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WAKE COUNTY, NC 487
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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HOLD FOR: SMITH DEBNAM, BOX 182

NORTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
MAYBROOK FOREST
HOMEOWNERS ASSOCIATION, INC.

WAKE COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this 15th day of May, 2006 between MAYBROOK ASSOCIATES, LLC, a North Carolina Limited Liability Company (hereinafter called "Declarant") and all parties hereafter acquiring any of the described Properties.

WITNESSETH:

WHEREAS, Declarant is the owner of all lots within a subdivision in the City of Raleigh, County of Wake, State of North Carolina, known as Maybrook Forest Subdivision, Phase I; and

WHEREAS, the Properties which shall be held, used, transferred, mortgaged, sold, conveyed, leased and occupied subject to this Declaration are located in the City of Raleigh, Wake County, North Carolina, and are more particularly described as Maybrook Forest Subdivision as shown on the maps and surveys recorded in Book of Maps 2006, Pages 927-930 Wake County Registry, containing approximately 64.95 acres. The Declarant hereby subjects the Properties, more particularly described on the aforesaid recorded maps to this Declaration and the jurisdiction of the Association and any additions thereto. The Properties for both Phase 1 & 2 consist of a total of 64.95 acres that the City of Raleigh has approved to be subdivided into 299 single-family lots, greenway areas and three (3) lots of open space; and

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described Properties that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the Properties be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the Properties in the City of Raleigh, Wake County; and for the continued maintenance and operation of such recreational and common area.

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NOW, THEREFORE, in consideration of these premises, the Declarant agrees with all parties hereafter acquiring any of the Properties, that they shall be and are hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which shall be binding on all parties acquiring any right, title or interest in any of the Properties and which shall inure to the benefit of each owner thereof.

ARTICLE I
RALEIGH CITY CODE REQUIREMENTS

PART A
DEFINITIONS AND GENERAL REQUIREMENTS

Section 1. Definitions. As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise (when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital letters in order to have the defined meaning). Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in Section 3 of this Part A (for example, words and terms defined by the Code and used in this Declaration have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

(a) "Act" is defined as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S.47F, with the particular section number following the G.S.47F reference (for example, G.S.47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

(b) "Annexation Declaration" is defined as a document, by whatever name denominated, that is recorded for the purposes of annexing Annexed Property to this Declaration and causing such Annexed Property to be subject to the scheme of covenants, charges, conditions and restrictions contained in this Declaration and including any additional covenants, charges, conditions and restrictions contained in the Annexation Declaration.

(c) "Annexed Property" is defined as all real property annexed or subjected (those two terms being used interchangeably herein) to any part or all of the terms of this Declaration following the initial recording of this Declaration in the Registry.

(d) "Association" is defined as the nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for the Properties. Sub-Association (if applicable) is defined as a nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for a portion of, but not all of, the Properties. There may be one or more Sub-Associations (if applicable) with respect to the Properties. An example of a Sub-Association is a property

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Owners association for a townhouse development that is part of a cluster unit development which has an Association for the cluster unit development. All references herein to an Association that is, in fact, a Sub-Association, are deemed corrected accordingly.

(e) "Board" is defined as the board of directors of the Association, and is the Executive board as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this Declaration and in the Act.

(f) "City" or "City of Raleigh" is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.

(g) "Code" is defined as the Raleigh City Code of Ordinances as it exists from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

(h) "Common Area" is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Properties, however such real property is described on a plat or document recorded in the Registry. Common Area may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Properties and that serves more than one (1) Lot in the Properties or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the City). Common Areas include all of the following:

- (1) any private street and private walkways in the Properties (but excluding private walkways on and solely for the benefit of an individual Lot);
- (2) Stormwater Control Measures;
- (3) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any City utility easement;
- (4) any site or facility designated a common area, common property open space, open space common area, amenity area, or other similar designation on any recorded plat or map of the Properties, or in this Declaration;
- (5) any Code-required shared facility or Open Space for the Properties, except for Open Space owned by the City;
- (6) any public road right-of-way dedicated to the public on plats and maps of the Properties recorded in the Registry but not accepted for public Maintenance by the appropriate Governmental Entity. Provided, however, that the fact that a street or road has not been accepted by the applicable Governmental Entity shall not relieve the Declarant of the obligation to take such action as is necessary to have it accepted. The Association has the right to enforce this Declarant obligation, and the Declarant shall be liable to the Association for all costs and expenses, including court costs and reasonable attorney's fees, incurred by the Association in connection with such unaccepted street improvements and enforcement of its rights against Declarant hereunder; and
- (7) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers.

Common Area that is owned by or subject to being Maintained by a Sub-Association is Sub-Association Common Area, even if it is referred to in this Declaration or in any recorded plat of the Properties as Common Area instead of Sub-Association Common Area. Common Area, if any, established by the Declarant or the Association for the benefit of fewer than all of the Owners and occupants of the Properties is Limited Common Area, and such Limited Common Area and the Owners and occupants of the applicable portion of the Properties

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for whose benefit the Limited Common Area exists are subject to the same Code provisions as those applicable to Common Area. All references herein or in any recorded plat of the Properties to Common Area that is, in fact, Limited Common Area, are deemed corrected accordingly. Sub-association Common Area, if any, owned by or subject to being Maintained by a Sub-Association for the benefit of fewer than all of the Owners and occupants of the applicable portion of the Properties is Sub-Association Limited Common Area, and such Sub-Association Limited Common Area and the Owners and occupants of the applicable portion of the Properties for whose benefit the Sub-Association Limited Common Area exists are subject to the same Code provisions as those applicable to Sub-Association Common Area. All references herein or in any recorded plat of the Properties to Limited Common Area or Sub-Association Limited Common Area that is, in fact, Common Area or Sub-Association Common Area, are deemed corrected accordingly.

(i) "Common Expense" is defined as all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, and the Governing Documents and including specifically, but without limitation, all of the following: (Expenses for the Maintenance of Limited Common Area are Limited Common Expenses, which is a subcategory of Common Expense.)

- (1) All sums lawfully assessed by the Association against its Members;
- (2) Expenses of the Common Area and administration, inspection and Maintenance of the Common Area;
- (3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;
- (4) Expenses for acquisition, Maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;
- (5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;
- (6) Ad valorem taxes and public assessment and charges lawfully levied against any Common Area owned in fee simple by the Association;
- (7) Fees or charges for utilities used in connection with the Common Area;
- (8) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;
- (9) Allocations to reserve funds;
- (10) Payments owed to the City pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the City by the Declarant;
- (11) Fees for services engaged by the Association;
- (12) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with the City or other Governmental Entity;
- (13) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;
- (14) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses; and
- (15) Expenses agreed by the Members to be Common Expenses of the Association.

(j) "Declarant" is defined as Maybrook Associates, LLC, its successors and assigns.

(k) "Declarant Annexation Date" is defined as the last date and time on which the Declarant has the right to annex real property to this Declaration without the consent or joinder of any Person other than the City, which date is 5:00 p.m. on _____ (or, if no date is entered in the blank space, is 5:00 p.m. on the date that is seven (7) years following the date of the recording of this Declaration). The timeliness of an Annexation Declaration is determined by the date of its recordation as stamped by the Registry notwithstanding its date of execution.

