WAKE COUNTY, NC 78
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
12/08/2009 AT 11:00:59

BOOK:013787 PAGE:01598 - 01649

Prepared by and return to: Kohn Law, P.L.L.C.
205 W. Millbrook Road, Suite 210
Raleigh, NC 27609 (WCROD Box 125)

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ARBOR CHASE CLUSTER UNIT SUBDIVISION

(A PLANNED COMMUNITY)

THIS DECLARATION is made on the 20th day of June, 2008, by Eastman Development Companies, LLC, with its principal office located at 205 West Millbrook Road, Suite 100, Raleigh, Wake County, North Carolina 27609, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain Properties in Raleigh, Wake County, North Carolina which are more particularly described on Exhibit "A" attached hereto; and

WHEREAS, it is the desire and intention of Declarant (as defined herein) to impose on the Properties described on Exhibit "A" attached hereto restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all Properties herein described and the future owners thereof;

NOW, THEREFORE, Declarant hereby declares that all of the Properties described on Exhibit "A" shall be held, sold 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 Properties and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

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 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 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 Eastman Development Companies, 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.

(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. 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 26.631 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.

(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 2007, the annual assessment per Lot is $325.00. 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. 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.

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 rights 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.

Section 10. Indemnification. No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from it's 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 sight 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)

The North Carolina Division of Water Quality has provided mandatory directions for the operation and maintenance of a system of level spreaders, which are Stormwater Control Measures, and which shall be a Common Expense of the Association in accordance with that certain "Level Spreader System Operation and Maintenance Agreement" attached hereto as Exhibit "C." The City of Raleigh Department of Public Works has indicated that the Development is not subject to the requirements of Section 10-9027 of the Code.

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

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: unlimited 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 58;

(b) maximum number of dwelling units per acre allowed in the cluster unit development is 6.

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.

(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

ANNUAL ASSESSMENT CRITERIA

Section 1. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on the day of the conveyance of a Lot upon which a completed dwelling has been constructed to the first consumer-occupant of the completed dwelling. Until annual assessments commence, the Declarant and/or its contractors, designees, or assigns, shall fund any Operating Deficit of the Association as provided by Section 5 of Article I of this Declaration. A consumer-occupant Lot Owner shall pay the pro-rata amount of the full annual assessment from the date of closing on any Lot until the first day of the first calendar year following closing of that sale or until the end of such period as the Association chooses to collect the assessments. The due dates and frequency of collection of annual assessments for future years shall be established by the Board. 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 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 2. Initial Working Capital. In addition to the regular assessments to be charged and paid hereunder, each consumer-occupant Lot Owner shall, at the time of the initial sale of a Lot by a Builder to that consumer-occupant Lot Owner, pay to the Association the sum of One Hundred Fifty and No/100 Dollars ($150.00) as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the consumer-occupant Lot Owner notwithstanding the fact that Declarant or any Owner may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 3. 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 Areas, any extraordinary maintenance, including 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. Provided, however, that the Board of Directors, in its sole discretion, may declare that a special assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. Any such special

assessment shall be in an amount not to exceed One Thousand and No/100 Dollars ($1,000.00) per Lot and may be levied no more than once every five (5) years from the date of recording by Declarant of a deed to the Association or the City for the Common Areas.

Section 4. 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 and ad valorem taxes 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 mortgage 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 5. 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 dwelling use shall be exempt from said assessments.

Section 6. No Infringement on Provisions of Article I. Nothing in this Article shall be construed to limit the exercise of the rights of the Association or the City of Raleigh as established in Article I. To the extent that any provisions of this Article are in conflict with provisions of Article I, the provisions of Article I shall control.

ARTICLE III

PROPERTY DEVELOPMENT REQUIREMENTS AND PROPERTY RIGHTS

Section 1. Property Development Requirements. The property shall be developed in accordance with a plan that complies with the applicable governmental zoning regulations and the provisions of the Raleigh City Code in effect at the time of initial development of the property. By acceptance of a deed to a Lot in the Properties, every Owner agrees to install and Maintain grass sod in the front yard of each Lot, weather conditions permitting. If unsuitable weather conditions, i.e., drought or freezing temperatures, exist at the time of acceptance of a deed to a Lot in the Properties, an Owner may be allowed to spread grass seed and straw as a temporary measure to be followed by the installation of grass sod when weather conditions permit.

Section 2. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Areas together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the drives, walkways and parking areas of the Common Areas, 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 charge reasonable admission and other fees for the use of any recreational or other similar facility situated upon the Common Areas;

(b) the right of the Association to suspend the voting rights and the right to use the recreational or other Common Area facilities, if any, 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, 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;

(c) the right of the Association to dedicate, sell, lease or transfer all or any part of the Common Areas, or any interest therein, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication, sale or transfer shall be effective unless it has been approved by at least eighty percent (80%) of each class of members as permitted by local government ordinances, and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that at least eighty percent (80%) 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. Notwithstanding the foregoing, the Association shall have a right to participate in an equal exchange of open space as permitted by local government ordinances;

(d) the right of the Association to limit the number of guests of members;

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof to mortgage the Common Areas, and the rights of such mortgage in the Common Areas shall be subordinate to the rights of the members hereunder;

(f) 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 Areas and improvements thereon, which rules and regulations may further restrict the use of the Common Area;

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of use and enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

ARTICLE IV

CLASSES OF VOTING MEMBERSHIP.

