

**BY-LAWS
OF
THE NEIGHBORHOODS OF WALNUT CREEK ASSOCIATION,
INC.**

**ARTICLE I
NAME AND LOCATION**

The name of the corporation is The Neighborhoods of Walnut Creek Association, Inc., hereinafter referred to as the "Association." The principal office of the Association shall be located at 2521-134 Schieffelin Road, Apex, North Carolina, 27502 but meetings of Members and directors may be held at such places within the State of North Carolina, Wake County, as may be designated by the Board of Directors. The location of the principal office of the Association may be changed by a majority vote of the Board of Directors.

**ARTICLE II
DEFINITIONS**

- 2.1 "Association" means The Neighborhoods of Walnut Creek Association, Inc., its successors and assigns.
- 2.2 "Classes of Membership" The Association shall have four classes of voting membership.

Class A: Class A Members shall be all Owners of detached single family units with the exception of the Class D Members, if any, and shall be entitled to one (1) vote for each Residential Unit owned. Class D Members may, however, be a Class A Member upon the termination of Class D membership. When more than one Person holds an interest in any Residential Unit, all such Persons shall be Members. The vote of such Residential Units shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Residential Unit. In the event of a dispute between the Owners of a particular Residential Unit, that Residential Unit's vote shall be suspended in the event more than one Person seeks to exercise it.

Class B: Class B Members shall be all Owners of townhouse units with the exception of the Class D Members, if any, and shall be entitled to one (1) vote for each Residential Unit owned. Class D Members may, however, be a Class B Member upon the termination of Class D membership. When more than one Person holds an interest in any

Residential Unit, all such Persons shall be Members. The vote of such Residential Units shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Residential Unit. In the event of a dispute between the Owners of a particular Residential Unit, that Residential Unit's vote shall be suspended in the event more than one Person seeks to exercise it.

Class C: Class C Member(s) shall be all Owners of multifamily apartment house structures, with the exception of the Class D Members, and shall be entitled to one-tenth (1/10th) of a vote for each Residential Unit owned. Class D Members may, however, be a Class C Member upon the termination of Class D membership. When more than one Person holds an interest in any multifamily apartment house structure, all such Persons shall be Members. The vote of such multifamily apartment house structure shall be exercised as they, among themselves, determine, but in no event shall more than one-tenth (1/10th) vote be cast with respect to Residential Unit. In the event of a dispute between the Owners of a particular multifamily apartment house structure, those Residential Units' vote shall be suspended in the event more than one Person seeks to exercise it.

Class D: Class D Member(s) shall be the Declarant and Builders, and shall be entitled to three (3) times the regular vote for each Residential Unit owned. The Class D membership shall cease and be converted to Class A, B or C membership, as appropriate, upon either of the following events, whichever occurs first:

- A. When the total votes outstanding in Class A membership, Class B and Class C membership equal the total votes outstanding in Class D membership, but provided that the Class D membership shall be reinstated if thereafter and before the time stated in subparagraph (B) below, Additional Lands are annexed to the Property without the assent of Class Members for the development of such Additional Lands by the Declarant, all as provided in Article IV, Section I, herein;
- B. On December 31, 2004; or
- C. Upon the surrender of all Class D memberships by the holders thereof.

2.3 "Common Area" shall mean all real property (including the improvements thereto) owned by the Association and the easements granted thereto for the common use and enjoyment of the Owners. The Common Area to be owned by the Association shall be described in deeds to the Association and designated as such on recorded maps of the Property. Common Areas shall include, without limitation, common properties, open space, landscape easements, landscaped medians, sign easements, sewer and water

lines not located within any public easement or public street right-of-way and serving more than one lot, and any stormwater drainage lines, ponds, stormwater easements, or facilities serving more than one lot and not located within any public street right-of-way nor otherwise maintained by any governmental authority.