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(l) "Declarant Control Period" is defined as any period of Declarant control of the Association, as provided in 47F-3-103(d) of the Act and established in this Declaration (which may include a vote allocation that gives Declarant, by itself, sufficient voting power to elect members of the Board).

(m) "Declaration" is defined as the document, however denominated, which contains this Article, together with all exhibits and amendments to the document.

(n) "Fiscal Year" is defined as the calendar year until such time as the Board, by appropriate resolution, establishes a different Fiscal Year for the Association.

(o) "Governing Documents" is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association; Annexation Declarations; and other declarations of restrictive or protective covenants applicable to the Properties; and all Sub-Association documents (with respect to those portions of the Properties subject to such Sub-Association documents), as the same may be amended, restated or supplemented from time to time.

(p) "Governmental Entity" is defined as the City, the Counties of Wake and Durham, North Carolina, the State of North Carolina, the United States of America and all other governmental entities and quasi-governmental entities that have jurisdiction over the Properties or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Entity or entities is/are applicable.

(q) "Include" or "Including" is defined as being inclusive of, but not limited to, the particular matter described, unless otherwise clearly obvious from the context.

(r) "Lot" is defined as any numbered or lettered portion of the Properties, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is not any of the following: dedicated street rights-of-way; Common Area; Open Space owned in fee simple by the Association; greenway or park lands owned in fee simple by the City.

(s) "Maintain", "Maintenance", "Maintaining", or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation. Provided, however, this definition is not applicable to Section 8 of Part A of this Article.

(t) "Member" is defined as each Person who or which holds membership in the Association.

(u) "Mortgagee" is defined as the beneficiary or payee under any mortgage or deed of trust, and the terms mortgage and deed of trust are deemed to refer to both mortgages and deeds of trust.

(v) "Open Space" is defined as open space areas shown on preliminary subdivision plans filed with the City and delineated on any recorded plat of the Properties or the open space areas required by the Code or by the conditional use zoning of the Properties for the perpetual benefit of the Owners. Open Space areas required under the Code are required as compensation for the flexible lot dimensions allowed on part or all of the Properties and Open Space areas in Conditional Use Zoning Districts may be required as consideration for such conditional use zoning. Accordingly, Open Space may not be conveyed except in strict compliance with the Code. Under the Code, Open Space may be owned by the Association, a Sub-Association, or by the City.

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Open Space owned by the Association or a Sub-Association is Common Area or Sub-Association Common Area, as appropriate.

(w) "Operating Deficit" is defined as the difference between the total amount of the annual assessments for a Fiscal Year levied on all Lots and the amount of actual expenditures by the Association during the Fiscal Year for Common Expenses, including funding of reserves, but excluding (i) amounts levied against a Lot, but which are not paid, and (ii) special assessments for capital improvements.

(x) "Owner" is defined as the record Owner, whether one or more Persons, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any Person who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

(y) "Person" is defined to include any natural person, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, Governmental Entity (including the City), or other entity.

(z) "Properties" is defined as all of the real property subject to any part or all of the terms of this Declaration. The amount of acreage of the Properties at the time of the recording of this Declaration is 64.95 acres.

(aa) "Registry" is defined as the office of the Register of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Properties are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Properties is situated.

(ab) "Stormwater Agreement" is defined as any agreement recorded in the Registry among the Declarant, the Association, and the City, or between the Declarant and the City, or between the Association and the City, relating to Stormwater Control Measures for the Properties or any part thereof, and includes all amendments and supplements to such agreements. A Stormwater Agreement with the City includes the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution Contract and the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Lump Sum Replacement Contribution Contract (those names being subject to change from time to time under the Code).

(ac) "Stormwater Control Measures" or "Stormwater Control Facilities", such terms being used interchangeably herein and in the Stormwater Agreement, is defined as one or more of the following devices and measures, together with associated private stormwater drainage easements (however identified on a plat or in a document) that serves the Properties: conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wetponds, dry detention basins, wetlands, permanently protected undisturbed open space areas, bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Properties, and which are located outside public street rights-of-way and City drainage easements. Private stormwater drainage easements that serve more than one (1) Lot in the Properties, however identified on a recorded plat or in a recorded document, are deemed to be dedicated to the Association for the benefit of the Properties or applicable portion thereof. All Stormwater Control Measures are Common Area or Limited Common Area, or Sub-Association Common Area or Sub-Association Limited Common Area, as applicable.

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(ad) "Stormwater Operations Maintenance Manual and Budget" is defined as that manual; however named, attached to and incorporated into the Stormwater Agreement as an exhibit for the Maintenance of Stormwater Control Measures and the payment of the costs thereof.

Section 2. Applicability. The Properties, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the City, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Properties and certain provisions of the Code that apply only to certain portions of the Properties (for example, provisions of the Code relating to private streets apply only to those portions of the Properties that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Properties to comply with all provisions of the Code applicable to such portion of the Properties, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Properties has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

Section 3. Conflicts.

(a) Some or all of the Properties may be subject to the provisions of the Act. To the extent that Properties are subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents.

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, any Annexation Declaration or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration and all Annexation Declarations are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Properties or any part thereof. Provided, however, any provision of this Declaration or any Annexation Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration or an Annexation Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(c) The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, any Annexation Declaration or any other Governing Documents.

(d) The provisions of this Declaration control over any inconsistent provisions of any other Governing Documents, except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the Articles shall control.

Section 4. Amendment of Declaration. Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment. When City approval of an amendment is required by the Code or by a provision of this Declaration (including this Article), City approval shall be evidenced by the signature of the Raleigh City Attorney or his/her Deputy on the recorded original or copy of the amendment. Any amendment of this Article of this Declaration must have prior City approval. Any amendment of this Article or any other provision of this Declaration that requires City approval is void *ab initio* if recorded without the required City signature.

Section 5. Assessments.

(a) **Obligation for Assessments.** Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) stormwater assessments created and established pursuant to Part B of this Article; (4) special assessments; (5) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Common Areas by the Owners or their family members, tenants, agents, contractors and guests; (6) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (7) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (8) all other assessments and charges imposed or allowed to be imposed by this Declaration.

The Association at all times has the right to include as part of the assessments or other charges applicable to the Properties and the Owners thereof such amounts as are required to pay all Common Expenses and all financial obligations of the Association imposed by the Code either (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on some or all of the Owners, with the Association having responsibility for collection and payment to the City.

(b) **Purpose of Assessments.** The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which it applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board. All budgets of the Association shall be proposed in good faith and with the intent to cover all reasonably necessary Common Expenses for the applicable Fiscal Year of the Association, including monies allocated for reserve funds.

(c) **Budgets; Amount of Assessments.** The Association is at all times empowered to levy assessments against the Lots and the Owners of Lots within the Properties for the payment of Common Expenses.

Notwithstanding the foregoing, for calendar year 2006, the annual assessment per Lot is \$180.00. The "Maximum Annual Assessment" for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget.

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If any proposed budget is rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

(d) Effect of Non-Payment; Remedies. No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Common Area or such Owner's Lot, or abandonment or leasing of such Owner's Lot, or unavailability of the use or enjoyment of the Common Area.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be charge on the Owner's Lot as provided in G.S.47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in G.S.47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

(e) Classes of Membership. This Declaration may allow different classes of membership in the Association and may allow different levels of annual assessments and other assessments to be imposed for different classes of membership.