Section 1. 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 (1) vote for each Lot owned. 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 Governing Documents, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B Member shall be the Declarant and shall be entitled to five (5) votes for each Lot as may be developed within the property under applicable City Zoning ordinances and regulations, as they may be amended from time to time, if fully developed to maximum density under such ordinance and regulations. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot owned on the happening of either of the following events, whichever occurs earlier.

(a) when the total votes outstanding in Class A membership exceed the total votes outstanding in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Subparagraph (b) below, additional lands are annexed to the Properties in accordance with Section 13 of Article I, Part A above; or

(b) ten (10) years from the date of conveyance of the first Lot by Declarant.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Purpose. The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of certain objective standards relating to design, size and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of Properties and of technological advances and environmental values. In order to implement the purposes of these covenants, the Declarant may establish and amend from time to time objective standards and guidelines, including, but not limited to, Architectural Standards and Construction Specifications, Uniform Sign Regulations, Uniform Mailbox Regulations, Landscape Guidelines, and Environmental Rules and Regulations as defined hereinafter, and which shall be binding on all Owners within the Properties.

Section 2. Controls.

(a) No building, fence, retaining wall, or other structure shall be erected, placed, or altered, nor shall a building permit application for such improvement be made on any Lot in Properties until the proposed building location, specifications, exterior materials and color or finish, plot plan (showing the proposed location of such building or structure, drives, and parking areas, exterior shape, size and height) shall have been approved in writing by the Declarant, or by the Architectural Review Board of the Association if such review responsibility has been delegated to the Association by the Declarant. The Declarant further reserves the right to

promulgate and amend from time to time architectural standards and construction specifications (hereinafter referred to as the "Architectural Standards and Construction Specifications") for specific neighborhoods and areas or for all Properties within the Properties and such Architectural Standards and Construction Specifications shall establish, define, and expressly limit those standards and specifications which will be approved in said neighborhoods and areas or within the Properties, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design, and construction technique. Refusal or approval of plans, location, exterior color or finish, or specifications may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant shall seem sufficient. No alteration in the exterior appearance of any building or structure, including exterior color or finish, shall be made without like prior written approval by the Declarant. One (1) copy of all plans and related data shall be furnished to the Declarant for its records. In the event approval of such plans is neither granted nor denied within sixty (60) days following receipt by the Declarant of written demand for approval, the provisions of this paragraph shall be thereby waived.

(b) Each Owner shall provide space for the parking of automobiles on his Lot prior to the occupancy of any building or structure constructed on said Lot in accordance with reasonable standards established by the Declarant.

(c) Except as may be required by legal proceedings, no sign shall be erected or maintained on any Lot that anyone including, but not limited to, an Owner, a tenant, a Realtor, a contractor, or a subcontractor, until the proposed sign size, color, content, number of signs, and location of sign(s) shall have been approved in writing by the Declarant. Refusal or approval of size, color, content, number of signs, or location of sign(s) may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant seems sufficient. The Declarant further reserves the right to promulgate and amend from time to time uniform sign regulations (the "Uniform Sign Regulations") which shall establish standard design criteria for all signs, including, but not limited to, real estate sales signs, erected upon any Lot in the Properties, such regulations to remain consistent with the Raleigh City Code. The Declarant and its agent shall have the right, whenever there shall have been placed or constructed on any Lot in the Properties any sign which is in violation of these restrictions, to enter immediately upon such Properties where such violation exists and summarily remove the same at the expense of the Owner.

(d) It shall be the responsibility of each Owner, tenant, contractor, or subcontractor to prevent the development of any unclean, unsightly, unkempt, unhealthy, or unsafe conditions of buildings or grounds on any Lot which shall tend to substantially decrease the beauty or safety of the Properties, the neighborhood as a whole, or the specific area. The Declarant and its agents shall have the right to enter upon any Lot for the purpose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the Lot, and the cost of such corrective action shall be paid by the Owner. Such entry shall not be made until thirty (30) days after the Owner of the Lot has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said thirty (30) day period; provided, however, that should such conditions pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Declarant to take any such corrective action.

(e) No mailbox (which term shall be deemed to include the post) shall be erected or maintained on any Lot until the proposed mailbox design, color, and location have been approved in writing by the Declarant or the Architectural Review Board. Refusal or approval of design, color, or location may be based by the Declarant or the Architectural Review Board upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant or, if review is delegated from the Declarant to the Association, the Architectural Review Board seems sufficient. No alteration in the exterior appearance of any mailbox shall be made without like prior written approval by the Declarant or the Architectural Review Board. The Declarant further reserves the right to establish uniform mailbox regulations (the "Uniform Mailbox Regulations") which shall define standard design criteria for all mailboxes erected upon any Lot in the Properties. Once approved, a mail box must be erected on the Lot prior to obtaining a certificate of occupancy for any building or structure on any Lot.

Section 3. Review Board. The Declarant shall be the sole member of the Architectural Review Board until dwellings have been constructed upon all of the Lots and conveyed to Owners other than Builders, or until such time as the Declarant shall resign, whichever shall first occur.

ARTICLE VI

USE RESTRICTIONS

Section 1. Land Use and Building Type. No Lot shall be used except for single-family residential purposes; provided, however, Declarant or any Builder, with the approval of Declarant, may use any Lot owned by Declarant or any Builder as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of property in the Properties. The temporary sales office may be a trailer and shall not be required to have a foundation. No structures shall be erected or allowed to remain on any Lot except one detached single-family dwelling and such accessory buildings as may be approved in writing by the Declarant or the Architectural Review Board, as the case may be, and in a manner consistent with the provisions of the Raleigh City Code.