- 2.4 "Declarant" means RBAG/Walnut Creek, L.L.C., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development or if such successors or assigns should acquire more than one Lot, whether developed or undeveloped, pursuant to foreclosure or a deed in lieu of foreclosure.
- 2.5 "Declaration" means the Declaration of Covenants, Conditions and Restrictions for The Neighborhoods of Walnut Creek Association, Inc. applicable to the Property recorded in the Office of the Register of Deeds, Wake County, North Carolina, and all amendments thereto.
- 2.6 "Governing Documents" means these Bylaws, the Declaration and the Articles of Incorporation of the Association.
- 2.7 "Legal Requirements" means the requirements imposed by the laws and regulations of the State of North Carolina, Wake County and the City of Raleigh as well as the requirements imposed by the Governing Documents.
- 2.8 "Limited Common Area" shall mean all real property and improvements thereto owned by the Association for the exclusive use and enjoyment of the Class A Members. Limited Common Area shall include without limitation the pool and clubhouse facility and associated parking spaces and facilities including landscaping and lighting thereof. The Limited common Area to be owned by the Association shall be described in deeds to the Association and designated as such on recorded maps of the Property.
- 2.9 "Lot" shall mean a portion of the Property, other than the Common Area, Limited Common Area, Townhome Common Area, private streets, and public street rights-of-way, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the recorded plats of the Property or amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.
- 2.10 "Member" means every person or entity entitled to membership in the Association as provided in the Declaration.

- 2.11 "Owner" means the record Owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of any obligation.
- 2.12 "Property" or "Properties" shall mean and refer to that certain real Property described in the Declaration of Covenants, Conditions, and Restrictions for the Neighborhoods of Walnut Creek being within the Association's jurisdiction, and such additions as may hereafter be brought within the jurisdiction of the Association.
- 2.13 "The Neighborhoods of Walnut Creek Declaration" means the Declaration of Covenants, Conditions and Restrictions of The Neighborhoods of Walnut Creek recorded in the Office of the Register of Deeds, Wake County, North Carolina, and all amendments thereto.
- 2.14 "The Neighborhoods of Walnut Creek Association" means The Neighborhoods of Walnut Creek Association, Inc., its successors and assigns.
- 2.15 "Townhome Common Area" means all real property and improvements thereto owned by the Association for the exclusive use and enjoyment of the Townhomes. Townhome Common Areas shall include without limitation private streets and drives, all utilities and drainage facilities located underneath said private streets and drives not maintained by a governmental entity, parking spaces and facilities, including landscaping and lighting thereof. The Townhome Common Area to be owned by the Association shall be designated as such on recorded maps of the Property.

ARTICLE III

OFFICES

- 3.1 Principal Office. The principal office of the Association shall be located at 2521-134 Schieffelin Road, Apex, North Carolina, 27502.
- 3.2 Registered Office. The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office.
- 3.3 Other Offices. The Association may have offices at such other places, within Wake County, North Carolina, as the Board of Directors may designate or as the affairs of the Association may require from time to time.

ARTICLE IV
MEMBERSHIP

- 4.1 Membership. Every person or entity who is a record Owner, including the Declarant, is a Member of the Association and is subject to the Governing Documents and applicable Legal Requirements. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to the Governing Documents. Whenever a Person or Entity ceases to be an Owner, termination of Membership shall not release or relieve any such Person or Entity from any liability or obligation incurred under the Declaration during the period of such Person's or Entity's ownership, nor impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.
- 4.2 Suspension. The Board of Directors may suspend a Member's voting rights and/or his rights (including his family's, guest's, etc.) to use the recreation facilities during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for the period of the infraction plus a period not to exceed sixty (60) days, for infraction of published rules and regulations.

ARTICLE V
MEETINGS OF MEMBERS

- 5.1 Place of Meetings. All meetings of Members shall be held at such place within the State of North Carolina and Wake County as shall be designated on the notice of the meeting or agreed upon by a majority of the votes of the Members entitled to vote thereat.
- 5.2 Annual Meetings. The annual meeting of the Members for the election of directors and the transaction of other business shall be held within the month of January each year at such time and at such place as determined by the Board of Directors.
- 5.3 Substitute Annual Meeting. If the annual meeting shall not be held within the month designated by these By-Laws, a substitute annual meeting may be called in accordance with the provisions of Section 5.4 of this Article V. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.
- 5.4 Special Meeting. Special meetings of the Members may be called at any time by the President, Secretary, or Board of Directors of the Association, or by any Member

pursuant to the written request of the holders of not less than one-fourth of all Class A or Class B votes, if any, entitled to vote at the meeting.

