more Co-Owners signs a proxy or purports to vote for his or her Co-Owners, such vote shall be counted unless one or more other Co-Owners is present and objects to such a vote or, if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote is counted. Cumulative voting is not allowed.

A persons or entity's Membership in the Association shall terminate automatically whenever such person or entity ceases to be an Owner, but such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Association or this Declaration during the period of such ownership, or impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

Section 5. Right of Declarant to Representation on Board of Directors of the Association. Notwithstanding anything contained herein to the contrary, until December 31, 2010, or until Declarant shall have conveyed seventy-five percent (75%) of the Properties, whichever occurs first, Declarant (or its expressed assignee of the right granted in this section) shall have the right to designate and select any person or persons to serve on any Board of Directors, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of the Association.

Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and replace such person or persons with another person or persons to act and serve in the place of any director or directors so removed. Any director designated and selected by Declarant need not be an Owner. Any representative of Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have pecuniary interest or other interest.

ARTICLE IV MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association. Each subsequent regular meeting of the Members shall be held in the same month of each year thereafter unless a different date is fixed by the Board of Directors.

Section 2. Special Meetings: Special meetings of the Members may be called at any time by the President or Board of Directors of the Association, or by any Member pursuant to the written request of the holders of not less than one-tenth of all votes of Class A and Class B Membership. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in said notice.

Section 3. Place of Meetings. Meetings of the Members shall be held at such place, within Wake County, as may be determined by the Board of Directors.

Section 4. Notice of Meeting: Except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws, written or printed notice stating the time and place of the meeting shall be delivered not less than ten nor more than fifty days before the date of any Membership meeting, either personally or by mail, by or at the direction of the President, the Secretary, or other person calling the meeting, to each Member of record entitled to vote at such meeting; provided that such notice must be given not less than twenty days before the date of any meeting at which a merger or consolidation is to be considered. If mailed, such notice shall be deemed to be delivered to the Member at his address as it appears on the record of Members of the association, with postage thereon prepaid.

In the case of a special meeting, the notice of meeting shall specifically state the purpose or purposes for which the meeting is called; but, in the case of an annual or substitute annual meeting, the notice of meeting need not specifically state the business to be transacted thereat unless such a statement is required by the provisions of the North Carolina Non-profit Corporation Act.

When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty days, it is not necessary to give any notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

Section 5. Quorum: Except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws, the presence at the meeting of Members or of proxies entitled to cast, twenty percent (20%) of the votes appurtenant to each Class of Lots in combination (Class A and B) shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 6. Proxies: Voting may be either in person or by one or more agents authorized by a written proxy executed by the Member or by his duly authorized attorney in fact. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot or may cease upon written notice of cancellation of proxy by Member.

Section 7. Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the minute book of the Association.

Section 8. Loss of Right to Vote. The vote of any Member who is shown on the books or records of the Association to be more than sixty (60) days delinquent in any payment due the Association shall not be an eligible vote and shall not be counted for purposes of deciding any question so long as such delinquency is not cured, nor shall such Member be eligible to be elected to not remain on the Board of Directors.

ARTICLE V BOARD OF DIRECTORS

Section 1. General Powers: The business and affairs of the Association shall be managed by its Board of Directors.

Section 2. Number, Term and Qualifications: The number of directors constituting the Board of Directors shall be three. At the first annual meeting of the Association after which transition to homeowner control has taken place, the number of Directors may be increased to five (5). At this first annual meeting after transition, the Members may elect one director to serve for a term of one year, two directors to serve for a term of two years, and two directors to serve for a term of three years, should they elect to increase the number of directors to five (5). If the Members elect to continue to maintain a board of three (3) Members, they shall elect a one, two and three year director. At subsequent annual meetings thereafter, the Members shall elect the number of directors needed to fill the vacancy or vacancies created by the director or directors whose term (s) is (are) expiring to serve for a term of three (3) years. Directors need not be Members of the Association.

Section 3. Election of Directors: Except as provided in Section 6 of this Article V, the directors shall be elected at the annual meeting of Members; and those persons who receive the highest number of votes shall be deemed to have been elected. If any Member so demands, the election of directors shall be by ballot. Cumulative and fractional voting are prohibited.

Section 4. Election. The directors may be elected by secret written ballot, if a Member so demands, at the annual meeting of the Members. In such election, the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled under the provisions of

Article III of these By-Laws. The persons receiving the highest number of votes shall be elected. Cumulative voting is not permitted.

Section 5. Removal: Any director may be removed at any time with or without cause, by a majority vote of the Members.

Section 6. Vacancies: Any vacancy occurring in the Board of Directors may be filled by the selection of a successor by the remaining Directors, who shall serve for the unexpired term of his predecessor. The Members may elect a director at any time to fill any vacancy not filled by the Directors.

Section 7. Compensation. No Director shall receive compensation for any service he may render to the Association in the capacity of Director. However, any Director may be reimbursed for actual expenses incurred in the performance of his duties.

ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings: A regular meeting of the Board of Directors shall be held at least quarterly, without notice and at such place and hour as may be fixed from time to time by the Board of Directors.

Section 2. Special Meetings: Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two Directors.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if written consent to the action so taken is signed by all the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action is so taken.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the Directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of President, a Chairman shall be elected by the Board of Directors to serve until a new President is elected.

