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LAURA M RIDDICK
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NORTH CAROLINA
COUNTY OF WAKE

**DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND
RESTRICTIONS FOR FALLS VILLAGE
TOWNHOME OWNERS ASSOCIATION**

Prepared by and return to: Elizabeth C. Trahos
Holt York McDarris & High, LLP
P. O. Box 2060
Raleigh, NC 27602

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR FALLS VILLAGE TOWNHOME OWNERS ASSOCIATION, ("Declaration"), made this 13th day of December, 2004, by BVT CAPITAL PARTNERS, XVII, LIMITED PARTNERSHIP, a Delaware limited partnership with its principal office located at c/o BVT Development Corporation, 3350 Riverwood Parkway, Suite 1500, Atlanta, GA 30339, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of the following real property located in the City of Raleigh, County of Wake, State of North Carolina (the "Property"):

All of Lot 1, containing 4.520 acres, as shown on plat entitled "Recombination Survey & Easement Exchange, Lots 4, 5, and 6 of the Plat Titled "Falls Village Shopping Center" by Chas. H. Sells, Inc. dated April 28, 2004, revised July 29, 2004 and recorded in Book of Maps 2004, page 1524, Wake County registry.

AND WHEREAS, Declarant intends to develop a residential project commonly referred to as "Falls Village Townhomes" on the Property; and

WHEREAS, it is the desire and intention of Declarant to impose on the Property restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all Property herein described and the future owners thereof and any additional land subject to this Declaration; and,

WHEREAS, this Declaration and the covenants, conditions, restrictions and easements, shall apply to the owners of all Lots in Falls Village Townhomes;

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, transferred, occupied, used and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I **DEFINITIONS**

Section 1. "Articles" shall mean the Articles of Incorporation of the Association as filed with the Secretary of State, State of North Carolina, as the same may be from time to time amended.

Section 2. "Association" shall mean and refer to Falls Village Townhome Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean those Persons elected or appointed and acting collectively as the Board of Directors of the Association. The Board shall for all purposes be considered to be the "executive board" of the Association, as such term is used in the Planned Community Act.

Section 5. "Bylaws" shall mean the bylaws of the Association, as adopted initially by the Board and as amended thereafter.

Section 6. "Common Properties" shall mean portions of the Property intended for the use and benefit of the residents of the Property, including: (1) any private street, (2) any stormwater device that serves more than one (1) Dwelling Unit, (3) any utility line located outside public street rights-of-way and public utility easements, and not located on a Lot, (4) any site or facility designated as "common area" or "common property" or "open space" or "common open space" on any recorded plat of the Property or in any recorded declaration of covenant, and (5) any shared facility or open space required under the City Code and not conveyed to the government.

Section 7. "Common Expenses" shall mean and include, as applicable:

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

(b) Expenses for maintenance of the roads, parking lots, sidewalks, curb and gutter and retaining walls located within any private rights-of-way, private streets, and parking lots on Common Properties, and, as determined by the Association or the Board and any amenities as provided in this Declaration;

(c) Expenses of administration, maintenance, repair, or replacement of the Common Properties including, but not limited to expenses of maintenance of any sign, fountain, fences, lighting, drainage, irrigation and landscaping located on any of the Common Areas within Falls Village Townhomes.

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

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

(f) Ad valorem taxes and public assessment charges lawfully levied against any Common Properties owned in fee by the Association;

(g) The expense of the maintenance of Stormwater Control Measures in accordance with the Stormwater Manual and Budget and utility easements granted in favor of the Association and any drainage or utility facilities located therein which are not maintained by the City of Raleigh or any public utility company;

(h) Unpaid assessments resulting from foreclosures of any first mortgage or deeds of trust and sale and the costs associated with the collection of any unpaid assessments;

(i) The charges for utilities used in connection with the maintenance and use of Common Properties;

(j) The expenses associated with the implementation of the terms of the Stormwater Agreement;

(k) All expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

(l) Any other expenses determined by the Board or approved by the Members to be common expenses of the Association.

Section 8. "Declarant" shall mean and refer to BVT CAPITAL PARTNERS, XVII, LIMITED PARTNERSHIP, a Delaware limited partnership its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose, or any owner of the remainder of the Property at foreclosure when held by Declarant or its Successor to the rights of Declarant or resulting from the transfer in lieu of foreclosure.

Section 9. "Declarant Control Period" shall mean the period of time beginning on the date this Declaration is recorded at the Register of Deeds and ending upon the termination of the Class B membership.

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Section 10. "Dwelling Unit" shall mean and refer to any improvement or portion thereof situated on a Lot intended for use and occupancy as one (1) single family dwelling, irrespective of the number of owners thereof (or the form of ownership).

Section 11. "Lot" shall mean any subdivided, numbered parcel of land shown on any subdivision plat of the Property, or any portion thereof, and intended for use as a site for a Dwelling Unit, as any such plat or plats may be from time to time amended or modified.

Section 12. "Member" shall mean and refer to every Person or entity that holds membership in the Association.

Section 13. "Notice" required to be given herein shall be in writing and mailed by U.S. mail, postage prepaid, first class to the address of any Member on the records of the Association or shall be hand delivered to the Member.

Section 14. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 15. "Person" shall mean and refer to any natural person, corporation, partnership, association, limited liability company, trustee, governmental subdivision or Agency, or other legal entity or any combination thereof.