(f) Declarant's Obligation to Fund Deficits; Assessment Credit. During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

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After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots owned by Declarant, in an amount equal to aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

(g) Certificate of Payment. The Association shall, within ten (10) business days after receipt of a written request from an Owner or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the assessments and other charges against a specified Lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

Section 6. Membership and Governance.

(a) Membership. The Declarant and every Owner within the Properties shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. The foregoing is not intended to include any Person that holds an interest merely as security for the performance of an obligation. Upon termination of ownership, an Owner's membership with respect to the transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot.

(b) Members' Rights of Use. Each Member and lawful occupant in the Properties shall have a non-exclusive right of use and enjoyment and easement in the Common Areas, including the right of ingress and egress to and from all Common Areas throughout the Properties, subject to such rules and regulations as are allowed under the Governing Documents to be imposed by the Association and subject to suspension of use rights allowed in the Governing Documents; provided that no suspension of rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decision as required by G.S. 47F-3-107.1 of the Act. But, the right of access and support, the right to drain stormwater and the right to use Stormwater Control Measures, private streets, private utility services provided to the Lot through easements in Common Area, and any assigned parking areas shall not be suspended for violation of the Association's rules and regulations.

(c) Voting Rights. Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. If a Lot is owned by multiple Owners, the votes allocated to that Lot shall be cast only in accordance the agreement of a majority in interest of the multiple Owners unless otherwise provided in the Governing Documents. A majority agreement is conclusively presumed if only one of the multiple Owners casts the votes allocated to that Lot, unless any of the other Owners of the Lot protest such co-Owner's vote promptly to the Person presiding at the meeting.

(d) Proxies. Votes may be cast in person or by proxy. All proxies must be dated, duly executed by the Owner, and delivered to the Secretary of the Association or to the property management company authorized by the Board to receive proxies prior to the opening of the meeting for which it is first intended to be used. No

proxy shall exceed a term of eleven (11) months from its date except as otherwise provided in the Act. Revocation of a proxy shall be made by actual notice to the Person presiding over the Association meeting.

(e) Quorum. Except as otherwise provided in the Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast ten percent (10%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Governing Documents, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 7. Permanently Protected Undisturbed Open Space Areas. Within any permanently protected undisturbed open space areas shown on any recorded plat of the Properties, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code), any new development or expansion thereof, or new use, construction, or encroachment without first obtaining a watercourse permit from the City. Permanently Protected Undisturbed Open Space may or may not be Open Space as defined in this Declaration.

Section 8. Tree Conservation. The Association shall have a conservation easement for the planting of trees and for the protection and Maintenance of the trees situated within any tree conservation areas shown on any recorded plat of the Properties. No tree disturbing activity, as defined in Part 10, Chapter 2 of the Code, shall be permitted in tree conservation areas in violation of the Code. Any tree disturbing activity undertaken in tree conservation areas or in permanently protected undisturbed open space areas shown on recorded plats of the Properties without a permit from the City or otherwise in violation of the Code is a violation of the Code and may result in significant financial consequences to the Owner and to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of both the City and of the Association, enter tree conservation areas to perform active tree protection measures (as defined in the Code), to plant trees, to remove dead or diseased trees, or to plant replacement trees, provided, however, that Association consent shall not be required, unless otherwise required by other provisions of this Declaration or Governing Documents, if the tree conservation area in which the Owner desires to perform active tree protection measures or plant trees, remove dead or diseased trees and to plant replacement trees is located on that Owner's Lot.

Section 9. Insurance. Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall procure and Maintain (i) hazard insurance on the Common Area, insuring against all risk of loss commonly insured against, including fire and extended coverage of peril, and (ii) liability insurance, in an amount of not less than one million dollars (\$1,000,000.00), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use ownership or Maintenance of Common Area. The Association shall obtain and Maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial for the protection or preservation of the Common Area and other property of the Association or otherwise is in the best interests of the Association. The premiums for such insurance shall be a Common Expense paid from the annual assessments as established pursuant to this Declaration.

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Section 10. Indemnification. No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from its liabilities as an Owner under this Declaration and other Governing Documents.

Section 11. On-Street Parking. Any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

Section 12. Sight Triangles. No sight obstructing or partially obstructing wall, fence, foliage, berm, parked vehicle or sign between two feet and eight feet tall, as measured above the curb line elevation or the nearest traveled way if no curb exists, shall be placed within any area designated on a recorded map of the Properties as a sight triangle or other similar designation. An easement over sight triangles is reserved for the benefit of the Declarant, the Association, and the City, and their respective agents and contractors for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or the Owner of the Lot with respect to the obstruction removed from the site triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Properties previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

Section 13. Annexed Property. Real property which was not part of the City-approved development, or real property that was part of the City-approved development but which was not subjected to this Declaration at the time of its initial recording, may be annexed to this Declaration and made part of the Properties as Annexed Property, provided that all of the following conditions are met with respect to the real property to be annexed:

- (a) the Annexed Property is contiguous to the Properties or directly across a street from the Properties;
- (b) any development of the Annexed Property is first approved by the City;
- (c) annexation of such Annexed Property meets any other applicable requirements of this Declaration; and
- (d) contemporaneously with either the development of the Annexed Property or the recording of the plat of the Annexed Property, whichever first occurs, an Annexation Declaration shall be recorded in the Registry.

No Annexation Declaration shall be valid without the prior written approval of the Raleigh City Attorney or his/her deputy. Evidence of such approval shall be indicated by the signature of the City Attorney or his/her deputy on the recorded original or copy of the Annexation Declaration. Any Annexation Declaration recorded without the required City approval is void *ab initio*. An Annexation Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Annexed Property and as are not inconsistent with the general scheme of this Declaration. Each Annexation Declaration shall state that title to the Common Area that is included within the Annexed Property shall be conveyed to the Association no later than the time of the conveyance of the first Lot within the Annexed Property, and any Open Space in the Annexed Property shall be conveyed in fee simple without any encumbrances except drainage, greenway, utility and conservation easements and this Declaration. Open Space in the Annexed Property is subject to all Code and Declaration provisions relating to Open Space. Each Annexation Declaration shall state the amount of the Stormwater Assessment for Lots in the annexed Property when required by Part B, Section 6 of this Article.

Annexation of the Annexed Property shall be effective upon the later of the recording of the Annexation Declaration in the Registry or such later date as specified in the Annexation Declaration, and the Annexed Property described therein shall be subject to all of the provisions of this Declaration to the extent made

applicable by the Annexation Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration and other Governing Documents of the Association. Each Owner of a Lot in Annexed Property shall be a Member of the Association, and the Annexed Property and each Owner of any portion thereof shall be subject to assessment by the Association in accordance with the terms of this Declaration, the Annexation Declaration, other Governing Documents, the Code, and the Stormwater Agreement, as applicable. The Association shall have the duties, responsibilities and powers set forth in this Declaration and other Governing Documents with respect to Annexed Property. Except as may otherwise be expressly provided in this Declaration or any Annexation Declaration, the Properties, including the Annexed Property, shall be managed and governed by the Association as an entirety. Assessments for Common Expenses collected from Owners in the Annexed Property may be expended by the Association for Common Expenses anywhere in the Properties without regard to the particular phase, area or subdivision from which such assessments came.