Section 2. Dwelling Specifications. Except with prior written approval of the Declarant or the Architectural Review Board, as the case may be, no dwelling shall be erected or allowed to remain on a Lot in Arbor Chase Cluster Unit Subdivision having an area of the main structure, exclusive of open or screened porches, carports, garages and decks, of less than 1,200 heated square feet.

Section 3. Nuisance. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood including, without limitation, the storing or parking of inoperative motor vehicles or the maintenance of or repair to motor vehicles except within completely enclosed garages constructed in conformity with these covenants and applicable laws and ordinances.

Section 4. Outside Antennas. No outside radio or television antennas or satellite dishes exceeding eighteen inches in diameter and no free standing transmission or receiving towers or satellite dishes or discs shall be erected on the Common Area or on any Lot or dwelling within the Properties

Section 5. Building Setback. No building shall be located on any Lot nearer to the front Lot line, rear Lot line, or side corner Lot line than twenty feet (20'), or nearer to any side Lot line than five feet (5') on one side and fifteen feet (15') in the aggregate, or outside of any building envelope which may been shown on the recorded map or maps of the subdivision; provided, however, that eaves, steps and open porches shall not be considered as a part of any building for purposes of this covenant. This covenant shall not be construed to permit any portion of a building to encroach on any other Lot, nor shall it allow any violation of any setback restrictions of the Raleigh City Code.

Section 6. Mobile Homes, Manufactured Homes, etc. No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or installed on any Lot. As used in this Section 6, mobile home, manufactured home or modular home shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. Notwithstanding the preceding, a temporary sales trailer without foundation may be used on any Lot during the development and marketing of the Properties, and this Section shall not be construed to prohibit the use of pre-assembled building components such as roof trusses.

Section 7. Waiver of Minor Violations. Unless such a waiver or variance is inconsistent with the provisions of the Raleigh City Code, both the Declarant and the Board of Directors of the Association shall have the right to waive a minor violation of, and allow a minor variance from, the restrictions contained in this Article, where the same resulted unintentionally or without gross carelessness on the part of any Owner (including, without limitation, Declarant) and/or is not materially harmful to the Properties. For the purpose of this Section 7, a minor variance shall be deemed to be any variance of ten percent (10%) or less, when the provision in question involves a minimum or maximum distance, size, or measurement. If such waiver is granted in writing, then thereafter any matter so waived shall no longer be deemed a violation of these covenants.

Section 8. Parking. No automobile, truck or vehicle of any kind shall be parked on any public street abutting the Properties after receiving notification from the Declarant, the Board of Directors of the Association, or from the City to remove the automobile, truck or vehicle. Restrictions on parking on public streets abutting the Properties shall be limited to the Owners, their family members and their tenants. No boats, campers, recreational vehicles, trucks, trailers junked, dismantled, wrecked, unregistered or abandoned vehicles may be parked on any Lot without the prior approval of the Declarant or the Architectural Review Board.

Section 9. Use of Common Area. The Association shall promulgate rules and regulations regarding use and enjoyment of the Common Area by all persons.

Section 10. Approved Building Materials. Materials approved for any building are brick, hardi-plank, fiber cement siding, vinyl siding and vinyl windows, stone or any other material as may be approved in writing by the Declarant or the Architectural Review Board, as the case may be.

Section 11. Swimming Pools. All swimming pools must be located in the rear yards of any dwelling. No above-ground pools shall be erected, constructed or installed on any Lot.

Section 12. Fences. All fences must have the written approval of the Declarant or the Architectural Review Board and must be installed and maintained at all times in a structurally sound and attractive manner. Materials approved for fences are wrought iron, aluminum, wood, vinyl or any other material as may be approved in writing by the Declarant or the Architectural Review Board, as the case may be. Fences shall not exceed five feet in height. No fence of any kind shall be located closer to the front Lot line than one-half the distance from the rear of the dwelling to the front of the dwelling.

Section 13. Accessory Buildings. No accessory building of any nature whatsoever (including, but not limited to, detached garages, storage buildings, dog houses, and green houses) shall be placed on any Lot without the prior written approval of the Declarant or the Architectural Review Board, either of which shall have sole discretion relating to the location and type of accessory building which shall be permitted on any Lot. Accessory buildings shall have an exterior finish of brick, stone, hardi-plank, fiber cement siding, vinyl siding and windows, or any other material as may be approved in writing by the Declarant or the Architectural Review Board, as the case may be, and must have an exterior finish consistent with the primary dwelling.

Section 14. Animals. No animal, livestock or poultry of any kind shall be raised, bred, kept or allowed to remain on any Lot other than the usual and common household pet with the following exceptions: (1) no pet shall be kept, bred, or maintained for any commercial purposes; (2) no animals shall be kept, chained or tied to a stake of any kind; (3) no "runs" shall be erected or permitted on the Properties; (4) no person shall keep, permit and/or cause the keeping of any animal otherwise allowed which habitually or frequently makes such sounds, cries or other utterances as may disturb the quiet, comfort or repose of any person with the Properties; and (5) any pet that is not on the Owner's premises shall be on a leash and accompanied by a responsible person.

Section 15. Drives and Walks. All drives and walks must be paved with concrete, stone and concrete mixture, brick pavers or such other material as may be approved in writing by the Declarant or the Architectural Review Board, as the case may be.