Section 16. "Planned Community Act" shall mean the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes.

Section 17. "Property" shall have the meaning hereinbefore set forth.

Section 18. "Stormwater Agreement" shall mean the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution applicable to the Property dated December 13, 2004 between Declarant, the Association and the City of Raleigh and recorded in Book 11261, page 1733, Wake County Registry.

Section 19. "Stormwater Control Measures" shall mean and refer to any bioretention area spreaders, drainage easements and all other stormwater measures including storm drainage pipes, which serve the Properties that are located outside public street rights-of-way (excluding those pipes and measures serving a single Lot).

Section 20. "Stormwater Manual and Budget" shall mean and refer to the Stormwater Operations and Maintenance Manual and Budget attached hereto as Exhibit A and incorporated herein.

ARTICLE II
PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Properties together with and including the right of use, access, ingress and egress, on and over the Common Properties, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Property facilities, if any, of 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 by the Owner of the Association's published rules and regulations;

(b) the right of the Association to dedicate, sell, lease or transfer all or any part of the Common Properties, or any interest therein, to any public agency, authority, or utility, and subject to such conditions as may be agreed upon by the Members. No such dedication, sale, lease or transfer shall be effective unless it has been approved by four-fifths (4/5) of each class of Members and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded and provided the dedication, sale, lease or transfer is in compliance with applicable governmental regulations. On such instrument the Secretary of the Association shall certify that four-fifths (4/5) of each class of Members have approved the dedication, sale, lease or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes, as specified herein, may be made by the Association without consent of the Members.

(c) the right of the Association, with the consent of four-fifths (4/5) of each class of Members, to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage or hypothecate the Common Properties, provided that the rights of the lender shall be subordinate to the rights of the Members and Association under this Declaration;

(d) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Properties and improvements thereon, which rules and regulations may further restrict the use of the Common Properties;

(e) the right of the Association to exchange portions of the Common Properties provided that all exchanges shall comply with §10-3073(a)(2) of the Raleigh City Code or its successor provision and such exchange, other than to eliminate an encroachment, is approved by four-fifths (4/5) of each class of Members and an instrument of exchange like that described in 1(b) above is recorded;

(f) easements of encroachment set forth in Article VII, Section 9.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Properties to his family members residing on the Property, tenants or contract purchasers who occupy or use the Property, but said owner shall retain all responsibility for the actions of those to whom such right is delegated.

Section 3. Title to the Common Properties. While reserving the right to construct permitted facilities on the Common Properties and to charge reasonable fees for use of said facilities, all in accordance with the Raleigh City Code, the Declarant hereby covenants for itself, its heirs and assigns, that it will convey title to the Common Properties located within the Property to the Association, free and clear of all encumbrances and liens, except for the Stormwater Agreement, and easements for utility access, storm drainage, utilities and greenways, prior to the conveyance of the first Lot shown on a recorded plat of any portion of the Property. The Association shall accept any conveyance of Common Properties to the Association, and shall not subdivide or convey the Common Properties except in connection with a mortgage or hypothecation of the Common Properties pursuant to Section 1(c) of this Article II. The Association may exchange all or portions of the Common Properties for other property, provided such exchange is done in compliance with the provisions of the Raleigh City Code (currently Code Section 10-3073(a)(2)).

Section 4. The members may dissolve the Association only upon the written consent of one hundred percent (100%) of the members. The said written consent shall either obligate each member to enter into continuing maintenance agreements which provide for the obligations of the dissolved Association, or designate a successor entity to hold, manage and maintain the Common Properties. If the Association is dissolved without the designation of a successor entity to hold, manage and maintain the Common Properties, such properties shall thereafter be held by the Members as tenants in common with percentages of ownership being the same as each Member's percentage of votes as a Class A Member, as determined pursuant to Section 2 of Article III of this Declaration. The Common Properties shall not be reconveyed except to a governmental entity or a nonprofit corporation that will accept perpetual maintenance responsibility.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership, as follows:

Class A. Class A members shall all be Members except Declarant and shall be entitled to one (1) vote for every Lot owned by such Member. When more than one Person holds an interest in any Lot, all such Persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws. Fractional voting is prohibited.

Class B. The Class B membership shall be the Declarant. The Declarant shall have ten (10) votes for every Lot it owns. Class B membership shall terminate upon the occurrence of any of the following events, whichever occurs earlier:

- (i) upon the conveyance of all remaining Lots and Common Properties by Declarant without the assignment of the rights of Declarant as the Declarant under this Declaration;
- (ii) ten (10) years after the date of this Declaration; or
- (iii) upon the resignation of Declarant as a Class B member.

Section 3. The right of any Member to vote may be suspended by the Board of Directors in accordance with the procedures set forth in § 47F-3-107.1 of the Planned Community Act for just cause pursuant to its rules and regulations and according to the provisions of Article II, Section I(a) herein.

Section 4. Notwithstanding any other provision of this Declaration, the Articles or Bylaws, during the Declarant Control Period Declarant shall have the following rights, which it may exercise in its sole discretion without the consent of any Owner or the Association:

- (a) Declarant shall have the right to appoint and remove the Board of Directors and the officers of the Association.
- (b) Declarant shall have all the rights listed in § 47F-1-103(28) of the Planned Community Act.
- (c) Declarant may recombine any Lots and/or Common Properties still owned by Declarant.