Section 14. Access Easement for Repair of Structures. A perpetual access easement over an adjoining Lot hereby is established in favor of each Owner or tenant of a residence or business, and the contractors of such Owner or tenant, whose residence or business is located closer than five (5) feet from an adjoining Lot line, for the purpose of allowing the residence or business to be Maintained. No fence, wall, storage shed, or similar structure or any other kind of obstruction shall be permitted in the easement area that will obstruct access to the residence or business.

Section 15. Access for Governmental Agencies. A non-exclusive, perpetual right of access over all Lots and Common Areas (including private streets, if any) in the Properties is hereby established for the benefit of Governmental Entities for installing, removing and reading water meters, Maintaining and replacing water and sewer facilities, fire lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and the delivery of mail.

Section 16. Conveyance or Dedication of Common Areas. Common Areas, including Open Space, shall either be conveyed to the Association in fee simple without any encumbrances except this Declaration, drainage, greenway, utility and conservation easements of record at the time of conveyance, and the lien of real property taxes not yet due and payable, or conveyed to the City as allowed or required under the Code. Common Areas may be conveyed to the City free of part or all of the provisions of this Declaration, as determined by the Declarant and the City. Title to Common Areas shall be conveyed to the Association or to the City no later than the time of the conveyance of the first Lot within the applicable phase of the Properties. The Association shall accept all Common Areas, including the improvements installed thereon by the Declarant, deeded to it and/or dedicated to it on any recorded plat of the Properties, whether or not the conveyance or dedication occurs prior to the time of the conveyance of the first Lot within the applicable phase of the Properties.

Section 17. Private Utility Lines. Any water or sewer line that serves more than one Lot and which is either located outside of any public street right-of-way or outside of any City utility easement shall be owned and Maintained by the Association as Common Area. In no case shall the City or the State of North Carolina be responsible for Maintaining any such private utility line or be responsible for the consequences for any blockage, backflow, break or leak in said utility line. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lots within the Properties. Accordingly, the City shall not be responsible for failing to provide regular or emergency utility services to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or their occupants when such failure is due to inadequate design or construction, blockage, backflow, leakage, inadequate maintenance, or any other factor within the control of the Declarant, the Association, or the Owners or occupants of the Properties.

The provisions of this Section shall be incorporated into all conveyances of any part or all of the Properties, which incorporation may be by reference to this Declaration. Provided, however, the provisions of this Section and all other provisions of this Declaration are applicable to the portions of the Properties conveyed and the Owners thereof, whether or not any such provisions are incorporated into the conveying documents.

Section 18. Landscape Easements. The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope easement co-exists, in whole or in part, within a designated landscape easement, and any future public improvement adjacent to the slope easement removes or causes any of the shrubs or trees within the slope easement to die or become unhealthy (as defined in Part 10 Chapter 2 of the Code), it shall be the responsibility of the Association to replace the shrubs and trees in accordance with the minimum applicable quantity, size and spacing requirements of the Code within one-hundred and eighty days of completion of the public improvement. Within any area designated on recorded maps of the Properties as a landscape easement or similar designation, no vegetation shall be removed without the prior written consent of the Association. Notwithstanding the foregoing, no Governmental Entity shall be required to obtain the consent of the Association when working within slope easements, greenway easements or construction easements.

PART B
STORMWATER
(CODE SECTIONS 10-5007 and 10-9027)

Section 1. Stormwater Control Measures. The Code requires that stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the Properties be reduced. To comply with the Code, Stormwater Control Measures will be installed by the Declarant and Maintained by the Association as Common Area or Limited Common Area (or by a Sub-Association as Sub-Association Common Area or Sub-Association Limited Common Area) in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement for the Properties so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code and applicable regulations, rules and directives of the City. The expenses for Maintenance of Stormwater Control Measures by the Association shall be Common Expenses (or, if applicable, Limited Common Expenses). Failure to Maintain the Stormwater Control Measures is a violation of the Code potentially subjecting each Owner of a Lot to significant daily civil penalties and other enforcement actions.

Section 2. Creation of Stormwater Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a Stormwater Assessment, as hereinafter defined, established and collected as hereinafter provided, and each Owner of a Lot, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any person who maybe designated by the Association to collect such monies) such Stormwater Assessment. For calendar year 2006, the Stormwater Assessment is \$20.04. Stormwater Assessments shall commence with respect to each Lot on the later of the date on which this Declaration or applicable Annexation Declaration is recorded or the date on which a plat is recorded establishing the Lot. The annual budget for the Association shall include a line item evidencing the Stormwater Assessments, and the amount budgeted shall be sufficient to satisfy the total annual inspection, management and Maintenance budget for the Stormwater

Control Measures as set forth in the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, and any replacement contribution payment owed to the City pursuant to the Stormwater Agreement. The Association shall honor its obligations under the Stormwater Agreement, and the Association shall assess the Stormwater Assessment. The Declarant and each Owner of a Lot shall be obligated to pay the Stormwater Assessment, whether or not the annual budget contains the required line item for the Stormwater Assessment, and whether or not the annual budget is ratified by the Members of the Association. No vote of the Owners is required to levy, collect, or foreclose a Stormwater Assessment. Stormwater Assessments shall be paid to the Association at the same time annual assessments are due.

In the event of nonpayment of any Stormwater Assessment for a period of thirty (30) days or longer after the payment due date, such Stormwater Assessment, together with interest at a rate not to exceed the highest rate allowed by North Carolina law), as computed from the date the delinquency first occurs, late charges, and costs of collection thereof, including reasonable attorney's fees, shall be a charge on the land upon the filing of a claim of lien, in the manner provided in G.S.47F-3-116(g), in the office of Clerk of Superior Court in the County in which the Lot is located and shall be a continuing lien upon each Lot against which the assessment is made until paid in full. The lien may be foreclosed in accordance with North Carolina law, or in any other manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the Stormwater Assessments against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. In such instances, such unpaid assessments shall be deemed Common Expenses collectible from all Owners, including the new Owner.

Each Stormwater Assessment, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was the Owner of the Lot at the time when the Stormwater Assessment first became due and payable. If more than one Person held an ownership interest in the Lot at the time the Stormwater Assessment first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of Stormwater Assessments shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amount due is paid.

The creation of the Stormwater Assessments is for the benefit of the City, and the Stormwater Assessments may be collected and enforced by the City as provided herein and in the Code.

Section 3. Purpose of Stormwater Assessments. The Stormwater Assessments to be levied by the Association against each Lot shall be used as follows:

(a) to pay the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve funds, under any Stormwater Agreement, including Maintenance of the Stormwater Control Measures in strict compliance with the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement as an exhibit, so that, at all times, the Stormwater Control Measures shall perform as designed and shall comply with the Stormwater Agreement, the Code, applicable regulations and rules and directives of the City;

(b) to pay all legal, engineering and other professional fees incurred by the Association in carrying out its duties as set forth herein, or in the Governing Documents, or in the Stormwater Agreement in connection with the Stormwater Control Measures; and

(c) payments to the City pursuant to the Stormwater Agreement.