Section 16. Maintenance. Subject to any other applicable terms of this Declaration, the Owner of any Lot, at such Owner's sole cost and expense, shall Maintain its Lot, including improvements thereon, in a safe, clean and attractive condition at all times, including but not limited to the following:

(a) Prompt removal of all litter, trash, refuse and wastes;
(b) Lawn maintenance on a regular basis, including Landscape Easements, Sign Easements and Landscaped Rights-of-Way if requested by the Association or according to the terms of any recorded easement agreements;
(c) Tree and shrub pruning and removal of dead or diseased trees, shrubs and other plant material;
(d) Maintenance of flower and plant gardens, which will be planted with natural grasses and plants and will require weeding during the growing season;
(e) Maintenance of exterior lighting and mechanical facilities;
(f) Maintenance of parking areas and driveways;
(g) Maintenance of all Improvements thereon, including gutters and downspouts, which shall be kept clean and free of debris and shall not be disconnected from any pipe that directs rainwater into an underground collection system;
(h) Maintaining adequate soil erosion controls;
(i) Maintenance of storm water drainage easements and portions of the Properties served by storm water drainage easements, as required by this Declaration; and
(j) To the extent not adequately Maintained by the applicable Governmental Entity, the Association, or a public utility provider, Maintenance of the sidewalk, driveway, driveway apron and utility laterals serving each Owner's Lot, even if located in the Common Area, including providing snow and ice removal for any sidewalks located adjacent to the Owner's Lot.

Each Owner shall perform the foregoing responsibilities in a manner that does not reasonably disturb or interfere with the reasonable enjoyment by the other Owners of their property.

If any Owner fails to perform any of the foregoing Maintenance responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10)

days after such notice is given by the Association, perform the required Maintenance. If any such Owner fails to perform the required Maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's Lot and perform such Maintenance without any liability to any Person for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required Maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Owner an invoice therefore. If the Owner fails to reimburse the Association as required, the Association shall have the same rights and remedies for collection of the amount as provided in Article I, Section 5 hereinabove.

ARTICLE VII

EASEMENTS

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

Section 2. Easements Shown on Recorded Maps. There are hereby reserved easements as shown on the recorded map or maps of the subdivision, and other easements, which may not be shown, including, but not limited to the following: (1) 10' wide drainage and utility easements (5' each side) along all interior Lot lines; (2) 10' wide drainage and utility easements along all exterior boundary lines; and (3) 15' wide grading, slope, drainage and utility easements along the Lot side of and adjacent to all street rights-of-way. In the event of a conflict in the width of any easement reserved herein or on the recorded map, the wider easement shall prevail.

Furthermore, in and 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.

Except in a tree conservation area or any area designated as Permanently Protected Undisturbed Open Space, these reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil any other action necessary to complete installation.

Section 3. Easement for Benefit of Utility Company. The Declarant reserves the right to subject the Properties, including the Common Areas, to contract(s) and easement(s) with Progress Energy, PSNC, Time-Warner Cable, Bell South for the installation of underground electric lines, cables and connector posts or for the installation of street lighting, either or both of which, may require an initial payment or a continuing monthly payment to the utility which shall be a Common Expense of the Association.

Section 4. 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 Areas, 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 5. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Properties to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same, provided said easement would be consistent with the provisions of the Raleigh City Code. Every Lot shall be subject to an easement for entry and encroachment by the Declarant or builder for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner..

Section 6. 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 and endangers any building or portion of the Common Areas.

Section 7. Easement for Entrance Signs and Landscaping. An easement is reserved on Lots 1 and 3, as shown on the above referenced recorded map for the purpose of locating thereon an entrance sign and landscaping and lighting surrounding same for the entrance to the subdivision. Included in the rights reserved is

the right to go on the easement area and to plant and maintain plants, shrubs, and trees and to maintain, repair, and replace any signs or lighting or portions thereof located on said Lot. The rights retained hereunder by Declarant shall be for the benefit of the Declarant, and for any person, firm, or corporation which shall hereafter own any Lot in the subdivision.

ARTICLE VIII

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, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of 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.

(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 for which it or they may designate in writing to the Association.

(d) To inspect the books and records of the Association and the Declaration, By-Laws 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 Areas.

(f) To be given notice by the Association if any portion of the Common Areas, 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.

ARTICLE IX

GENERAL PROVISIONS

Section 1. 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 2. 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. Notwithstanding any contrary provision in this Declaration, Article, or Section, the provisions of Article I shall control over any inconsistent provisions found elsewhere in this Declaration.

(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 3. Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

Section 4. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of the Members representing 75% of the total Class "A" votes in the Association. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article II; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it, or (e) actions by the Association against any contractor, vendor, or supplier of goods and services arising out of a contract for services or supplies. This section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 5. 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 6. 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 7. Duration of Declaration. 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 8. Amendment of Declaration By Lot Owners. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and thereafter by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners.

Section 9. 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) Amendments, if necessary for the exercise of any development right, including, but not limited to, amendments to qualify the Association or the Properties, or any portion thereof, for tax exempt status, or to reflect any plat change to the Properties as permitted herein.

(b) Amendments to correct any obvious error or inconsistency in drafting, typing or reproduction.

(c) Amendments to conform to the requirements of any law or Governmental Entity having legal jurisdiction over the Properties or to qualify the Properties 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 Properties, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

(d) Amendments, so long as the Class B membership exists, that would allow the Declarant to change any provision of the Declaration or the By-Laws, which, in the sole judgment of the Declarant, tends to impair the development or marketing rights of the Declarant or Builders under the Declaration or the By-Laws, or interferes with the development of or construction on any portion of the Properties.