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(f) Declarant may relocate easements at any time on any part of the Property still owned by Declarant.

(g) Declarant shall have the right to use the Common Properties for any purpose reasonably related to the development of the Property.

ARTICLE IV
ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

Section 1. Architectural Standards. Each Dwelling Unit shall include a minimum of 2,100 square feet of heated space. The exterior of each unit shall be constructed of brick, hardiplank siding or a combination of brick and hardiplank siding with a minimum of 40% of the area of each exterior wall, excluding windows and doors, being brick. Each Dwelling Unit shall contain an attached two-car garage and a driveway designed to accommodate two vehicles. Such garages shall be maintained as garages, and shall not be converted to heated space.

Section 2. Residential Use Only. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling not to exceed two and one-half stories in height, and a private garage for no more than two automobiles. No lot shall be used for any business activity or any trade or commercial purpose, or for any purpose other than residential use, except for (i) such home office use as may be permitted under the zoning applicable to the Property; and (ii) those activities normal and incident to the initial construction of Dwelling Units and sale of Lots. No trade materials or inventories may be stored upon a Lot.

Section 3. Removal of Vegetation from Common Areas. No Owner shall injure, cut or remove, or suffer or cause to be injured, cut or removed, any trees, shrubs, flowers or other vegetation from any Common Area without the prior written approval of the Association.

Section 4. Signs. No signs, billboards or posters of any nature shall be erected, placed, exhibited or maintained on any Lot without the prior written approval of the Association except the following:

i. Identification signs not to exceed one (1) square foot in display area, and not illuminated, bearing only the address and/or names of the occupants of the Lot.

ii. Political yard signs not to exceed nine (9) square feet in display area and not illuminated.

iii. "For Sale" or "For Rent" signs pertaining to Lots offered for sale or rent, not exceeding nine (9) square feet in display area, not illuminated, and placed no closer to a front property line than ten (10) feet. There shall be a limit of one such sign for each street abutting a particular Lot.

iv. Temporary signs giving information pertaining to construction taking place on the Lot upon which the sign is located, and which must be removed prior to issuance of a certificate of occupancy. Temporary signs shall not be illuminated, shall not be erected

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more than twenty-one (21) days per calendar year and shall not be larger than nine (9) square feet in display area. Only one temporary sign shall be permitted on any particular Lot.

Section 5. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done on a Lot that is or may become an annoyance or nuisance to the surrounding Lots or Common Areas. This shall include loud noises or sounds, which shall be maintained at such levels and times as limited by local ordinance.

Section 6. Parking. No boats or other vehicles except automobiles shall be parked on any street in the Development. Boats, trailers, campers, recreational vehicles, tractors or large vehicles shall be stored or parked only in garages or other well screened enclosures approved in advance for such use in writing by the Association. No such vehicles shall be exposed to view from any street, any other Lot or from any Common Areas. Automobiles parked along any street shall be removed within twenty-four (24) hours and shall be parked so as not to obstruct traffic along said street.

Section 7. Exterior Appurtenances. No Lot shall have more than one television or radio antenna, which antenna must be attached to the Dwelling Unit. No television or radio reception dish antennas may be placed on any Lot except a single television or radio reception dish antenna that is no greater than twenty-four (24) inches in diameter, and which must be attached to the Dwelling Unit in a location that is not visible from the street in front of the Dwelling Unit. No Dwelling Unit shall have any other object attached to its exterior, including lightning rods, weather vanes and high powered antennas. No outside clothes lines shall be placed on any Lot. No window air conditioning units shall be visible from any street in the direction in which they face.

Section 8. Utility Connections. All telephone, electric and other utility lines and connections between the main utility lines and a Dwelling Unit or other structure on a Lot shall be concealed and located underground so as not be visible.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, and agree to pay to the Association: (1) periodic assessments or charges for Common Expenses, (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction or reconstruction of improvements, and (4) special assessments for any monies owed by the Association to the City of Raleigh pursuant to the Stormwater Agreement (hereinafter, a "City Stormwater Assessment"). The annual, special and individual assessments, together with interest and costs, late payment charges (see Section 9 of this Article) and reasonable attorney's fees for collection, shall be a charge on the land, and if unpaid for a period of at least thirty (30) days, shall be a lien upon the Lot against which each such assessment is made upon the filing of a claim of lien

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against said Lot by the Association as provided in § 47F-3-116 of the Planned Community Act. In addition, City Stormwater Assessments, together with interest, collection costs, late payment charges and attorney's fees (all as provided in the Stormwater Agreement), shall be a lien upon the Lot against which each such assessment is made upon the filing of a claim of lien, any time after default, against said Lot by the Association, or by the City of Raleigh as the assignee of the Association's lien rights, as provided in § 47F-3-116 of the Planned Community Act. Any claim of lien filed by the City of Raleigh shall be signed by the City Manager. Each such assessment, together with interest, costs, late payment charges and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association following a hearing before the executive board shall also have the authority, through the Board of Directors to establish, fix and levy an individual assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof together with all late payments, charges, interest, reasonable attorney fees shall become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses; and, in particular, but not limited to, for the acquisition, improvement and maintenance, use and enjoyment of the Common Properties, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the maintenance of Stormwater Control Measures in accordance with the Raleigh City Code and the Stormwater Manual and Budget, the payment of taxes and public assessments assessed against any Common Properties owned in fee, the providing for security to the Property, the procurement and maintenance of insurance in accordance with the Declaration, Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment.