Section 4. Assignment of Collection Rights and Lien Rights to the City. Pursuant to the Stormwater Agreement and G.S.47F-3-102(15) of the Act, the Association has assigned to the City its rights to collect Stormwater Assessments, its rights to file liens against the Lots, and the right to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement. The Association shall have a license to collect Stormwater Assessments, to file liens against the Lots, and to foreclose on those liens for monies owed by the Association to the City pursuant to the Stormwater Agreement until such time as the City notifies the Association in writing that it has elected to exercise its right to collect Stormwater Assessments, to file liens against the Lots, and/or to foreclose on those liens for monies owned by the Association to the City pursuant to the Stormwater Agreement. Declarant hereby irrevocably authorizes and directs each Owner to rely upon any written notice sent to such Owner by the Association that the City has elected to exercise its rights hereunder and thereafter to pay Stormwater Assessments directly to the City without any obligation or right to inquire otherwise until such time such Owner receives written notice from the City to pay the Stormwater Assessments directly to the Association. As the assignee of the Association's collection and lien rights, upon the filing of a claim of lien by the City, any such lien may be foreclosed in like manner as a mortgage on real estate pursuant to power of sale under Articles 2A of Chapter 45 of the General Statutes from and after the time of recording a claim of lien in the office of the clerk of superior court of the county in which the Lot is located; which claim of lien shall state the description of the Lot(s) encumbered by the claim of lien, the name and address of the Association and of the City, the record Owner(s) of the encumbered Lot(s) at the time the claim of lien is filed, and the amount of the lien claim. The claim of lien shall be filed any time after a period of thirty (30) days or longer of default and the lien shall continue in effect until all sums secured by the lien as herein provided shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is filed, plus late charges, interest at the rate set forth in the Stormwater Agreement, but not to exceed eighteen percent (18%) per year, collection costs, and reasonable attorney's fees. Any lien claim filed by the City shall be signed by the City Manager. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

Section 5. Effect of Assignment. Each Owner of a Lot, by acceptance of a deed or otherwise, vests in the City, as the assignee of the Association's collection and lien rights for the Stormwater Assessments, the right and power, upon nonpayment of the Stormwater Assessments by the Association, to bring all actions against each Owner, personally, for the collection of such charges as a debt or to foreclose the lien, which charges and lien amounts shall equal a pro-rata share of the Stormwater Assessments for each Owner. The lien provided for in this Article shall be in favor of the City and shall be for the benefit of all Owners.

Section 6. Annexation of Additional Property. As set forth in this Declaration, additional real property from time to time may be annexed to the Properties and subjected to this Declaration. Such Annexed Property shall also be subjected to existing Stormwater Agreements and/or new Stormwater Agreements, in accordance with the following:

In connection with the recording of an Annexation Declaration, either a new Stormwater Agreement and/or an amendment to an existing Stormwater Agreement (as determined by the City) shall be entered into among the City, Declarant, and Association to address the Stormwater Control Measures of the Annexed Property. Except in those instances where the Stormwater Agreement already contains contribution payments for the Annexed Property, the Annexation Declaration shall establish a new Stormwater Assessment for the Lots in the Annexed Property with respect to all new Stormwater Control Measures located in or serving such Annexed Property, and such new Stormwater Control Measures shall be designated as Common Area or Limited Common Area, as appropriate, on the recorded plat(s) of the Annexed Property. The new Stormwater

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Assessment shall be sufficient to Maintain the new or additional Stormwater Control Measures in or serving the Annexed Property and to pay the applicable replacement contribution payments to the City under the new or amended Stormwater Agreement, and such Stormwater Assessment shall be assessed against the Owners of the Lots of the Annexed Property and Owners of the existing or future Lots served by the same Stormwater Control Measures.

Section 7. Drainage Easement. The Declarant dedicates, establishes and declares to and for the benefit of each Lot, the Common Area and each Owner hereof:

(a) a perpetual, irrevocable and nonexclusive easement, right and privilege to discharge and store surface water drainage from such Lot or Common Area into the Stormwater Control Measures situated in private drainage easements that serve the Properties, whether located on or off of the Properties, and

(b) a perpetual, irrevocable and non-exclusive easement, right and privilege to use and Maintain Stormwater Control Measures, including the right of access to and from the private drainage easements and other portions of the Properties as reasonably necessary to Maintain the Stormwater Control Measures.

Section 8. Joint and Several Liability. Each Owner of any portion of the Properties served by Stormwater Control Measures is jointly and severally responsible for Maintenance of such Stormwater Control Measures, including payment of any unpaid *ad valorem* taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the Stormwater Control Measures, and including all interest charges thereon, together with the costs and expenses of collection incurred by the City or other collecting Person, including court costs and reasonable attorney's fees actually incurred. Each Owner of any portion of the Properties served by the Stormwater Control Measures has a right of contribution against all other Owners of other portions of the Properties served by the same Stormwater Control Measures for payment of such costs and expenses to the extent that the Owner having such right of contribution pays more than such Owner's prorata share thereof, such prorata share being determined either by other assessment provisions of this Declaration or by dividing the acreage of such Owner's portion of the Properties served by the Stormwater Control Measures by the total acreage of the Properties served by the same Stormwater Control Measures.

Section 9. Relocation of Drainage Easements. Drainage easements situated on the Properties may be relocated only by a written agreement signed by the Association - upon approval of the Board of Directors without vote of the Members - and by the Owners of all portions of the Properties on which the drainage easement then is located, and by the Owners of all portions of the Properties on which the drainage easement is to be relocated. The consent of tenants and Mortgagees of the affected Lots shall not be required for the relocation to be effective. All relocations of a drainage easement shall be accompanied with a letter sealed by a professional engineer licensed in the State of North Carolina stating that the relocated drainage easement will not cause any adverse stormwater runoff unto adjoining properties.

Notwithstanding anything herein to the contrary, no relocation of any drainage easement shall be valid without the prior approval of the Raleigh Chief Engineer or his/her Deputy. City approval shall be evidenced by the signature of the Raleigh Chief Engineer or his/her Deputy on the recorded plat or other instrument of the relocation. Any relocation, without the required City signature is void *ab initio*.

Relocation of a drainage easement is valid from the later of the time of either recording of the plat or other instrument of relocation in the Registry or such later date specified therein.

PART C
CLUSTER UNIT DEVELOPMENT
(CODE SECTIONS 10-2101, 10-3071 and 10-3073)

Any portion of the Properties that is part of a "cluster unit development", as that term is defined in the Code, is subject to all of the following:

Section 1. Open Space. In addition to other provisions of this Article (*see e.g.*, Part A, Sections 6, 16 and 17), all Open Space is subject to the following:

(a) Preservation. Open Space and private streets shall be preserved for the perpetual benefit of the Owners of the Lots within the Properties, and shall be restricted against private or public ownership for any other purpose except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage, conservation and greenway easements.

(b) Exchange. Open Space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of Open Space for other properties when all of the following are met:

- (1) written notice of the exchange is given to each Member of the Association;
- (2) after the notice is given, those Members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;
- (3) the exchanged properties and other considerations are of like value and utility;
- (4) 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 the Code; and
- (5) the exchange is approved by the Planning Director of the City.