- 5.5 Notice of Meetings. Except as otherwise provided in the Governing Documents, written or printed notice stating the time and place of the meeting shall be delivered not less than fifteen nor more than fifty days before the date of any Members 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. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at his address as it appears on the record of Members of the Association, with first class postage thereon prepaid. Such notice shall specify the place, day and hour of the meeting.

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 Chapter 55A of the North Carolina General Statutes.

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 in any one adjournment, 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.

- 5.6 Voting Lists. At least ten days before each meeting of Members, the Secretary of the Association shall prepare an alphabetical list of the Members entitled to vote at such meeting or any adjournment thereof, with the address of and number of votes held by each, which list shall be kept on file at the registered office of the Association for a period of ten days prior to such meeting, and shall be subject to inspection by any Member at any time during the usual business hours. This list shall be produced and kept open at the time and place of the meeting and shall be subject to inspection by any Member during the whole time of the meeting.
- 5.7 Quorum. One-tenth (1/10) of the votes of each class of Members of the Association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Members for any action except as otherwise provided in the Governing Documents.

The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

In the absence of a quorum at the opening of any meeting of Members, such meeting may be adjourned from time to time without notice other than announcement at the meeting until a quorum shall be present or represented, by a vote of the majority of the votes voting on the motion to adjourn; and at any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting.

- 5.8 Proxies. At all meetings of Members, votes may be voted 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 must be in writing and filed with the secretary. A proxy is not valid after the expiration of eleven months from the date of its execution, unless the person executing it specifies therein the length of time for which it is to continue in force, or limits its use to a particular meeting, but no proxy shall be valid after ten years from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.
- 5.9 Voting. The vote of a majority of the votes on any matter present at a meeting of Members at which a quorum is present, regardless of class, shall be the act of the Members on that matter, unless the vote of a greater number is required by law or by the Declaration or By-Laws of this Association.
- 5.10 Informal Action. 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 as part of the Association's records. No more than six weeks shall elapse between the signature of the first member on the document and that of the last signature.
- 5.11 Presiding Officer. The President of the Association, or in the absence of the President, the Vice-President, shall preside at all meetings of the Members. The Secretary of the Association shall act as the Secretary of the meeting, or in the absence of the Secretary, the President shall designate some other person to act as the Secretary of the meeting. In the absence of both the President and Vice-President, the Members present at the meeting shall elect a Presiding Office for such meeting.

5.12 Order of Business. The order of business at the annual meeting and at any special meeting of the Members shall be as follows:

- (a) The calling of the meeting to order;
- (b) The calling of the roll;
- (c) The announcement by the Presiding Office of the purpose of the meeting and of the nature of the business which may be presented by it;
- (d) The reading and approval of the minutes of any former meeting of the Members if such minutes have not been previously read and approved;
- (e) The presentation of and action, if required, upon reports of officers and committees;
- (f) unfinished business;
- (g) new business, including the election of directors for the forthcoming year if the meeting be an annual meeting; and
- (h) Adjournment.

ARTICLE VI

BOARD OF DIRECTORS

6.1 Number, Term and Qualification. The affairs of this Association shall be managed by a Board of Directors, the number of directors constituting the Board of Directors shall be not less than three (3) nor more than seven (7) as may be fixed by resolution duly adopted by the Members or by the Board of Directors prior to the annual meeting at which such directors are to be elected; and in the absence of such a resolution, the number of directors shall be the number elected at the preceding annual meeting. Any directorships not filled by the Members shall be treated as vacancies to be filled by and in the discretion of the Board of Directors.