(a) Initial Maximum Assessment. To and including December 31, 2005, the maximum annual assessment shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) per dwelling unit.

(b) Assessment for Subsequent Years. From and after December 31, 2005, the annual assessment imposed by this Association, shall be established by the Board of Directors in the Association's yearly budget. Within thirty (30) days after adoption of any proposed annual assessment for the community, the Board of Directors shall provide to all the lot owners a summary of the annual budget and a notice of the meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The Board of Directors shall set a date for a meeting of the lot owners to consider ratification of the budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A budget including an annual assessment increase which does not exceed the greater of ten (10%) percent or the percentage increase reflected in the Consumer Price Index For All Urban Consumers (CPI-U) - South Urban Area Average (1982-84 = 100) (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other Index as may succeed that Index, for the twelve-month period ending with the calendar quarter immediately preceding the quarter during which the meeting is held, shall be approved unless at that meeting, lot owners of ninety percent (90%) of the subdivision acreage reject the budget. For budgets containing annual assessment increases exceeding the aforementioned limits, the budgets shall be deemed approved unless at the budget ratification meeting, lot owners of fifty-one percent (51%) of the subdivision acreage reject the budget.

(c) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs.

(d) Board Authority. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation, or to fund the obligations established by the Stormwater Agreement.

(e) Declarant Expenses. Declarant may, but shall not be obligated to pay or advance any Association expenses not otherwise covered by the assessment hereunder. The terms of any Loan by Declarant to the Association to cover such payments shall be in writing and approved by 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.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement

upon the Common Properties, the cost to purchase Lots and buildings at foreclosure sales of Association liens, construction, and reconstruction of improvements, any extraordinary legal expenses or maintenance expenses, including vegetation, fixtures and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Properties. A reserve fund for Stormwater Control Facilities which the Association may be obligated to maintain will be established pursuant to the terms and provisions of the Stormwater Agreement; periodic maintenance and repair costs not covered by the Stormwater Agreement may be paid out of other reserve funds of the Association and Common Expenses.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members not less than 10 days nor more than 60 days in advance of the meeting. Except as otherwise provided in Article V, Section (3)(b) wherein no quorum is required, 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 a minimum seven (7) day, maximum twenty-one (21) day notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. If at a second meeting, the requirement of one-half of the required quorum is not met, then successive meetings may be held until a quorum is maintained by successively halving the quorum requirement of the immediately preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate per Dwelling Unit for all Lots and shall be collected on a monthly basis or other periodic basis established by the Board.

Section 8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital. The annual assessments provided for herein shall commence as to all Lots on the date which is the earlier of (a) at the date of closing of the sale of the first Lot from the Declarant; or (b) until such time as the Board of Directors shall decide to commence the levying of assessments upon its members. Pursuant to the provisions of North Carolina General Statutes Section 47F-3-115(a), until such time as the Association shall commence the levying of assessments upon the Members, Declarant shall pay all Common Expenses. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth

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whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Lot.

The right to a lien herein granted unto the Association shall be enforceable pursuant to § 47F-3-116 of the Planned Community Act and Article 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 in Wake County in the manner provided, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, late payment charges, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage or first deed of trust recorded before the docketing of the claim or lien in the Office of the Clerk of Superior Court and ad valorem taxes and public assessments on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage deed of trust or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner until three (3) years after the docketing of the claim of lien in the office of the Clerk of Superior Court. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof provided that a first-lien mortgagee or other purchaser of a Lot at foreclosure sale shall not be liable for, and such Lot shall not be subject to, a lien for the payment of Common Expenses assessed prior to such foreclosure sale, and such unpaid Common Expenses shall be deemed to be Common Expenses collectible from all of the Lot Owners, including such purchaser, his successors and assigns.

Section 11. Foreclosure of liens for unpaid Common Expenses. In any action brought by the Board to foreclose on a Lot because of unpaid Common Expenses, the Lot Owner shall be required to pay a reasonable rental for the use of his Lot, and the plaintiff in such foreclosure

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action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all Lot Owners, or on behalf of any one or more individual Lot Owners, if so instructed, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover money judgment for unpaid Common Expenses may be maintainable without foreclosing or waiving the lien securing the same.

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

ARTICLE VI **PARTY WALLS**

Section 1. General Rules of Law to Apply. The walls connecting adjacent Dwelling Units and situated on or about the boundary line separating said Dwelling Units shall be referred to herein as "Party Walls". To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of repair and maintenance of a Party Wall shall be shared by the Owners sharing use of the wall in proportion to such use and benefit.

Section 3. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it, and if the other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Reconstruction and Repair. The Owner of any Dwelling Unit may reconstruct or repair a Party Wall used by such Dwelling Unit, and shall have the right to go upon the adjoining Lot to the extent reasonably necessary to perform such work. Such work shall be done expeditiously. Upon completion of such work, such Owner shall restore the adjoining Lot to as near the same condition as prevailed on it before the commencement of such work as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the Lot owned by such Owner and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Owner That No Contribution Is Due. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner(s) a certificate that no contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request without charge. However, where the adjoining Owner claims a right of contribution, the certificate shall contain a recital of the amount claimed.

