BK012122PG00556

WAKE COUNTY, NC 472
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
08/18/2006 AT 14:15:36

Prepared by and hold for:
Harold E. Russell, Jr., Attorney at Law
Wake County ROD Box # 176

BOOK:012122 PAGE:00556 - 00621

STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MASSEY PRESERVE, A CLUSTER UNIT DEVELOPMENT

THIS DECLARATION, made on the date hereinafter set forth by FORESTVILLE PARTNERS, LLC, a North Carolina limited liability company, and MURDOCK & GANNON CONSTRUCTION, INC., a North Carolina corporation (hereinafter collectively referred to as the "Declarant"),;

W I T N E S S E T H:

WHEREAS, the Forestville Partners, LLC has purchased certain property containing approximately 164.26 acres in Wake County, North Carolina, as the same is described on Exhibit A attached hereto and made a part hereof by reference;

WHEREAS, Forestville Partners, LLC sold 43.37 acres of the above-referenced 164.26 acres to Murdock & Gannon Construction, Inc. and such property is to be a part of Massey Preserve;

WHEREAS, Forestville Partners, LLC and Murdock & Gannon Construction, Inc., collectively the Declarant, execute this Declaration for the purpose of subjecting the property owned by them described in Exhibit B attached hereto and made a part hereof by reference (the "Property");

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

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

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and conceptual intent of Massey Preserve, for the maintenance of Common Areas and improvements thereon as described herein, and accordingly desires to subject the Property, together with such additions and/or deletions as may hereafter be made, to the covenants, restrictions, easements, affirmative obligations, charges, and liens as hereinafter set forth, (the "Declaration" as herein defined) each and all of which is hereby declared to be for the benefit of said Property and each and every owner of any and all parts thereof;

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

NOW, THEREFORE, Declarant hereby declares all of the Properties described on Exhibit B and any Additional Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described Properties or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I - DEFINITIONS

Section 1. "Amenities" shall mean the facilities and Stormwater Control Measures constructed, erected or installed on the Common Areas for the use, benefit and enjoyment of Members, any and all recreational facilities constructed, erected or installed on the Common Areas and the ponds located in the Common Areas.

Section 2. "Additional Property" is defined as "Annexed Property" in Article II, Part A, Section 1(c).

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

Section 4. "Association" shall mean and refer to MASSEY PRESERVE HOMEOWNERS ASSOCIATION, INC., its successors and assigns. See also Article II, Part A, Section 1(d).

Section 5. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

Section 6. "Common Area" or "Common Areas" shall be defined as set forth in Article II, Part A, Section 1(h).

Section 7. "Common Expenses" shall be defined as set forth in Article II, Part A, Section 1(i) and also shall mean and include the following unless in conflict with Article II, Part A, Section 1(i) of this Declaration:

(a) Maintenance of stormwater control measures, replacement contribution payments required to be paid by the Association to the City of Raleigh pursuant to the terms and provisions of the Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution Contract;

(b) Replacing of trees and vegetation located within the Common Areas, and the maintenance of any natural protective yard;

(c) Maintenance of all ponds and easement areas to and around said ponds; and

(d) Maintenance of all berms located on the Properties.

Section 8. "Declarant" shall mean and collectively refer to Forestville Partners, LLC and Murdock & Gannon Construction, Inc. and their successors and assigns.

Section 9. "Declarant Control Period" is defined as set forth in Article II, Part A, Section 1(l) and shall also mean the period of time beginning at the time of recording of this Declaration in the Registry and ending on the first to occur of the following:

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

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

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

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

Section 11. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties on which such plot appears (provided said map has been

approved by Declarant and the City of Raleigh), with the exception of the Common Area, Limited Common Areas, open space owned in fee simple by the Association, greenways or park lands owned in fee simple by the City of Raleigh, and dedicated street rights-of-way. It is recognized Common Areas and Limited Common Areas and easements may be portions of a Lot. See also Article II, Part A, Section 1(r).

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

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

Section 14. "Owner" shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. See also Article II, Part A, Section 1(x).

Section 15. "Property," "Properties," or "Massey Preserve" shall mean and refer to that certain real property described on Exhibit B attached to this Declaration, and such Additional Properties thereto as may hereafter be brought within the jurisdiction of the Association. See also Article II, Part A, Section 1(z).

Section 16. "Stormwater Control Facilities" shall mean and refer to the detention ponds and associated stormwater control systems shown on recorded plats of the Property and owned and maintained by the Association, together with private drainage easements and all other storm drainage pipes, which serve the Property and are located outside public street rights-of-way and city-owned drainage easements (excluding those pipes and measures serving a single Lot). See also Article II, Part A, Section 1(ac).