Section 10. Amendments Cannot Vary Provisions Required by the Code. Notwithstanding the above, no amendment to this Declaration may alter any provisions required by the Raleigh City Code. The provisions of any amendment that modify this Declaration in violation of the Code shall be void *ab initio*.

Section 11. Insurance to be Maintained by Owners. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his dwelling except that the amount shall not be required to exceed the replacement cost of the dwelling. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid as a result of enforcement by the Association or otherwise.

Section 12. FHA/VA Approval. As long as there is a Class B membership, and if Declarant or any Builder determines to qualify this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Common Areas, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 13. Exhibits Attached to this Declaration. The following Exhibits are attached and incorporated herein by reference thereto: Exhibit "A" – Legal Description of the Properties; Exhibit "B-1" – Articles of

Incorporation; Exhibit "B-2" – By-Laws; and Exhibit "C" – Level Spreader System Operation and Maintenance Agreement.

Section 14. Recordation. No amendment shall be effective until recorded in the County in which the Properties are situated.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its company name by authority duly given all as of the date and year first above written.

EASTMAN DEVELOPMENT COMPANIES, LLC, a North Carolina limited liability company

By: _____
Name: Stephen B. Eastman, Jr.
Title: Managing Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Stephen B. Eastman, Jr., whose identity has been proven by satisfactory evidence, said evidence being:

- ☒ I have personal knowledge of the identity of the principal(s);
- ☐ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____;
- ☐ A credible witness has sworn to the identity of the principal(s);

personally came before me this day and acknowledged that he is a managing member of Eastman Development Companies, LLC, a North Carolina limited liability company, and that she, in such capacity and being authorized to do so, voluntarily executed the foregoing on behalf of the company for the purposes stated therein and in the capacity indicated.

Witness my hand and seal, this the 20th day of June, 2008.

_____
Notary Public
Print Name: Howard S Kohn
My Commission Expires: 7/13/09

[AFFIX NOTARY SEAL BELOW - NOTE THAT SEAL MUST BE FULLY LEGIBLE]

(Official Seal)

EXHIBIT "A"

Legal Description of the Properties

BEING all of Arbor Chase Subdivision, Phase 1, as shown on plat of survey entitled "Subdivision Map of Arbor Chase Phase 1", for Owner: Eastman Development Companies, LLC, dated September 9, 2009, prepared by Withers & Ravenel Kenneth Close Surveying and recorded in Book of Maps 2009, Pages 1321 - 1323 Wake County Registry.

EXHIBIT "B-1"

Articles of Incorporation of the Association

C200732500422

SOSID: 1013774
Date Filed: 11/27/2007 9:17:00 AM
Elaine F. Marshall
North Carolina Secretary of State
C200732500422

Prepared by and return to: Howard S. Kohn, Esq.
205 W. Millbrook Road, Suite 210, Raleigh, NC 27609

ARTICLES OF INCORPORATION
OF
ARBOR CHASE COMMUNITY ASSOCIATION, INC.

The undersigned natural person of the age of eighteen (18) years or more does hereby execute these Articles of Incorporation pursuant to the laws of the State of North Carolina, as contained in Chapter 55A of the General Statutes of North Carolina, entitled "Non-Profit Corporation Act", and the several amendments thereto, and does hereby make, sign, and acknowledge these Articles of Incorporation, and to that end does hereby set forth:

ARTICLE I
NAME

The name of the corporation is ARBOR CHASE COMMUNITY ASSOCIATION, INC., hereinafter called "the Association".

ARTICLE II
REGISTERED OFFICE

The principal and registered office of the Association is located at 205 W. Millbrook Road, Suite 100, Raleigh, Wake County, North Carolina 27609.

ARTICLE III
REGISTERED AGENT

Stephen B. Eastman, whose address is 205 W. Millbrook Road, Suite 100, Raleigh, Wake County, North Carolina 27609, is hereby appointed the initial registered agent of this Association.

ARTICLE IV
PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide maintenance, preservation and architectural control of the Lots and Common Areas within that certain tract or property (herein referred to as "Properties") described in that certain Declaration of Covenants, Conditions and Restrictions for Arbor Chase Cluster Unit Subdivision recorded in the Register of Deeds of Wake County, and to promote the health, safety, and welfare of the residents within the above described Properties and any additions thereto,

as may hereafter be brought within the jurisdiction of this Association and for those purposes to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration", applicable to the Properties and recorded, or to be recorded, in the Office of the Wake County, North Carolina Register of Deeds and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) Fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses including all licenses, taxes or governmental charges levied or imposed against the Properties of the Association;

(c) Acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association, in accordance with the City of Raleigh Zoning Ordinance.

(d) Borrow money, and with the assent of two-thirds (2/3) of each class of members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; provided the rights of such mortgagee shall be subordinate to the rights of the Owners and Association in the Common Areas;

(e) Dedicate, sell or transfer all or any part of the Common Areas or grant an easement or right of way across the Common Areas to any public agency, authority, utility, or to any other person for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of members, and any instrument properly executed by the Association has been recorded.