ARTICLE VII **EASEMENTS**

Section 1. Utility Easements. All of the Property, including Lots and Common Properties, shall be subject to easements for driveways, walkways, parking areas, water lines, sanitary sewer lines, storm drainage, gas lines, telephone, cablevision and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to or after the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Properties conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the Membership as provided in the Articles of Incorporation and this Declaration.

Section 2. Easement for the Benefit of Governmental Authorities. An easement is hereby established for the benefit of any governmental authority having jurisdiction over the Property, or other governmental agency, over all Common Properties for the setting, removing and reading of water meters (which shall be separate for each Lot), maintaining and replacing water, sewage and drainage facilities owned by the City, for police protection, fire fighting, postal delivery and garbage collection and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property, including exercising the rights delegated to the City of Raleigh set forth in the Stormwater Agreement.

Section 3. Recorded Easements. There are hereby reserved easements as shown on the recorded map or maps of the subdivision. In the event of a conflict in the width of any easement reserved herein or on the recorded map, the wider easement shall prevail.

Section 4. Drainage Easement. There is hereby reserved a blanket stormwater easement in, on, through, between and among all lots. Every lot owner shall have a right to convey its stormwater into this stormwater drainage easement on any lot. In addition to the foregoing reserved specific easements, the Declarant so long as it controls the Association, and thereafter the Association, may cut and create drains and drainways both above ground and underground for the purpose of facilitating the removal of surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and

appearance along, over or across any Lot. Further, this Property is subject to the terms of the Stormwater Agreement.

Section 5. Ground Disturbance. These reservations of easements by the Declarant contained in this Article expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil and any other action necessary to complete installation of utilities and drainage facilities.

Section 6. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Properties, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

Section 7. Declarant Easement. Every Lot shall be subject to an easement for entry by the Declarant for the purpose of correcting any problems that may arise regarding utilities, grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 8. Emergencies. Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot that endangers any building or any portion of the Common Properties.

Section 9. Encroachments. If any unintended encroachment shall occur subsequent to subjecting the Property to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same.

ARTICLE VIII

INSURANCE

Section 1. Insurance to be Maintained by the Association. The Association shall maintain such insurance as is required under § 47F-3-113 of the Planned Community Act, in compliance with all the requirements of § 47F-3-113 of the Planned Community Act, including but not limited to the following:

- (a) Public liability insurance in an amount not less than one million dollars and property damage insurance in such amounts and in such forms as shall be required by the Association.
- (b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.
- (c) Property insurance on the Common Properties insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the Common Properties, exclusive

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of land, excavations, foundations and other items normally excluded from property policies.

(d) Such other insurance coverage as it may determine to be desirable and necessary.

(e) Fidelity bonds for those officers or employees having control over Association funds.

(f) Other insurance required by law.

If the Association is scheduled as an additional named insured on the policy of insurance of another Person (e.g., the Declarant) for any of the above listed coverage requirements, the naming of the Association as an additional named insured shall satisfy such coverage requirements.

Section 2. Premiums. Premiums for insurance policies purchased by the Association are a common expense and shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. The beneficiaries of all such insurance policies shall be the Association and the Owners.

ARTICLE IX

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, U. S. Department of Veterans Affairs, Federal Housing Authority, Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

(a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the Membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

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

(d) To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof.

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

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

Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender. Failure of Institutional Lender to provide such notice as provided above shall relieve the Association of its duties herein until such time as notice is received.

ARTICLE X

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. General Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless owners of Lots containing at least sixty-seven percent (67%) of the subdivision

acreage record a termination of this Declaration with the Wake County Register of Deeds. This Declaration may be amended by an instrument signed by Owners holding four fifths (4/5) of the votes in the Association at the time of the amendment.

Section 4. Amendments Permitted Without Membership Approval. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the Members:

(a) Prior to the sale of the first Lot, this Declaration may be amended by the Declarant.

(b) The Declarant, so long as it shall retain Class B Membership, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls and construction standards. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, the State of North Carolina, the County of Wake, the City of Raleigh, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

(c) The Declarant, for so long as it shall retain Class B Membership, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status.

(d) The Declarant for so long as it has Class B Membership may amend this Declaration to include any platting change of the Property as permitted herein or to make amendments correcting minor typographical errors or other similar clerical errors.

Section 5. Governmental Authority Amendments. Any amendment to this Declaration shall conform to all the requirements of the Raleigh City Code, as in effect at the time of the amendment. Any amendment that does not comply with such requirements shall not be effective. Notwithstanding any authority or power conferred on the Declarant or the Association by this Declaration or Article 2 of Chapter 47F of the North Carolina General Statutes, any amendment to this Declaration relating to stormwater, including without limitation provisions related to Stormwater Control Measures, the funding of the Stormwater Agreement,

or the definitions in Article I, shall be void *ab initio* unless the Raleigh City Attorney or assistant City Attorney has approved the amendment prior to its adoption. The sole and exclusive means to show such approval shall be by the signature of the Raleigh City Attorney or assistant City Attorney on the amendment recorded in the Wake County Registry

Section 6. Recordation. No amendment shall be effective until recorded in the office of the Register of Deeds for Wake County, North Carolina.