(c) Dissolution. If the Association is dissolved, the Open Space shall first be offered to the City, and, if accepted, deeded to the City.

(d) Recreation. Recreational uses located in Open Space and other Common Areas shall comply with the provisions of Code Section 10-2072 related to recreational use related to a residential development, other than a single-family dwelling unit. Membership fees shall not be charged to non-members of the Association for any recreation facility located in a residential zoning district unless the facility is owned by a non-profit entity and a special use permit is first obtained from the Raleigh Board of Adjustment in accordance with Code Section 10-2144(b), "Recreational Use Restricted to Membership - Not for Profit".

(e) Mortgaging of Open Space. Open Space may be subjected to a security interest with the written approval by those Members who have the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration, and provided that the rights of the mortgagee are subordinate to the rights of the Owners and the Association.

Section 2. Residential Density Transfers. The Properties are developed as a cluster unit development approved by the City. Residential density transfers are permitted in a cluster unit development as allowed in the Code. Accordingly, even though some Lots may appear to contain enough land area to construct additional

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dwelling units or create additional Lots, prior density transfers approved within the cluster unit development may, in fact, preclude City approval of additional dwellings or further subdividing of Lots.

Section 3. Development Rights. Development rights retained by the Declarant as special Declarant rights, including the right to add real estate to the cluster unit development, to add dwelling units, to add Common Areas, to change dwelling unit types within the cluster, or to reallocate units within the cluster, as well as all conditions and limitations applied to the exercise of any such development rights, are described in other Articles and Sections of this Declaration. Exercise of any of the development rights described in this Section is subject to the prior approval of the City.

Section 4. Addition of Land. The maximum amount of land that can be added to the cluster unit development is as follows: _____ acres.

Section 5. Number of Dwelling Units. The maximum number of dwelling units and the maximum number of dwelling units per acre that can be contained in the cluster unit development, or transferred to portions of the cluster unit development without rezoning the real property to another zoning classification for additional dwelling units, are as follows (for purposes of this Section, the cluster unit development includes all portions of the Properties initially subjected to this Declaration that are part of the cluster unit development, together with all Annexed Property that becomes subject to this Declaration and is part of the cluster unit development):

- (a) maximum number of dwelling units allowed in the cluster unit development is 322;
- (b) maximum number of dwelling units per acre allowed in the cluster unit development is 5.56;

Section 6. Common Party Walls. All common party walls between individual residences shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

(a) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable Maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

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(d) Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(e) The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

(f) An Owner who desires to sell a residence, or the prospective purchaser of such residence, may request the Owners of each other residence which shares that common party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such common party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a residence which shares a common party wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that residence and with respect to third parties.

(g) Each Owner of a residence which shares a common party wall with one or more other residences and such Owner's contractors and subcontractors shall have an easement and right of entry upon such other residences or businesses to the extent reasonably necessary to repair, restore, Maintain or reconstruct the common party wall. Such repair, restoration, Maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences or businesses damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

PART D
CITY GREENWAYS
(CODE SECTIONS 10-3003 AND 10-3022)

Notwithstanding any other provision of this Declaration, without the prior written consent of the City, none of the following is allowed in any City-owned greenway or greenway easement: grading; excavation; dredging; the addition or removal of soil or other materials; the erection of buildings, signs, fences, drainage devices or structures; or any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code). The City, in its sole discretion, at any time and from time to time, may erect paved or unpaved trails, trail markers, and place litter receptacles and other convenience facilities, within the greenway boundaries. The City, in its sole discretion, may adopt and amend regulations concerning the use of greenway (including, by way of example, limiting hours of operation), which shall be equally applicable to the general public and to the Owners and their occupants and guests.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner's right and easement of use and enjoyment in and to the Common Area and over the Common Area for access, ingress and egress from and to public streets, walkways and parking areas which shall be appurtenant to and shall pass with the title to every Lot, shall be subject to the following provisions:

- (a) The right of the Association subject to the ordinances of the City of Raleigh to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association, following notice and opportunity to present evidence, to fine Owners for non-compliance with these Covenants, suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) The right of the Association to limit the number of guests of Members;
- (d) The right of the Association to adopt, publish and enforce rules and regulations as provided in the Governing Documents;
- (e) The right of the Association, with the assent of four-fifths (4/5) of all Class A Members and four-fifths (4/5) of all Class B Members, and in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the Members and the Association hereunder. No such action to subject the Common Area to a security interest shall be effective unless an instrument agreeing to subject the Common Area to a security interest signed by four-fifths (4/5) of each class of Members has been recorded; ; and
- (f) The right of the Association to dedicate fee simple title or transfer fee simple title and to all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by four-fifths (4/5) of each class of Members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property, but such delegate shall be subject to the limitations of the Governing Documents.

Section 3. Parking. The Association may regulate the parking of boats, trailers and other such items on the Common Area and individual Lots. In particular, outdoor storage or parking of any unlicensed vehicles, campers, boats, trailers or any vehicles that are not licensed automobiles, vans and sport utility vehicles is prohibited. No motor vehicles of the Owner, members of his family or tenants may be parked or stored on any Lot or any of the subdivision streets while on jacks or while being repaired. No motor vehicles of the Owner, members of his family, or tenants may be parked or kept on any street in the subdivision for overnight parking. Parking or storage of motor vehicles on the grass area or sidewalk area of any Lot is prohibited. Boats, trailers and motor vehicles parked in violation of this Paragraph or in violation of the rules and regulations promulgated by the Association from time to time shall be subject being towed or removed by the Association at the expense of the owner thereof.

Section 4. TV Antennas and Cablevision. Exterior equipment including, but not limited to, communications, telecommunications, microwave, television, cable television dishes, satellite dishes, and antennae, shall not be placed or installed by Owner, its agents, licensees, or representatives on the exterior front wall or on the exterior sidewalls of any structure erected or placed upon a Lot that is within twenty feet (20') from the front wall of the house or at any place on the premises that is parallel to said front wall or sidewalls. In a location where the rear wall or a sidewall faces a street, the same restriction shall apply to the entire rear wall or the entire sidewall that

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faces a street and the areas of the premises that are parallel to said rear wall or sidewall. Under no circumstances may installed exterior dishes or receivers have a circumference larger than eighteen inches (18"). The Association may further regulate or prohibit the erection of television antennas and satellite dishes on individual Lots.

Section 5. Repair and Reconstruction. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon. Each Owner further covenants and agrees that in the event of a partial loss or damage (defined as cost of repair less than 50% of the current tax value), resulting in less than total destruction (defined as cost of repair valued at greater than or equal to 50% of the current tax value) of structures comprising his Lot, the Owner shall proceed, within 60 days of the casualty, to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner, within 45 days of the casualty, shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the community-wide Standard.

ARTICLE III **CLASSES OF MEMBERSHIP**

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

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned provided that, when Class B membership terminates as set forth below, the Declarant shall be a Class A member for each Lot it then owns. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine by majority, but in no event shall more than one vote be cast with respect to any Lot, and in no event shall fractional votes be allowed.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier.

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in Class B membership; or
- (b) on December 31, 2011; or
- (c) Upon the surrender of all Class B membership by the holder thereof.

ARTICLE IV **ASSESSMENTS**

Section 1. Working Capital Assessments. 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 cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have 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.