ARTICLE II - RALEIGH CITY CODE REQUIREMENTS

PART A - DEFINITIONS AND GENERAL REQUIREMENTS

Section 1. Definitions. As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise (when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital letters in order to have the defined meaning). Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other

portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in Section 3 of this Part A (for example, words and terms defined by the Code and used in this Declaration have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

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

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

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

(d) "Association" is defined as the nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for the Properties. Sub-Association (if applicable) is defined as a nonprofit corporation organized and operated under the laws of the State of North Carolina as the property Owners association for a portion of, but not all of, the Properties. There may be one or more Sub-Associations (if applicable) with respect to the Properties. An example of a Sub-Association is a property 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 FORESTVILLE PARTNERS, LLC, a North Carolina limited liability company and MURDOCK & GANNON CONSTRUCTION, INC., a North Carolina corporation, their 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 144.24 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 2006, the annual assessment per Lot is $540.00 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 site triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Properties previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

Section 13. Annexed Property. Real property which was not part of the City-approved development, or real property that was part of the City-approved development but which was not subjected to this Declaration at the time of its initial recording, may be annexed to this

Declaration and made part of the Properties as Annexed Property, provided that all of the following conditions are met with respect to the real property to be annexed:

(a) the Annexed Property is contiguous to the Properties or directly across a street from the Properties;

(b) any development of the Annexed Property is first approved by the City;

(c) annexation of such Annexed Property meets any other applicable requirements of this Declaration; and

(d) contemporaneously with either the development of the Annexed Property or the recording of the plat of the Annexed Property, whichever first occurs, an Annexation Declaration shall be recorded in the Registry.

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

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

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

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

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

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

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

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

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

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

Section 2. Creation of Stormwater Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a Stormwater Assessment, as hereinafter defined, established and collected as hereinafter provided, and each Owner of a Lot, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any person who maybe designated by the Association to collect such monies) such Stormwater Assessment. For calendar year 2006, the Stormwater Assessment is $26.00 per Lot. Stormwater Assessments shall commence with respect to each Lot on the later of the date on which this Declaration or applicable Annexation Declaration is recorded or the date on which a plat is recorded establishing the Lot. The annual budget for the Association shall include a line item

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

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

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

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

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

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

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

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

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

Section 5. Effect of Assignment. Each Owner of a Lot, by acceptance of a deed or otherwise, vests in the City, as the assignee of the Association's collection and lien rights for the

Stormwater Assessments, the right and power, upon nonpayment of the Stormwater Assessments by the Association, to bring all actions against each Owner, personally, for the collection of such charges as a debt or to foreclose the lien, which charges and lien amounts shall equal a pro-rata share of the Stormwater Assessments for each Owner. The lien provided for in this Article shall be in favor of the City and shall be for the benefit of all Owners.

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

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

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

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

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

Section 8. Joint and Several Liability. Each Owner of any portion of the Properties served by Stormwater Control Measures is jointly and severally responsible for Maintenance of such Stormwater Control Measures, including payment of any unpaid *ad valorem* taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the Stormwater Control Measures, and including all interest charges thereon, together with the costs and expenses of collection incurred by the City or other collecting Person, including court costs and reasonable attorney's fees actually incurred. Each Owner of any

portion of the Properties served by the Stormwater Control Measures has a right of contribution against all other Owners of other portions of the Properties served by the same Stormwater Control Measures for payment of such costs and expenses to the extent that the Owner having such right of contribution pays more than such Owner's prorata share thereof, such prorata share being determined either by other assessment provisions of this Declaration or by dividing the acreage of such Owner's portion of the Properties served by the Stormwater Control Measures by the total acreage of the Properties served by the same Stormwater Control Measures.

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

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

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

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

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

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

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

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

(1) written notice of the exchange is given to each Member of the Association;

(2) after the notice is given, those Members having the minimum percentage of votes in the Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;
(3) the exchanged properties and other considerations are of like value and utility;
(4) the acreage and configuration of the remaining Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code; and
(5) the exchange is approved by the Planning Director of the City.

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

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

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

Section 2. Residential Density Transfers. The Properties are developed as a cluster unit development approved by the City. Residential density transfers are permitted in a cluster unit development as allowed in the Code. Accordingly, even though some Lots may appear to contain enough land area to construct additional 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: 0 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 502;

(b) maximum number of dwelling units per acre allowed in the cluster unit development is 3.02.