Section 7. Stormwater Control Measures. The Raleigh City Code requires stormwater runoff from the Properties be controlled and nitrogen loading from stormwater runoff from the Properties be reduced. To comply with the City Code, Stormwater Control Measures will be installed and maintained. Failure to maintain the Stormwater Control Measures is a violation of the Raleigh City Code potentially subjecting each Owner to significant daily civil penalties and other enforcement actions. Consequently, on behalf of each Owner, the Association shall maintain, repair, replace and reconstruct the Stormwater Control Measures so that all times the Stormwater Control Measures shall perform as designed and at all times shall comply with all applicable laws, ordinances, regulations, rules, and directives of governmental authorities. In addition, the Association shall perform maintenance and repair of the Stormwater Control Measures as set forth on the Stormwater Manual and Budget. In the event that the Association neglects or fails to maintain, repair, replace, or reconstruct the Stormwater Control Measures, each Owner shall be jointly and severally responsible for such tasks, as required by the City of Raleigh. In the event that the Owner thereafter performs such maintenance, repair, replacement, or reconstruction, said Owner shall be entitled to reimbursement from the Association for the cost thereof, or, if the Association should fail to reimburse the Owner, said Owner shall be entitled to a pro-rata contribution for such costs from the Owner of every other Lot.

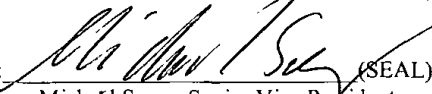
Section 8. Open Space Preservation and Protection Areas and Homeowner Association Undisturbed Open Space. No land-disturbing activity, removal of vegetation, application of impervious surface, or construction shall take place in Open Space Preservation Protection Areas without first obtaining a written permit from the City of Raleigh.

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Section 10. Private Streets. In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the Association and occupants, in that such private streets may not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to the Property or its occupants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, Association or occupants.

BVT Capital Partners XVII, Limited Partnership,
a Delaware limited partnership.
By: BVT Development Corporation, its general partner

By:  (SEAL)
Michael Sauer, ~~Senior~~ Vice President

STATE OF GEORGIA

COUNTY OF Cobb

I, Carol A. Boyer, a Notary Public of the State and County aforesaid, certify that Michael Sauer, as ~~Senior~~ Vice President of BVT Development Corporation, general partner of BVT Capital Partners XVII, Limited Partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument in the name of such corporation on behalf of the said BVT Capital Partners XVII, Limited Partnership.

Witness my hand and official seal or stamp this the 10th day of December, 2004.


Notary Public

My commission expires: CAROL A. BOYER
NOTARY PUBLIC, COBB COUNTY, GEORGIA
MY COMMISSION EXPIRES SEPTEMBER 8, 2006

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Exhibit A

Stormwater Manual and Budget

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CHAS. H. SELLS, INC.

Consulting Engineers, Surveyors & Photogrammetrists

15300 Weston Pkwy, Ste 106, Cary NC 27513

Phone: (919) 678-0035

Fax: (919) 678-0206

**OPERATION AND MAINTENANCE MANUAL
FALLS VILLAGE TOWNHOMES
RALEIGH, NC**

September 2004

BACKGROUND

A bioretention facility is designed for Falls Village Townhome Owners Association to adhere to the Neuse River Basin requirements to limit discharge from newly developed areas within the basin to that which would be discharged from the same amount of precipitation if that land were not developed for the one year design storm. The device also limits the nitrogen export to 4.04 lb/ac/yr, which is allowable by the Division of Water Quality with a one time buydown of nutrient reduction.

A copy of the engineering design drawings for the bioretention facility is on record with the City of Raleigh as prepared by Chas. H. Sells, Inc., entitled "Townhomes at Falls Village" dated September 2004. This plan details the grading and outlet structure for the facility.

INSPECTIONS:

At a minimum, inspection(s) will include review of the following by the groundskeeping contractor (unless otherwise noted) whereby any deficiencies shall be reported to the owner immediately.

- A. Inspection of the inlet and outlet devices noted. Excessive erosion or sedimentation in or around these devices noted. Inspection of inlet/outlet device is to be performed if rainfall amounts exceed 2.65 inches over a six hour time interval (2 yr, 6 hr rainfall event).
- B. Condition of the embankment noted (Inspection every 5 years).
- C. Deterioration of rip rap outlet protection noted (Inspection every 2 years).
- D. Condition of the emergency spillway noted (Inspection every 5 years).
- E. Debris around the inlet grates, inlet pipe and pond outlet pipe noted (Inspection after each storm event as annotated in item A above).
- F. Inspect the collection system, i.e., catch basins, piping, grassed swales noted (Inspection after each storm event as annotated in item A above).
- G. Upstream and downstream channel conditions noted (Inspection after each storm event as noted in item A above).
- H Woody vegetation in or on the embankment noted (Inspection every 1 year).

Bioretention facilities require additional inspections because of the unique components that make up the facility. Additional inspection is as follows:

- A. Planting Soil – Urban plant communities tend to become very acidic due to precipitation as well as the influences of stormwater runoff. For this reason, it is recommended that the application of an alkaline substance, such as limestone, be considered once or twice a year. Testing of the pH of the organic layer and soil should precede the limestone application to determine the amount of limestone required.