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 seven (7). Two (2) directors shall be elected from the Townhouse Election District, two (2) directors shall be elected from the Apartment Election District and three (3) directors shall be elected from the Single Family Election District. At that meeting, the Single Family Election District Members shall elect one director for a term of one year, one director for a term of two years, and one director for a term of three years. The Townhouse Election District Members shall elect one director for a term of two (2) years and one director for a term of three (3) years. The Apartment Election District Members shall elect one director for a term of one (1) year and one director for a term of two (2) years. At each annual meeting thereafter, the Members shall elect the number of directors needed to fill the vacancy or vacancies created by the director or

directors whose terms is/are expiring to serve a term of three (3) years. The number of directors may be changed by amendment of the By-Laws of the Association. The number of directors shall always be an odd number, and the Single Family Election District shall elect on more director that the Townhouse Election District and Apartment Election District.

- 6.2 **Nomination.** Nominations for election to the Board of Directors shall be made by the board of Directors. Nominations may also be made from the floor at the annual meeting. The Board of Directors shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominations must be made from the appropriate Election District.
- 6.3 **Election of Directors.** Except as provided in Section 5 of this Article V, the directors shall be elected at the annual meeting of Members by votes of the appropriate Election District; 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 secret written ballot. Cumulative voting is not permitted.
- 6.4 **Removal.** Any director may be removed at any time, with or without cause, by a vote of the Members holding a majority of the outstanding votes entitled to vote to elect that director. If any directors are so removed, new directors may be elected at the same meeting. Additionally, any Director who has three (3) consecutive unexcused absences may be removed by majority vote of the Directors.
- 6.5 **Vacancies.** Any vacancy occurring in the Board of Directors (caused by death, resignation, removal or otherwise) may be filled by the affirmative vote of a majority of the remaining directors even though less than a quorum, or by the sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the authorized number of directors shall be filled only by election at an annual meeting or at a special meeting of Members called for that purpose. A vacancy must be filled from the appropriate Election District.
- 6.6 **Compensation.** The Board of Directors may not compensate directors for their services as such, but may provide for the payment of any or all actual expenses incurred by directors in performing their duties.

ARTICLE VII
MEETINGS OF DIRECTORS

- 7.1 Regular Meetings. A regular meeting of the Board of Directors shall be held immediately after the annual meeting of the Members for the purpose of electing officers. In addition, the Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings.
- 7.2 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two directors. Such a meeting may be held as fixed by the person or persons calling the meeting.
- 7.3 Notice of Meetings. Regular meetings of the Board of Directors may be held without notice. The person or persons calling a special meeting of the Board of Directors shall, at least three (3) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.
- 7.4 Waiver of Notice. Any director may waive notice of any meeting. The attendance by a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.
- 7.5 Quorum. A majority of the number of directors fixed by these By-Laws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Provided, however, that at least one (1) Member must be present from each Election District for a quorum to be present.
- 7.6 Manner of Acting. Except as otherwise provided in these By-Laws, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.
- 7.7 Presumption of Assent. A director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

- 7.8 Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.
- 7.9 Committees of the Board. The Board of Directors, by resolution adopted by a majority of the number of directors fixed by these By-Laws, shall designate three Members to constitute an Architectural Committee as provided in the Declaration and may appoint other committees as it deems appropriate. The designation of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any responsibility or liability imposed upon it or him by law.

ARTICLE VIII
POWERS/DUTIES OF THE BOARD OF DIRECTORS

8.1 Powers. The Board of Directors shall have the power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area, Limited Common Area, Townhome Common Area and facilities, 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 and right to use of the recreational facilities as provided elsewhere in the Governing Documents;
- (c) exercise for the Association all powers, duties and authority vested in or delegated to this 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 Member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and
- (e) employ a manager, independent contractors, or such employees as they deem necessary, and to prescribe their duties. During Class C membership, all contracts shall contain a provision which allows the Association to terminate the contract at will upon sixty days notice.,