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.

PART E - PRIVATE STREETS
(CODE SECTION 10-3074)

Section 1. Private Streets. Pursuant to Code Section 10-3074 (b) and (c), all of the following are applicable to private streets in the Properties:

(a) In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any cluster unit development, unit Ownership (condominium) development, group housing development, townhouse development, or manufactured home park or to the occupants of same when such failure is due to lack of access to such areas due to inadequate design, construction or blocking of access routes, inadequate Maintenance, or any other factor within the control of the Declarant, the Association, the Owners or the occupants of the Properties.

(b) In no case shall the City or the State of North Carolina be responsible for Maintaining any private street. Such responsibility shall rest with the Association (or applicable Sub-Association) and Owners of Lot within the Properties, in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

(c) 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.

ARTICLE III - PROPERTY AND PROPERTY RIGHTS IN THE COMMON AREAS

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

Section 2. Annexation/Removal of Property. In addition to Article II, Part A, Section 13 of this Declaration, if a person or entity other than Declarant desires to add property to the scheme of this Declaration, such property may only be added with the assent of two thirds (2/3) of the votes of the Association's Class A and Class B members, if any. If Declarant, in the development process, deems it appropriate not to include subsequent phases in the Association, the Declarant has such right under this Declaration. It is anticipated the Declarant will annex all of the land described in Exhibit A of this Declaration. All annexations undertaken by the Declarant of Additional Property must be undertaken on or before the Declarant Control Period. If there is a conflict between the terms of this Section and Article II, Part A, Section 13 of this Declaration, Article II, Part A, Section 13 shall control.

Section 3. Contents of Supplemental Declaration. Each Supplemental Declaration shall set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this

Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant and the Association, acting through its Board. In no event, shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the Property or to previously added Additional Property except as provided in Section 5 of this Article. All Common Areas contained in any Annexed Property will be conveyed to the Association in conformity with Section 7 of this Article.

To be valid, a Supplemental Declaration first must be approved in writing by 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. Any Supplemental Declaration recorded without the required City approval is void *ab initio*. Should there be a conflict between the provisions of this Section and Article II, Part A, Section 13 of this Declaration, Article II, Part A, Section 13 shall control.

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

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

Section 6. Delegation of Use. In accordance with the Bylaws of the Association, any Member may delegate to the members of his/her family, his/her tenants or contract purchasers who reside on such Member's Lot the Member's right of enjoyment to the Common Areas and facilities.

Section 7. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage said properties subject to the provisions of Article XI of this Declaration. The right to borrow money must be subordinated to the Declaration. The Association may not use easement property as security for any loan. No such encumbrance on the Common Areas shall be effective unless an instrument signed by Members entitled to cast four-fifths (4/5) of the votes of each class of membership has been recorded in the Wake County Registry agreeing to such encumbrance.

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

(c) The right of the Association to give, sell, mortgage or lease all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift, sale or lease shall be effective unless an instrument signed by Members entitled to cast four-fifths (4/5) of the votes of each class of membership has been recorded in the Wake County Registry agreeing to such dedication, sale, mortgage or lease. Such an instrument shall be conclusive evidence of authorization by the Association's Membership; and

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

Section 8. Exchange of Common Area. Subject to the applicable legal requirements, the Association upon request of the Declarant during the Development Period, shall re-convey portions of the Common Area to the Declarant. The Association, acting through its Board, from time to time may exchange with the Declarant or any Member a portion of the Common Area for a portion of the real property owned by the Declarant or such Member within Massey Preserve provided that the real property acquired by the Association in exchange: (a) is free and clear of all encumbrances except the Declaration, and easements for drainage, utilities and sewers; (b) is contiguous to other portions of the Common Area; (c) has approximately the same area and utility as the portion of the Common Area exchanged; (d) has been approved by the City of Raleigh Planning Director to assure that the provisions of the Raleigh City Code are not being violated; and (e) meets the procedural requirements for an open space exchange, said requirements enumerated in Article II, Part C, Section 1(b) of this Declaration. The real property so acquired by the Association shall be a part of the Common Area, and without further act of the Association or membership, shall be released from any provisions of the Declaration except those applicable to the Common Area. The portion of the Common Area so acquired by

Declarant or a Member, without further act of the Association or membership, shall cease to be Common Area and shall be subject to those provisions of the Declaration that were applicable to the real property conveyed to the Association by the member.

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

ARTICLE IV - MEMBERSHIP

No Owner shall have more than one membership per Lot. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules as to proof of ownership of a Lot. See also Article II, Part A, Section 6 of this Declaration.