Soil testing should be conducted annually so that the accumulation of toxins and heavy metals can be detected or prevented. Over a period of time, heavy metals and other toxic substances will tend to accumulate in the soil and the plants. Data from other environs such as forest buffers and grass swales suggest

accumulation of toxins and heavy metals within five years of installation. However, there is no methodology to estimate the level of toxic materials in the bioretention areas since runoff, soil, and plant characteristics will vary from site to site. The preventive measure would include removal of the contaminated soil. In some cases, removal and disposal of the entire soil base, as well as the plant material, may be required.

- B. Mulch – Bioretention areas should be mulched once the planting of trees and shrubs has occurred. Any ground cover specified as plugs may be installed once the area has been mulched. Ground cover established by seeding and /or consisting of grass should not be covered with mulch.
- C. Plant Materials – Certain plant species involve maintenance problems due to dropping of fruit or other portions of the plant. Another problem includes plants, primarily trees, that are susceptible to windthrow, which creates a potential hazard to people and property (parked cars). As a result, some plant species will be limited to use in low traffic areas

MAINTENANCE:

During construction of this project, any sediment from the project that fills the bioretention facility will need to be removed by the Contractor prior to completion of the project. Any wetland vegetation damaged by the sediment removal will need to be replaced by the Contractor.

After completion of the project, at a minimum, monthly maintenance will include the following by the groundskeeping contractor or other individual noted:

- A. Control and removal of debris around inlet structure, upstream stormwater conveyance system and downstream discharge pipe below the embankment.
- B. Vegetation maintenance and mowing around facility above pond level to include embankments and any common areas associated with the recorded map for the facility. Lawn areas should be maintained to a maximum height of eight inches. Embankments should be kept clear of any woody vegetation. Lawn cuttings shall be removed from site.

Reseeding of any areas not germinating with ground cover. Periodically re-seeding may be required to establish grass on areas where seed did not take or has been destroyed. Before seeding, fertilizer (12-12-12) should be applied at a minimum rate of 12 to 15 pounds per 1,000 SF. The seed should be evenly sown at a rate of 3 pounds per 1,000 SF. The seed should be covered with soil to the depth of approximately ¼ inch. Immediately following the planting, the area should be mulched with straw. At a minimum, semi-annual maintenance should include seeding and fertilizing of pond areas shall be performed by the groundskeeping contractor or individual otherwise noted.

The embankments and swales have a ground cover of fescue which, if properly maintained, will prevent erosion and provide an easy surface for inspection. Grass should be fertilized every October and April.

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Annual maintenance will include an inspection performed by a qualified North Carolina Professional Engineer, Surveyor or Landscape Architect. This inspection report shall be submitted to City of Raleigh and shall include the following:

- A. The name, address of the landowner.
- B. The recorded book and page number of the area designated as "Pond Access and Maintenance Easement"
- C. A statement that the inspection was made of all required stormwater control facilities to include areas within the "Pond Access and Maintenance Easement".
- D. The date of the inspection.
- E. A statement that all inspected facilities and the pond access and maintenance areas are performing properly and are in compliance with the approved stormwater control plan, this maintenance and operations manual and the Raleigh Stormwater Control and Watercourse Buffer Manual. No sampling of pollutant loading is required.
- F. The original signature and seal of the Engineer, Surveyor or Landscape Architect. All inspection reports shall be on forms supplied by City of Raleigh. An original inspection report shall be given to City of Raleigh beginning from the date that the as-built was first certified and each year thereafter on the anniversary date of said certification.

At a minimum, annual maintenance will include the following by the grounds keeping contractor or individual otherwise noted.

- A. Stormwater piping system to be cleaned of sediment and debris buildup.
- B. Remove any sediment in pond area which has accumulated.

At a minimum, five year maintenance will include the following by the groundskeeping contractor or individual otherwise noted:

- A. Replacement of all Rip Rap located at stormwater discharge points both upstream and downstream of the facility.
- B. Geotechnical inspection and reported findings of embankment condition by registered Professional Engineer in the State of North Carolina. Any structural deficiencies to embankment system as reported by Geotechnical Engineer shall be repaired.

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Additional maintenance is as follows:

Description	Method	Frequency	Time of Year
Inspect and repair erosion	Visual	Monthly	Monthly
Remulch any void areas	By hand	Whenever needed	Whenever needed
Remove previous mulch layer before applying new layer (optional)	By hand	Once every two or three years	Spring
Any additional mulch added	By hand	Once a year	Spring
Remove and replacement of all dead and diseased vegetation considered beyond treatment	See planning specifications	Twice a year	3/15 to 4/30 and 10/1 to 11/30
Treat all diseased trees and shrubs	Mechanical or by hand	N/A	Varies, but will depend on insect or disease infestation
Watering plant material shall take place at the end of each day or fourteen consecutive days and after planting has been completed	By hand	Immediately after completion of project	N/A
Replacement of support stakes	By hand	Once a year	Only remove stakes in the spring
Replace any deficient stakes or wires	By hand	Whenever needed	Whenever needed

MAJOR REPAIRS:

Outside of the yearly amount to be collected for pond access and maintenance are what might be called major repairs to the facility not anticipated in projecting the budget. Major repairs would consist of any repair which would cost more than 50% of the cost to construct the facility. Accordingly, if any of these items or disablement of the facility occurs, justification of these costs shall be submitted to the City Attorney and/or _____ owner _____ for consideration of reimbursement.