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Section 2. Emergency Special Assessments. In the event of an Emergency (as hereafter defined), the Board, on behalf of the Association, in the Board's sole discretion, may levy an Special Assessment for the purpose of taking preventative, protective, stabilizing, or remedial actions to protect the Common Areas, streets or any improvements located thereon, and to further reconstruct, repair or replace any portion of the Properties, streets or improvements following such Emergency. For purposes of this Section, Emergency includes, but is not limited to, hurricanes, tornadoes, flooding, fires, acts of God or other naturally occurring phenomena. An Emergency Special Assessment shall be due and payable as established by the Board of Directors.

Section 3. Notice and Quorum for any Action authorized under this Article. Unless specifically provided otherwise, written notice of any meeting called for the purpose of taking any action authorized under Sections 1 or 2 of this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. Unless specifically provided otherwise, at the first such meeting called, the presence 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 present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. This provision shall continue to reduce the quorum by one-half from that required by the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. No such subsequent meeting shall be more than 60 days following the preceding meeting.

Section 4. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and may be collected on an annual, semi-annual, quarterly or monthly basis as determined by the Board of Directors. Provided, however, that the assessments for Lots owned by Declarant for which no certificate of occupancy has been issued shall be twenty-five percent (25%) of the regular assessments for other Lots.

Section 5. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following recordation of the map wherein such Lot is shown. Said annual assessments shall be paid ratably on an annual, semi-annual, quarterly or monthly basis as determined by the Board of Directors. 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. Within ten (10) business days after receipt of a request, the Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein and is binding on the Association, the executive board and every Lot Owner.

Section 6. Working Capital Fund. At the time of closing of the sale of each Lot by the Declarant, a sum equal to at least two months assessment for each Lot shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. In addition, at the time of closing of the sale of each Lot by the builder/original purchaser, a sum equal to at least two months assessment for each Lot shall be collected from the home buyer/purchaser and transferred to the Association to be held as a working capital fund. Thus, the builder/original purchaser and the home buyer/purchaser shall each pay a sum equal to at least two months assessment at the time of the closing of their purchases. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 7. Dues Paid In Advance. The annual assessments provided for herein shall commence as to Lots being purchased at the time of recordation of a deed from the Declarant to a new owner, pro rated to the first day of the month following said recordation. An amount equivalent to one annual assessment (prorated to the

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end of the Association's fiscal year), plus any working capital collections, shall be collected at the time of closing to the ultimate consumer referred to in this Section. Such annual assessments shall be paid ratably on an annual basis and shall be collected at the time of purchase by the ultimate consumer, also referred to as the home buyer/purchaser.

ARTICLE V **ARCHITECTURAL & ENVIRONMENTAL CONTROL**

Section 1. No Action Without Approval. No dwelling building, fence, wall or other structure of any kind shall be commenced, erected or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made (including, but not limited to, changes or alterations in the color exterior paint, vinyl siding, roof-shingles, masonry or shutters) until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said completed plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Buildings. No trailer, tent, shack, barn or other building shall be erected or placed on any Lot covered by these covenants. No detached garage shall at any time be used for human habitation temporarily or permanently. Temporary structures are prohibited.

Section 3. Driveways and Sidewalks. No additional driveways or sidewalks may be installed on any Lot without the prior written approval of the Architectural Committee of the Association and, if required by the Raleigh City Code, the City of Raleigh.

Section 4. Mailboxes. Mailboxes shall not be altered in any way, with the exception of repairs to restore these items to their original appearance if damaged or discolored.

Section 5. Landscaping. Grass and flowerbeds shall be maintained in a neat and orderly manner to appear as the grass has been mowed on a weekly basis and the weeds in the flowerbeds removed on a weekly basis. In the event this work is not done, the Association shall have the authority, but not the obligation, to perform this work in lieu of the Owner and assess the cost to the Owner through the Association, including any legal fees and administrative costs incurred by the Association. In addition, any alteration (including altering the grade of the Lot) of the landscaping of the front and/or side yards and/or in any landscape easement must be approved by the Architectural Committee of the Association.

Section 6. Yard Art. No yard art, including plastic flowers, which is visible from the street may be displayed on any Lot without the prior written approval of the Architectural Committee of the Association.

Section 7. Furniture. No household furniture intended for interior use may be kept or stored on porches or yards.

Section 8. Garbage. Unless otherwise required by the City of Raleigh, all garbage or refuse shall be kept in the rear yard of all Lots; not in the front or side yards and may not be visible from the public street.

Section 9. Clothes Lines. Clothes lines, including temporary or retractable lines, are prohibited on any Lot.

Section 10. Lot Upkeep. Upon the recordation of a deed from the Declarant to a builder, said builder

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shall be responsible for upkeep and cleanliness (including mowing of any grass on the Lot) of Lots for which no structure has been commenced. During the construction phase, the builder shall keep the Lot clean and maintain a dumpster or fenced area for the construction debris, so that the Lot is free from debris other than that contained in those areas. The fenced area must be cleaned at least once a week. Upon completion of the construction of a house, the builder shall establish a seeded or sodded lawn area and shall maintain that area in keeping with the requirements under this Article herein. At the commencement of construction at a Lot, the builder shall install such silt fencing and all other such Lot protection devices as may be required by any governmental agency.

Section 11. Nuisance. No noxious or offensive trade, activity, or language shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No trade materials or inventories may be stored upon the premises and no trucks or tractors may be stored on the premises. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a doctor's office or professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop or gift shop shall be carried on upon any Lot. Any business activity or trade that causes undue traffic, noise, outward signs of non-residential use or has any employee shall be prohibited, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Noise levels must be maintained in accordance with the City of Raleigh Code requirements at all times.

Section 12. Billboards and Signs. Except for unit identification numbers required by the City of Raleigh, no billboards or signs shall be erected or maintained on the premises. However, nothing in this section shall be construed so as to be in conflict with N.C.G.S. § 47F-3-121.

Section 13. Trespassing. Trespassing on any Lot is strictly prohibited.

Section 14. Minimum Square Footage. The residences of Detached Family Dwelling Lots shall be erected with a minimum of 588 square feet on the first story (if a two story structure), exclusive of porches and garages, with a total square footage of at least 1392 square feet. On single story residences, the minimum total square footage shall be 1392 square feet, exclusive of porches and garages.

ARTICLE VI

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish, and endorse reasonable rules and regulations concerning the use and enjoyment of the Common Areas, streets and individual Lots. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the Declarant and/or model used by Declarant) shall be used except for single Family residential purposes and for purposes incidental or accessory thereto.

Section 3. Occupancy Limitation. No portion of any Lot or any Dwelling constructed on a Lot shall be occupied by more than one Family as defined in Article II of this Declaration.

Section 4. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

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Section 5. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling. Household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. Pitt Bulls and Rottweilers are not permitted. All pets must be kept under the direct control of the owner by fence, leash or harness and may not run freely at any time. Pet owners are required to clean up after their animals at all times in the Common Areas, Streets and Lots, both at their own Lots and at Lots not their own. Violations will be subject to a fine and/or legal action.

ARTICLE VII **GENERAL PROVISIONS**

Section 1. 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 or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any 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 3. Binding Effect. The covenants 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.