ARTICLE V - VOTING RIGHTS

Section 1. Voting Classes. The Association shall have two classes of voting membership, and fractional voting shall not be permitted. See also Article II, Part A, Section 6 of this Declaration.

Class A. Class A members shall be all those Owners as defined in Article I, Section 14 of this Declaration with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article IV of this Declaration.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership by Article IV of this Declaration, provided, the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in Subparagraph (b) below, such additional lands are annexed to the Properties without the assent of Class A members on account of the development of such additional lands by the Declarant, all as provided for in Article III, Section 2 of this Declaration:

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

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

Section 2. Voting Right Suspension. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations, after providing the Member with notice and the opportunity to present evidence, and for any period during which any assessment of a Member remains unpaid according to the provisions of Article IV, Section 8 of the Bylaws.

ARTICLE VI- COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties for which a building permit has been issued, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association those assessments described in Article II, Part A, Section 5 of this Declaration. However, for Lots for which no certificate of occupancy has been issued, the annual assessments charged to the Declarant shall be twenty-five percent (25%) of that amount due from an Owner.

Section 2. Purpose of Assessments. The assessments levied by the association shall be used exclusively for the purpose of promoting the beautification of the Property, the recreation, health, safety and welfare of the residents of the Property, for the improvement and maintenance of the Common Area and for funding Common Expenses. See also Article II, Part A, Section 5 of this Declaration.

The Association shall be required to maintain an adequate reserve fund out of the assessments levied for the periodic maintenance, repair, and replacement of improvements to the Common Area, including but not limited to Stormwater Control Facilities. The City of Raleigh may impose an assessment pursuant to the Stormwater Replacement Agreement without a vote of the Owners. A lawful purpose of the assessments shall be the funding of the general replacement account entered into by Declarant and the Association with the City of Raleigh for the operation and maintenance of the stormwater facilities referred to therein and in Exhibit C attached hereto.

Section 3. Maximum Annual Assessments. See Article II, Part A, Section 5 of this Declaration. In no event may the Board or membership of the Association decrease the amount of the annual assessment for any calendar year from the amount of the annual assessment for the previous calendar year.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting;

a quorum as set forth in Section 5 of this Article shall be required. The amount of the proposed assessment need not be stated in the notice.

Section 5. Quorum for any Action authorized under Sections 3 or 4 of this Article, when required. At the first meeting called, as provided in Section 3 or 4 of this Article of this Declaration, the presence at the meeting of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, subsequent meetings may be called, subject to the notice requirement set forth in Section 3 or 4 of this Article, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the previously-called meeting. No such subsequent meeting shall be held more than sixty (60) days following the previously-called meeting.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided herein for Lots in Use may be paid in installments and the payment of such shall commence as to each Lot in Use on the first day of the first month following the date on which the first Lot has become a Lot in Use. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

Section 7. Effect of Non-Payment of Assessment. See Article II, Part A, Section 5 of this Declaration.

Section 8. Subordination of the Lien To Mortgages. The lien of the assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage or first deed of trust on such Lot. The transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein, except no land or improvements devoted to Dwelling use shall be exempt from said assessment.

Section 10. Omission of Assessments. The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

Section 11. Responsibility for Maintenance of Private Streets and Alleys. The maintenance responsibility of the private streets and alleys as shown on all recorded plats made subject to the Declaration shall rest with the Association pursuant to the provisions of the Raleigh City Code, which Code provides substantially in part that in no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police, or other public service to the property and/or occupants when there is a blocking of access routes, or any other factor within the control of the developer, the Association, or occupants. In no case shall the City or State be responsible for maintaining any private street or alley.

Section 12. Two Months of Assessments to be Collected at Closing. At the closing of each sale of a Lot with a Dwelling completed thereon a sum equivalent to two months assessments shall be collected from the purchaser and such sum shall be contributed to the general operating fund of the Association to be used in the manner specified for annual assessments. This initial contribution shall not be considered an advance against assessments to become due.

ARTICLE VII - ARCHITECTURAL CONTROL

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

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

ACC shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form within forty-five (45) days after written request is received by the ACC for final approval or disapproval, such plans and specifications shall be deemed approved.

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

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

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

Section 3. Unless specifically excepted by the ACC, all improvements for which approval of the ACC is required under this Declaration shall be completed within a reasonable time from the date of commencement of said improvements or within the time set by ACC in the event that the approval is so conditioned.