On any instrument of dedication, sale, transfer, easement, lease, right of way, mortgage, pledge, deed in trust or other hypothecation or other disposition of real or personal property, the Secretary of the Association shall certify that two-thirds (2/3) of each class of members have approved the action evidenced by the instrument, and that certificate shall be conclusive that the execution and delivery of such instrument was properly authorized by the Association and its members and shall be relied upon and binding as to any third party or as to any grantee, its successors and assigns; provided, however, conveyances for general service utility purposes as specified in the Declaration may be made without consent of the members, and the Association may execute an instrument of conveyance therefore without such certification;

(f) Subject to the approval of the City of Raleigh Attorney or his deputy, participate in mergers and consolidations with other non-profit corporations organized for

the same purposes or annex additional property or Common Areas, provided that any such merger, consolidation or annexation shall have the assent of two-thirds (2/3) of each class of members, except that annexation of additional property by Declarant may be done without the consent of the members as provided in the Declaration; and

(g) Have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of North Carolina by law may now or hereafter have or exercise.

ARTICLE V
MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by Declaration to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation or trustees under a security instrument. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment by the Association.

ARTICLE VI
VOTING RIGHTS

The Association shall have two classes of voting membership:

CLASS A. Class A Members shall be all Owners of a Lot in the Property, with the exception of the Declarant, and shall be entitled to one vote for each lot owned. Declarant, if it owns any Lot, shall, however, be a Class A Member upon the termination of Class B Membership. 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, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

CLASS B. Class B Member(s) shall be the Declarant and the Class B Member(s) shall be entitled to five (5) votes for each Lot in which the Class B Member(s) has an ownership interest; but provided, that the Class B Membership shall cease and be converted to Class A Membership on the happening of the following events whichever shall first occur:

(a) when the total votes outstanding in Class A Membership exceed the total votes outstanding in Class B Membersbip, but provided, that the Class B Membership shall be reinstated if thereafter, and before the time stated in subparagraph (b) below, additional lands are annexed to the Property without the assent of Class A Members for the development of such additional lands; or

(b) Ten (10) years from the date of conveyance of the first Lot by Declarant.

After termination of the Class B membership, if the Declarant still owns lots, said Declarant shall, for all purposes, be deemed a Lot Owner and shall be entitled to the same rights and privileges of Class A Members.

ARTICLE VII
BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of not less than three (3) nor more than seven (7) Directors, who shall be qualified as set forth in the By-laws. The initial Board shall be comprised of three (3) members. The number of Directors may be changed by amendment of the By-laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

NAME	ADDRESS
Stephen B. Eastman	205 W. Millbrook Road, Suite 100 Raleigh, NC 27609
Anne M. Edwards	205 West Millbrook Rd., Suite 100 Raleigh, NC 27609
Richard T. Bowen	2610 Wycliff Rd., Suite 102 Raleigh, NC 27607

ARTICLE VIII
DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for the purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE IX
DURATION

The corporation shall exist perpetually.

ARTICLE X
INCORPORATOR

NAME	ADDRESS
Howard S. Kohn	205 W. Millbrook Road, Suite 210 Raleigh, NC 27609

ARTICLE XI
EFFECTIVE DATE

These Articles will be effective upon filing.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of North Carolina, the undersigned, constituting the incorporator of this Association, has executed these Articles of Incorporation this 15th day of November, 2007.

ARBOR CHASE COMMUNITY ASSOCIATION, INC.

By: _____
Howard S. Kohn, Incorporator

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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

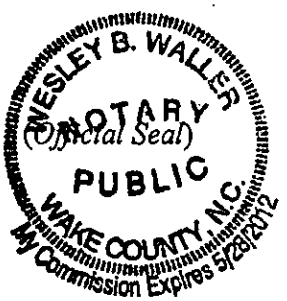
Howard S. Kohn Incorporator

Date: 11/15/07

Official Signature of Notary Public

Wesley B. Waller
(Printed or Typed Name of Notary Public)

My Commission Expires: 05/28/2012



(Official Seal)

Prepared by and return to:
Howard S. Kohn, Esq.
205 W. Millbrook Road, Suite 210
Raleigh, NC 27609

BY-LAWS
OF
ARBOR CHASE COMMUNITY ASSOCIATION, INC.

Article I
Name, Principle Office, and Definitions

1.1. **Name.** The name of the corporation is Arbor Chase Community Association, Inc. (the "Association").

1.2. **Principle Office.** The Principle office of the Association shall be located in Wake County, North Carolina. The Association may have such other offices, either within or outside the State of North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. **Definitions.** The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions and Restrictions for Arbor Chase Community Association filed in the Register of Deeds of Wake County, North Carolina, as it may be amended (the "Declaration"), unless the context indicates otherwise.

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

2.1. **Membership.** The Association shall have two classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as possible and practical.

2.3. **Annual Meetings.** The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the first quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4. **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of

the Board or upon a petition signed by at least 10% of the total Class "A" votes in the Association.

2.5. **Notice of Meetings.** Unless otherwise required by the Declaration or by the Articles of Incorporation, written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 30 nor more than 60 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association, with postage prepaid.

2.6. **Waiver of Notice.** Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. **Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called except as otherwise provided in the Declaration or in the Articles of Incorporation. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. **Voting.** The voting rights of the Members shall be set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. **Proxies.** At all meetings of Members, each Member may vote in person (if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of North Carolina law. Each proxy shall be in writing, shall duly specify the Lot or Living Unit for which it is given, and shall be signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. A proxy that fails to specify the Lot or Living Unit for which it is given shall be presumed to cover all votes which the Member giving such proxy is entitled to cast. In the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Lot or Living Unit for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. **Majority.** As used in the Governing Documents, the term "majority" shall mean the votes of Owners, Members or other group as the context may indicate, totaling more than 50% of the total eligible number.