Section 4. Amendment. This Declaration may be amended in accordance with the North Carolina Planned Community Act, as amended. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within 30 days do the following:

(a) Reasonably assure itself that the Owners of the required number of Lots have executed the amendment. (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 **CONDITIONS AND RESTRICTIONS OF MAYBROOK FOREST HOMEOWNERS ASSOCIATION, INC.**

MAYBROOK FOREST HOMEOWNERS ASSOCIATION, INC.

By: _____
President

(c) This section must be read so as to be in harmony with Article I, Part A, Section 4 of this Declaration.

Section 5. Management and Contract Rights of Association. Declarant shall enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance and management of the Properties. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract at any time after providing 90 days written notice without justification or penalty after transfer of management by Declarant to the Association.

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Section 6. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon written request, be entitled to (a) upon being given an appointment, inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within one hundred eighty (180) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the note securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the owner of any single-family dwelling unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy, all the above upon request of mortgage holder.

**ARTICLE VIII
ELECTRICAL SERVICE**

Declarant reserves the right to subject the above described Properties to a contract with an electrical utilities company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to such electric utilities company by either the Association, the Owners or both within said Properties.

IN WITNESS WHEREOF, the undersigned, being the Declarant and Association herein, have caused this Declaration to be executed by its Managers as of the day and year first above written.

MAYBROOK ASSOCIATES, LLC

By: _____

Manager

STATE OF NORTH CAROLINA

COUNTY OF Nash

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 purposes stated therein and in the capacity indicated: Donald H. Perry, Manager of Maybrook Associates, LLC, a North Carolina limited liability company.

Date: 5-10-10

(Official Seal)

My commission expires 06-30-2010

By: Wendy B. Kerns

, Notary Public



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

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	New Time Stamp
	# of Pages

22.004-1/20/06

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WAKE COUNTY, NC 730
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
05/18/2007 AT 16:06:23

BOOK:012555 PAGE:01738 - 01742

PREPARED BY: THOMAS R. LENFESTEY, III
HOLD FOR: SMITH DEBNAM, BOX 182

STATE OF NORTH CAROLINA

WAKE COUNTY

FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR MAYBROOK FOREST
SUBDIVISION

MAYBROOK ASSOCIATES, LLC, a North Carolina limited liability company (hereinafter referred to as "the Declarant"), PERRY BUILDERS, LLC, a North Carolina limited liability company and JORDAN'S CONSTRUCTION, INC, a North Carolina corporation do hereby consent to declare and establish this First Amendment to Declaration of Covenants, Conditions and Restrictions for Maybrook Forest Subdivision (hereinafter referred to as "Maybrook Forest").

WITNESSETH:

WHEREAS, Maybrook Forest Homeowners Association, Inc, a North Carolina non-profit corporation has certified the validity of this First Amendment as shown on Exhibit A, attached hereto.

WHEREAS, the Declarant has previously recorded a Declaration of Covenants, Conditions and Restrictions for Maybrook Forest, said plan being recorded in Book 11962, Page 335 in the office of the Register of Deeds, Wake County, North Carolina (hereinafter referred to as "the Declaration"); and

WHEREAS, pursuant to the provisions contained in Article VII of the Declaration, the Declarant desires to modify Article IV, Section 4 by deleting said provision in its entirety and replacing it with the following:

Section 4. **Uniform Rate of Assessment.** Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and may

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be collected on an annual, semi-annual, quarterly, or monthly basis as determined by the Board of Directors. Provided, however, that the assessments for Lots which are owned for the purposes of constructing a Dwelling by a builder or Declarant shall not be required. Upon completion of construction and subsequent sale of such builder or Declarant owned Lots then annual and special assessments shall begin on such date and applied on the basis as determined above.

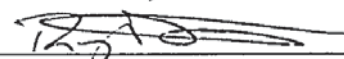
Except as herein amended, said Declaration shall remain in full force and effect.

IN TESTIMONY WHEREOF, the parties named herein have caused this First Amendment to be executed this the 14 day of ~~January~~ April, 2007.

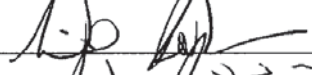
MAYBROOK ASSOCIATES, LLC


By: Ryan D. Ryan
Title: President/Owner

PERRY BUILDERS, LLC:


By: Ryan D. Ryan
Title: CEO

JORDAN'S CONSTRUCTION, INC:


By: Ryan D. Ryan
Title: President

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STATE OF NORTH CAROLINA
COUNTY OF Wake

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Ryan D. Perry personally appeared before me this day and acknowledged that he is a manager of Maybrook Associates, LLC, a North Carolina limited liability company, and that by authority duly given and as an act of said limited liability company, the foregoing instrument was signed in its name by him as a Manager.

2007. Witness my hand and official stamp or seal this the 18 day of April,

Caroline F. Mullen
Notary Public
My Commission Expires: Oct 22, 2011

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Ryan D. Perry personally appeared before me this day and acknowledged that he is a manager of Perry Builders, LLC, a North Carolina limited liability company, and that by authority duly given and as an act of said limited liability company, the foregoing instrument was signed in its name by him as a Manager.

2007. Witness my hand and official stamp or seal this the 18 day of April,

Caroline F. Mullen
Notary Public
My Commission Expires: Oct 22, 2011

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Mike Jordan personally appeared before me this day and acknowledged that he is president of Jordan's Construction, Inc., a North Carolina corporation, and that by authority duly given and as an act of said corporation, the foregoing instrument was signed in its name by him as a president.

2007. Witness my hand and official stamp or seal this the 16 day of April,

Robin R. Horton
Notary Public
My Commission Expires: 3-11-2012

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EXHIBIT A

CERTIFICATION OF VALIDITY OF AMENDMENT TO
CONDITIONS AND RESTRICTIONS OF MAYBROOK FOREST HOMEOWNERS
ASSOCIATION, INC.

MAYBROOK FOREST HOMEOWNERS ASSOCIATION, INC hereby certifies that this First Amendment to the Declaration of Covenants, Conditions and Restrictions for Maybrook Forest Subdivision which was recorded in Book 11962, Page 335 in the office of the Register of Deeds, Wake County, North Carolina (hereinafter referred to as "the Declaration") has been validly prepared and consented to in accordance with the requirement of Article VII, Section 4 of the Declaration as well as the North Carolina Planned Community Act.

This certification of validity has been executed, this the 8th day of ~~January~~^{May}, 2007.

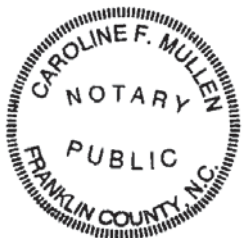
**MAYBROOK FOREST HOMEOWNERS
ASSOCIATION, INC.**

By: Don H. Perry
Title: Member / Manager

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Don H. Perry personally appeared before me this day and acknowledged that he is president of Maybrook Forest Homeowners Association, Inc., a North Carolina non-profit corporation, and that by authority duly given and as an act of said corporation, the foregoing instrument was signed in its name by him as a president.

2007. Witness my hand and official stamp or seal this the 8th day of May,



Caroline F. Mullen
Notary Public

My Commission Expires: Oct. 22, 2011



BOOK:012555 PAGE:01738 - 01742

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

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