These items include but are not limited to:

1) Seepage

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

2. Cracks, Slides, Sloughing and Settlement

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

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

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

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- b. Slides: Slides and slumps are serious threats to the safety of an embankment. Slides can be detected easily unless obscured by vegetation. Arch shaped cracks are indications that slides are slipping or beginning to slip. These cracks soon develop into large scarps in the slope at the top of the slide.
- c. Settlement: Settlement occurs both during construction and after the embankment has been completed and placed in service. To a certain degree, this is normal and should be experienced. It is usually the most pronounced at the location of maximum foundation depth or embankment height. Excessive settlement will reduce the free board (difference in elevation between the water surface and the top of the dam). Any area of excessive settlement should be restored to original elevation and condition to reduce the risk of overtopping. A relatively large amount of settlement (more than 6") within a small area could indicate serious problems in the foundation or perhaps the lower part of the embankment. Settlement accompanied by cracking often precedes the failure.
- d. What To Do If Seepage, Cracks, Slides, or Settlement Is Detected: If any of the preceding items are detected, there may be signs of significant problems, which could lead to the failure of the structure. A Geotechnical or Civil Engineer should be consulted regarding the origin of these problems and for the assessment of the appropriate solutions for correcting them. If the professional is not immediately able to inspect the dam, then the bottom drain should be opened and the water level lowered to remove the risk of failure until a professional can observe these problems.

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OPINION OF PROBABLE CONSTRUCTION COST A ESCROW ACCOUNT PAYMENT SCHEDULE FOR REPLACEMENT COST					DATE PREPARED: 11/04/04		SHEET 1 OF 1	
PROJECT NAME: Townhomes at Falls Village					PROJECT NO.: 3437.00		Basis for Estimate ☐ No design completed ☐ Preliminary Design ☒ Final Design ☐ Other : (Specify)	
LOCATION: 6721 Falls of Neuse Road, Raleigh, NC 27607 Chas. H. Sells Inc Cary, NC								
DISCIPLINE: Civil			ESTIMATOR DAS			CHECKED BY CRM		
OTHER	QUANTITY NO. UNITS	UNIT MEAS.	PER UNIT	MATERIAL TOTAL COST	PER UNIT	LABOR		TOTAL COST
						PER UNIT	TOTAL COST	
A. REPLACEMENT COST STORM WATER COLLECTION SYSTEM								
i. Storm Drainage								
12" RCP	424	LF	\$18.00	\$7,632.00			\$0.00	\$7,632.00
15" RCP	101	LF	\$21.00	\$2,121.00			\$0.00	\$2,121.00
24" RCP	219	LF	\$30.00	\$6,570.00			\$0.00	\$6,570.00
36" RCP	236	LF	\$45.00	\$10,620.00			\$0.00	\$10,620.00
48" RCP	340	LF	\$60.00	\$20,400.00			\$0.00	\$20,400.00
Catch Basin	12	EA	\$1,200.00	\$14,400.00			\$0.00	\$14,400.00
Junction Boxes	7	EA	\$2,500.00	\$17,500.00			\$0.00	\$17,500.00
24" FES	1	EA	\$650.00	\$650.00			\$0.00	\$650.00
Outlet protection	3	TN	\$30.00	\$90.00			\$0.00	\$90.00
SUB-TOTAL								\$79,983.00
Replacement Period =					100 years			
Amount needed at end of replacement period					Inflation =		2.50%	
Amount deposited at YR 10 in escrow account					Interest Rate =		5.50%	
Annual Payment for 10 Yrs to achieve deposit for replacement cost							\$540.75	
B. EMERGENCY REPLACEMENT COST BMP DEVICE (10 YRS)								
ii. Stormwater Protection								
Wet Retention Pond (SCS)**	1	LS	\$15,000.00	\$15,000.00			\$0.00	\$15,000.00
**INCLUDES RISER/BARREL STRUCTURE, EMBANKMENT, ANTI-SEEP COLLAR, RIPRAP OUTLET PROTECTION, EROSION CONTROL and SEEDING								
SUB-TOTAL								\$15,000.00
ESCROW PAYMENT				A.		B.		Yearly Total
Year 1			\$540.75		15%	\$2,250.00		\$2,790.75
Year 2			\$540.75			\$1,937.50		\$2,478.25
Year 3			\$540.75			\$1,937.50		\$2,478.25
Year 4			\$540.75			\$1,937.50		\$2,478.25
Year 5			\$540.75		Two-Thirds	\$1,937.50		\$2,478.25
Year 6			\$540.75			\$1,000.00		\$1,540.75
Year 7			\$540.75			\$1,000.00		\$1,540.75
Year 8			\$540.75			\$1,000.00		\$1,540.75
Year 9			\$540.75			\$1,000.00		\$1,540.75
Year 10			\$540.75		100%	\$1,000.00		\$1,540.75
SUB-TOTAL				\$5,407.53		\$15,000.00		\$20,407.53



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Please retain with original document and submit for rerecording.



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

North Carolina – Wake County

The foregoing certificate ___ of Carol A. Boyer

____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: George W. Patten
Assistant/Deputy Register of Deeds

This Customer Group

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31 # of Pages