8.2 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 one-fourth (1/4) of the Class A Members who are entitled to vote;
- (b) supervise all officers, agents, and employees of this Association, and to 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 in advance of each annual assessment period;
 - (2) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days in advance of each annual assessment period; and
 - (3) foreclose the lien against any Property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.
- (d) issue, or to cause an appropriate officer or agent 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 for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment and the amount thereof;
- (e) pay ad valorem taxes and public assessments levied against the real and personal Property owned in fee by the Association;
- (f) procure and maintain adequate liability and hazard insurance on Property owned by the Association;
- (g) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;
- (h) cause the Common Area, Limited Common Area, Townhome Common Area and the improvements thereto to be maintained; and

- (i) direct and supervise the affairs of the Association and require the Association to fulfill all of its obligations and duties set forth in the Declaration.
- (j) appoint Members to the Architectural Committee for such terms as deemed appropriate.

ARTICLE IX OFFICERS

- 9.1 **Officers.** The officers of the Association shall consist of a President, and a Vice-President, who shall at all times be Members of the Board of Directors, a Secretary, a Treasurer and such Assistant Secretaries, Assistant Treasurers, and such other officers as the Board of Directors may from time to time elect. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where the action of two or more officers is required.
- 9.2 **Election, Term and Qualification.** The officers shall be elected by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, and each officer shall hold office for one (1) year unless he shall sooner resign, be removed, or be otherwise disqualified to serve.
- 9.3 **Resignation and Removal.** Any officer or Member of the Board may be removed by the Board, with or without cause, whenever in its judgement the best interests of the Association will be served thereby. 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.
- 9.4 **Bonds.** The Board of Directors may require an officer, agent, or employee of the Association to give bond to the Association, with sufficient sureties, conditioned on the faithful performance of the duties of his respective office or position, and to comply with such other conditions as may from time to time be required by the Board of Directors.
- 9.5 **President.** The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Board of Directors and Members. He shall sign, with the Secretary, an Assistant Secretary, or any other proper officer, any deeds, leases, mortgages,

promissory notes, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be delegated by the Board of Directors or these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

- 9.6 Vice-President. In the absence of the president or in the event of his death, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting shall have all powers of and be subject to all the restrictions upon the President. The Vice-President shall perform duties as from time to time may be assigned to him by the President or Board of Directors.
- 9.7 Secretary. The Secretary shall: (a) keep the minutes of the meetings of Members, of Board of Directors and of all Committees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the Association records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; (e) keep or cause to be kept a record of the Association's Members, giving names and addresses of all Members and the number of votes held by each. and prepare or cause to be prepared voting lists prior to each meeting of Members as required by law; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.
- 9.8 Assistant Secretaries. In the absence of the Secretary or in the event of his death, inability or refusal to act, the Assistant Secretary, unless otherwise determined by the Board of Directors, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. They shall perform such other duties as may be assigned to them by the Secretary, by the President, or by the Board of Directors.
- 9.9 Treasurer. The Treasurer shall (a) have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such depositories as shall be selected; (b) prepare, or cause to be prepared, a true statement of the Association assets and liabilities as if the

close of each fiscal year; (c) shall cause an annual audit of the Association books to be made by an independent certified public accountant at the completion of each fiscal year; (d) issue, at the direction of the Board of Directors, certificates as to whether assessments on a specified Lot have been paid; and (e) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors, or by these By-Laws.

- 9.10 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.

ARTICLE X

MEMBERSHIP REGISTER

- 10.1 For the purposes of determining Members of the Association entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or in order to make a determination of Members for any other proper purpose, the Board of Directors may provide that the membership register shall be closed for a stated period but not to exceed, in any case, fifty (50) days and, in case of a meeting of Members, not less than ten (10) days immediately proceeding the date on which the particular action, requiring such determination of Members is to be taken.
- 10.2 In lieu of closing the membership register, the Board of Directors may fix in advance a date as the record date for any such determination of Members, such record date in any case to be not more than fifty (50) days and, in case if a meeting of Members, not less than ten (10) days immediately preceding the date on which the particular action, requiring such determination of Members is to be taken.
- 10.3 If the membership register is not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, the date on which notice of the meeting is mailed shall be the record date for such determination of Members.
- 10.4 When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the membership register and the stated period of closing has expired.