2.11. **Quorum.** Except as otherwise provided in these By-Laws or in the Declaration, or in the Articles of Incorporation, the presence, in person or by proxy, of Members representing 10% of the total Class "A" votes and 10% of the total Class "B" votes in the Association shall constitute a quorum at all meetings of the Association.

2.12. **Conduct of Meetings.** The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. **Action Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting.

Article III
Board of Directors: Number, Powers, Meetings

A. **Composition and Selection.**

3.1. **Governing Body: Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or Residents; provided, no Owner and Resident occupying the same Living Unit may serve on the Board at the same time. A "Resident" shall be any natural person 18 years of age or older whose principle place of residence is a Living Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, employee or trust officer of such Member shall be eligible to serve as a director, unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2. **Number of Directors.** The Board shall consist of three to seven directors, as provided in Section 3.3 and 3.5 below. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

3.3. **Directors During Class "B" Control Period.** Subject to the provisions of Section 3.5 below, the directors shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following:

(a) when the total votes outstanding in Class A membership exceed the total votes outstanding in Class B membership, but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Subparagraph (b) below, such additional lands are annexed to the Property without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article VII below; or

(b) Ten (10) years from the date of Conveyance of the first Lot by Declarant; or

(c) when, in its sole discretion the Class "B" Member so determines.

3.4. **Nominations and Election Procedures.**

(a) **Nomination of Directors.** Except with respect to directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members

or representatives of Members. The Nominating Committee shall be appointed by the Board of Directors not less than 30 days prior to each election to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such election. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 3.5 below. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and solicit votes.

(b) **Election Procedures.** Elections shall be held at the Association's annual meeting, unless the Board determines that such elections shall be held by mail. If elections are held by mail, the Board or an election committee appointed by the Board shall open and count the ballots on the election date.

Each Owner may cast the entire vote assigned to his Lot or Living Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5. **Election and Term of Office.** Notwithstanding any other provision of these By-Laws:

(a) From and after the time that Class "A" Members own 33% of the Lots, or whenever the Class "B" Member earlier determines, the President shall call for an election at the next annual meeting thereafter by which the Class "A" Members shall be entitled to elect one of the three directors. The remaining two directors shall be appointees of the Class "B" Member. The director elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) From and after the time that Class "A" Members own 67% of the Lots or whenever the Class "B" Member earlier determines, the President shall call for an election at the next annual meeting thereafter by which the Class "A" Members shall be entitled to elect two of the three directors. The remaining director shall be the appointee of the Class "B" Member. The directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c)

below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in Subsection (c) below, successors shall be elected for a like term.

(c) Not later than the first annual meeting after the termination of the Class "B" Control Period, an election shall be held, by which the Class "A" Members shall be entitled to elect all three directors, with the two directors receiving the greatest number of votes being elected for a term of two years and the remaining director being elected for a term of one year.

Upon the expiration of the term of office of each director elected by the Class "A" Members, a successor shall be elected to serve a term of two years. The directors elected by the Class "A" Members shall hold office until their respective successors have been elected.

3.6. **Removal of Directors and Vacancies.** Any director elected by the Class "A" Members may be removed, with or without cause, by Members holding a majority of the votes entitled to be cast for his or her election. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three or more consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due to the Association, may be removed by the majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

B. Meetings.

3.7. **Organizational Meetings.** The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.8. **Regular Meetings.** Regular Meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter. Notice of the time and place of a regular meeting shall be communicated to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. **Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) facsimile, computer, fiberoptics or such other communication device. All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association. Notices of special meetings of the Board shall be posted in a prominent place within the Properties. Notices sent by first class mail shall be deposited into a United States mailbox at least seven business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

3.10. **Waiver of Notice.** The transactions of any meeting of the Board however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. **Telephone Participation in Meetings.** Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12. **Quorum of Board of Directors.** At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue

to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. **Compensation.** Directors shall not receive any compensation from the Association for acting as such. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14. **Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15. **Open Meetings.** Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16. **Action Without a Formal Meeting.** Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effects as a unanimous vote.

C. **Powers and Duties.**

3.17. **Powers.** The Board of directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration and Articles of Incorporation and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declaration, Articles, these By-Laws, or North Carolina law directed to be done and exercised exclusively by the membership generally.

3.18. **Duties.** The duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Limited Common Area expenses;

(b) levying and collecting such assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Common Areas;

(d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending use restrictions and rules in accordance with the Declaration;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Areas in accordance with the Declaration and these By-Laws;

(i) enforcing by legal means the provisions of the Declaration and Articles of Incorporation and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Board shall not be obligated to take action to enforce any covenant, restriction or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Declaration and Articles of Incorporation and all other books records, and financial statements of the Association, as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required under North Carolina law, the Articles of Incorporation or the Declaration; provided, however, that no indemnification shall be paid for a financial obligation and as a Member of the Association.

(p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

(q) Contracting with a professional property management firm to perform any and all of the above-referenced duties.

3.19. **Right of Declarant Member to Disapprove Actions.** So long as the Class "B" membership exists, the Declarant shall have the right to disapprove any action, policy or program of the Association, the Board, and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant or builders under the Declaration or these By-Laws, or interfere with development of or construction on any portion of the Properties.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.8, 3.9 and 3.10, and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Declarant, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Declarant, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. **Management.** The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(f), 3.18(g), and 3.18(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board. All management contracts shall contain a provision which allows the Association, after ninety days written notice, to terminate such contracts.