Section 6. Participation in Meetings by Means of Conference Telephone. Members of the Board of Directors, or any committee of the Board, may participate in a meeting of the Board or of such committee by means of a conference telephone or similar communications device by means

of which all persons participating in the meeting can hear each other, and participation by such means shall constitute presence in person at such meeting.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers: The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Sub-Association Common Properties and the personal conduct of the Members and their guests thereon, and to establish fines and penalties for the infraction thereof;

(b) suspend a Member's voting rights during any period in which he shall be in default in the payment of any assessment levied by the Association pursuant to the provisions of the Declaration. Such rights may also be suspended after such notice and hearing as the Board, in its discretion, may determine, for a period not to exceed 60 days for infraction of the published rules and regulations of the Association;

(c) exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a Member of the Board of Directors to be vacant in the event such director shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(e) employ a manager, independent contractors, or such other employees or agents as it may deem necessary and prescribe their duties. In the event a contract is entered into with a management company to manage the affairs of the Association, such contract must be terminable by the Board of Directors without cause or penalty on not more than ninety (90) days notice;

(f) employ attorneys to represent the Association when necessary;

(g) To execute deeds or other legal documents to effectuate the transfer of Association Common Areas as allowed under the Declaration; and

(h) appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting when such statement is requested in writing by Members entitled to at least one-fourth (1/4) of the votes appurtenant to Class A Lots;

(b) supervise all officers, agents and employees of the Association and see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days before January 1 of each year;

(2) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days before January 1 of each year; and

(3) as to any Lot for which an assessment is not paid within sixty (60) days after it becomes due, bring an action at law against the Owner personally obligated to pay the assessment or foreclose the lien against such Lot.

(d) issue, or cause an appropriate office to the Association to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of such certificates. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment as of the date of its issuance;

(e) procure and maintain adequate liability insurance covering the Association in an amount not less than \$1,000,000.00, and adequate hazard insurance if available at reasonable cost, and adequate hazard insurance on the real and personal property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Association Common Properties and all facilities erected thereon including private streets to be maintained;

(h) if necessary, establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements constructed on the Association Common Properties; and

(i) provide such notices to and obtain such consents from the Owners and holders of first deeds of trust on Lots within the Properties as is required by the Declaration or these By-Laws; and

(j) pay all ad valorem and public assessments levied against the real and personal property owned by the Association.

ARTICLE VIII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of the Association shall be a President and Vice President, who shall at all times be Members of the Board of Directors, a Secretary, and a Treasurer and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors. Officers shall include a President, Vice President, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, be removed, or be otherwise disqualified to serve.

Section 4. Special Appointments: The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out, shall sign all leases, promissory notes, mortgages, deeds and other written instruments, and, in the absence of the Treasurer, shall sign all checks.

(b) Vice Presidents: The Vice President shall act in the place instead of the President in the event of his death, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, keep the corporate seal of the Association and affix it on all papers requiring a seal, serve notice of meetings of the Board and of the Members, keep appropriate current records showing the Members of the Association and their addresses, and perform such other duties as required by the Board.

(d) Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all funds of the Association and shall disburse such funds as directed by resolution of the Board of Directors, shall sign all checks of the Association, shall keep proper books of account, shall cause an annual audit of the Association books to be made by an independent public accountant at the completion of each fiscal year, and shall prepare an annual budget and a statement of income and expenditures to be presented to the Membership at its regular annual meeting, and deliver a copy of each to the Members. Any or all of the duties may be delegated to a Management Company at the order of the Board of Directors.

ARTICLE IX COMMITTEES

The Board of Directors of the Association may appoint a Nominating Committee, as provided in these By Laws, and shall appoint an Architectural Control Committee, as provided in the Declaration. The Board of Directors may appoint such other committees as it deems appropriate in carrying out its purpose.

ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association shall at all time, during reasonable business hours, be subject to inspection by any Member or his authorized agent by appointment. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection at the principal office of the Association, where authorized copies, as outlined in a resolution by the Board of Directors, may be purchased at a reasonable cost.

ARTICLE XI ASSESSMENTS

As more fully provided in Article IV of the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum or the maximum interest rate charge as may be established by the Board of Directors, but said rate shall not exceed the maximum rate allowed under the laws of North Carolina. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot for which such assessment is due. Interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may

waive or otherwise escape liability for the assessments provided for herein by non use of the Sub-Association Common Area or abandonment of his unit.

ARTICLE XII CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: KIRKWOOD PARK OWNERS ASSOCIATION, INC.

ARTICLE XIII AMENDMENTS AND CONFLICTS

Section 1. Amendments. These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present at a meeting duly called for such purpose, in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is a Class B Membership.

Section 2. Conflicts. In case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XIV FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

CERTIFICATION

I, the undersigned, do hereby certify: THAT I am duly elected and acting Secretary of the Kirkwood Park Owners Association, Inc., a North Carolina non-profit corporation, and that the foregoing By-Laws constitute the original By-Laws of said Kirkwood Park Owners Association, Inc. as a duly adopted at a meeting of the Board of Directors thereof, held on the _____ day of _____, 2005.

IN WITNESS WHEREOF, I hereunto subscribed my name and affixed the seal of said KIRKWOOD PARK OWNERS ASSOCIATION, INC. this _____ day of _____, 2005.

Secretary

KIRKWOOD PARK OWNERS ASSOCIATION, INC
ANNUAL BUDGET - 2010

INCOME

Annual dues 13 lots @ \$ 720.00	\$ 9,360.00
(\$60.00 monthly)	

EXPENSES

Landscape Maintenance	4,860.00
Utilities	
Electric for irrigation systems	250.00
Street light posts	1,700.00
Water for irrigation	650.00
Insurance	400.00
Stormwater Certifications	1,000.00
Contingency	500.00
	<u>\$ 9,360.00</u>