ARTICLE XI
GENERAL PROVISIONS

- 11.1 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours be subject to inspection by any Member, his agent or attorney. The Declaration, the Articles of Incorporation and the By-Laws of the Association and the financial statements for the Association for the immediately preceding fiscal year shall be available for inspection by any Member and any first mortgage holders, their insurer or guarantors, at the principal office of the Association, where copies may be purchased at reasonable cost.
- 11.2 Assessments. As more fully provided in 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 twelve percent (12%) per annum or the highest rate allowed by law, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Property and late fees, interest, costs, and reasonable attorney's 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 nonuse of the Common Area, Limited Common Area, Townhome Common Area or abandonment of this Lot.
- 11.3 Seal. The seal of the Association shall consist of two concentric circles between which is the name of the Association and the year of incorporation and in the center of which is inscribed SEAL.
- 11.4 Waiver of Notice. Whenever any notice is required to be given to any Member or director by law, by Declaration, or by these By-Laws, a waiver thereof in writing signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be equivalent to the giving of such notice.
- 11.5 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.
- 11.6 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 in person or by proxy. Notwithstanding any provision in this instrument to the contrary, as long as

the Declarant controls the Association and if the Property has been approved by the Veterans Administration and the Federal Housing Administration for loans guaranteed by the Veterans Administration or the Federal Housing Administration (but not otherwise), any amendment of these By-Laws will require the prior approval of the Federal Housing Administration or the Veterans Administration. Provided, however, that any amendment which would have a disproportionate impact on a particular Election District must be approved by a majority of the Members present in person or by proxy from that Election District.

- 11.7 Conflicts. In the 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 for The Neighborhoods of Walnut Creek and these By-Laws, the Declaration shall control.
- 11.8 Declarant's Veto. From the termination of the Class C membership, the Declarant shall have a veto power over all actions of the Board, as is more fully provided below. This power shall expire when the Declarant has less than three (3) Class A votes or on December 31, 2009, whichever occurs first. The veto power shall be exercisable only by Declarant, its successors, and assigns. The veto power may not be exercised to veto an increase in assessments if such veto would prevent the Association from fulfilling its financial obligations as set forth in the Governing Documents.

The veto shall be as follows: No action authorized by the Board of Directors shall become effective, nor shall any action, policy, or program be implemented, until and unless:

- (a) Declarant shall have been given written notice of all meetings by certified mail, return receipt requested, or by personal delivery of all regular and special meetings of the Directors, and which notice shall set forth in reasonable particularity the agenda to be followed at such meeting; and
- (ii) Declarant shall be given the opportunity at any such meeting, if Declarant so desires, to join in or have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board. Declarant and its representatives or agents shall make its concerns, thoughts, and suggestions known to the Members of the Association and/or Board. At such meeting, Declarant shall have and is hereby granted a veto power over any such action, policy, or program authorized by the Board of Directors and to be taken by said Board, the Association, or any individual Member of the Association if Board approval is necessary for such Member's

action. Said veto may be exercised by Declarant, its representatives or agents at the meeting held pursuant to the terms and provisions hereof. Any veto power shall not extend to requiring of any action or counteraction on behalf of the Board of Association.

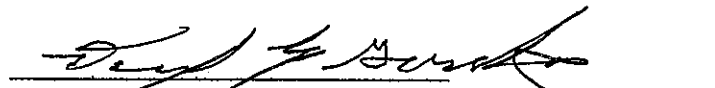
This section may not be amended without the express written consent of the Declarant until Declarant no longer owns any land described in Exhibits A or B to the Declaration or until December 31, 2009, whichever first occurs.

Adopted this 8th day of June, 1999 by the undersigned, being all of the Directors of the Association.

THE NEIGHBORHOODS OF WALNUT
CREEK ASSOCIATION, INC.


Michael Dean Chadwick, Director


Edward J. Bedford, Director


David Goracke, Director