3.21. **Accounts and Reports.** The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines, by an independent public accountant.

3.22. **Borrowing.** The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in Article IV, Section 4 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 25% of the budgeted gross expenses of the Association for that fiscal year.

3.23. **Right to Contract.** The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with owners associations outside the Property.

3.24. **Enforcement.** Prior to exercising certain enforcement rights set forth in the Declaration and taking other actions specified in the Declaration and Articles of Incorporation, the Association shall comply with the following notice and hearing procedures:

(a) **Notice.** Prior to imposition of certain sanctions specified in the Governing Documents, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction

stated in the notice shall be imposed; provided, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing.** If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any imposed.

(c) **Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Section, the Board may elect to enforce any provision of the Governing Documents by certain sanctions set forth in the Declaration, including by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

Article IV
Officers

4.1. **Officers.** The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. **Election and Term of Office.** The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

4.3. **Removal and Vacancies.** The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any

vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. **Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7. **Compensation.** Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

Article V
Committees

5.1. **General.** The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2. **Covenants Committee.** In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Governing Documents and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of the By-Laws.

Article VI
Miscellaneous

6.1. **Fiscal Year.** The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. **Parliamentary Rules.** Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. **Conflicts.** If there are conflicts between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. **Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of records;
(ii) hours and days of the week when such an inspection may be made; and
(iii) payment of the cost of reproducing copies of documents requested.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. **Notices.** Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the dwelling of such Member; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principle office of the Association or the managing agent, or at such other address shall be designated by notice in writing to the Members pursuant to this Section.

6.6. **Amendment.**

(a) **By Class "B" Member.** Until termination of the Class "B" Membership and subject to the approval requirements of the Declaration, the Class "B" Member may unilaterally amend these By-Laws if such amendment is necessary (i) to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the dwellings; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Lots unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any substantive right of any Member.

(b) **By Members Generally.** Except as provided above, these By-Laws may be amended during the first twenty (20) year period only by the affirmative vote or written consent, or any combination thereof, of 75% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists; thereafter, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of 67% of the total Class "A" votes in the Association. In addition, the approval requirements set forth in the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon enactment, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its enactment or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

(d) **FHA/VA Approval.** As long as there is a Class "B" membership, and if Declarant determines to qualify this Property for Federal Housing Administration or Veterans Administration approval the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional property, dedication of Common Areas, and amendment of this Declaration of Covenants, Conditions and Restrictions.

6.7. **Conflicts.** Any conflicts between the terms of these By-laws and the Declaration shall be resolved in favor of the Declaration, which shall be deemed to control, any conflicts between the terms of these By-Laws and the Articles of Incorporation shall be resolved in favor of these By-Laws, which shall be deemed to control.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Arbor Chase Community Association, Inc., a North Carolina corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors, thereof held on the 27th day of November, 2007.

IN WITNESS WHEREOF, I have hereunto subscribed my name on behalf of the Association this 27th day of November, 2007.

Secretary

EXHIBIT "C"

Level Spreader System Operation and Maintenance Agreement

LEVEL SPREADER SYSTEM OPERATION AND MAINTENANCE AGREEMENT (1/2007)

A level spreader system includes: a forebay, diverter box, level spreader, riparian buffer/vegetated filter strip, and flow bypass channel.

Name of Project: Arbor Chase

Address: Arbor Chase Dr., Raleigh, NC

Maintenance activities shall be performed as follows:

MAINTENANCE ACTIVITY	FREQUENCY
Post-construction monitoring—inspect for vegetation, settling, erosion, or concentrated flow.	Check after every heavy rainfall for first 6 months following construction.
Inspect Diverter Box and clean and/or make repairs. Look for: • Clogged inlet or outlet pipes. • Trash/debris in the box.	Once a month and after heavy rainfalls/storms.
Inspect Forebay + Level Spreader. Clean and/or make repairs. Look for: • Sediment in forebay and along level spreader lip; • Trash and/or leaf buildup. • Scour, undercutting of level spreader. • Settlement of level spreader structure (no longer level; you see silt downhill below level spreader). • Fallen trees on level spreader. • #57 stone washing downhill.	Once a month and after heavy rainfalls/storms.
Inspect the Riparian Buffer and the Bypass Swale and make repairs as needed[1]. Look for: • Damaged turf reinforcement or riprap rolling downhill. • Erosion within the buffer or swale. • Concentrated flows downhill of level spreader—look for gullies or sediment flows.	Once a month and after heavy rainfalls/storms.
Mow grass to a 6" height.	As needed during growing season.
Remove any weeds/shrubs growing on level spreader or in swale.	Once a year.

[1] NOTE: Contact NC Division of Water Quality, 401/Wetlands Unit at 919-733-1786 BEFORE any work in Protected Riparian Buffers.

LEVEL SPREADER NO.	LOCATION ON SITE (DESCRIBE)	HOW WILL IT BE ACCESSED?
1	Behind Lots 8 & 9 in open space 53	Street R/W, Easement on Lots 9 & 10 and open space
2	Behind Lots 50 & 51 in open space 53	Street R/W, Easement on Lots 49 & 50 and open space
3	Behind Lots 42, 43 & 44 in open space 53	Street R/W, Easement on Lots 41 & 42 and open space
4		
5		
6		

BOOK:013787 PAGE:1598 - 1649

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

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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
52 # of Pages
F

22.004-1/20/06