Section 4. The ACC shall in all cases have the right to determine and designate building set back lines necessary to conform to the general plan of Massey Preserve, in order to preserve the integrity of the Properties and the Master Plan. In this respect the ACC's judgment and determination shall be final and binding. However, the ACC shall not designate building set back lines for Lots, Lots in Use and Common Areas that are in conflict with the Raleigh City Code.

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

Section 6. The ACC may adopt additional guidelines along with rules and regulations as it deems necessary to carry out its functions and purposes hereunder, provided all such rules and

regulations shall be approved by the Board of Directors and made a part of this Association's Book of Resolutions.

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

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

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

Any exception or waiver granted by the ACC pursuant to this Section shall not violate the Raleigh City Code. Likewise, any exception or waiver granted by the ACC pursuant to this Section shall not relieve the Owner from first obtaining the consent of easement holders.

ARTICLE VIII - USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

Section 2. Use of Property. Each Dwelling and the Common Area facilities shall be for the following uses and subject to the following restrictions and, in addition, to those restrictions set forth in the Bylaws:

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

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

(c) No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances and regulations of all governmental agencies

having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner or of the Association, whichever shall have the obligation to maintain or repair such portions of the Property.

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

(e) No owner shall display, or cause or allow to be displayed, to public view any sign, placard, poster, billboard or identifying name or number upon any dwelling or any portion of the Common Area and facilities, except as allowed by the Association pursuant to its Bylaws or as required by the ordinances of the City of Raleigh; provided, however, the Declarant shall permit any political sign if in compliance with North Carolina General Statute § 47F-3-121 and may authorize "For Sale" signs, the size and shape of which is commonly displayed by real estate firms in Raleigh, on any unsold or unoccupied Dwellings and in suitable places on the Common Area; provided, however, that during the development of the Property and the marketing thereof, the Declarant or its agents may maintain a sales office and may erect or display such signs as the Declarant deems appropriate as aids to such development marketing, provided that such signs do not violate any applicable laws.

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

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

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

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

Section 5. Development of the Property will be limited to single-family detached Dwelling units with a minimum of sixteen hundred (1,600) square feet (heated floor area gross) in size in cluster unit development single family Lots having a minimum square footage of five thousand (5,000) square feet and for recreational uses related to a residential development. At least ninety percent (90%) of the Dwellings upon the Property shall be greater than sixteen hundred (1,600) square feet in size. All Dwellings located on the perimeter of the Property shall be greater than sixteen hundred (1,600) square feet. All Lots around the perimeter of the

Property shall be greater than fifty-five hundred (5,500) square feet in size. At least seventy-five percent (75%) of the cluster unit Lots developed upon the Property shall be a minimum of fifty-five hundred (5,500) square feet in size.

Section 6. Development of the Property shall comply with the provisions of the Residential-4 Zoning District in regard to allowable residential density, including a density limitation on the transfer of residential density from the adjacent Conservation Management Zoning District to four (4) units per acre. A maximum of four hundred thirty-six (436) Dwellings shall be constructed upon the Property. At least ninety-five percent (95%) of such Dwellings will have garages. There shall be no carports or detached garages upon the Property. The Property is a part of a cluster unit development approved by the City in which residential density transfers are permitted; therefore, even though some Lots may appear to contain enough land area to construct additional Dwellings 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 7. Ponds and Buffer Rules and Regulations. There are six (6) detention ponds located on or to be located on the Property which are part of the Stormwater Control Measures. There are two additional ponds already existing on the Property which are not part of the Stormwater Control Measures, the larger of which is located near the entrance to Forestville Road (hereinafter the "Larger Pond"). There is a Smaller Pond located west of the Larger Pond which is in the southeastern portion of the Property (hereinafter the "Smaller Pond"). Both the Larger Pond and the Smaller Pond will have a 50 foot buffer area around them, and the Larger Pond and the Smaller Pond along with the buffer areas will be Common Areas. If allowed by North Carolina regulations, a path of at least five (5) feet width shall be constructed around the Larger Pond and around that portion of the Smaller Pond except where the Smaller Pond serves as property lines for Lots. Each Owner's use and enjoyment of the Larger Pond and the Smaller Pond located on the Property shall be subject to the following provisions and conditions:

(a) no boats shall be allowed or permitted on either the Larger Pond or the Smaller Pond except for a boat used by the Association for maintenance, care and repair of the ponds or facilities attendant thereto;

(b) no boats may be stored or left unattended on either the Larger Pond or the Smaller Pond or upon any other Common Areas, excepting areas that may be designated by the ACC;

(c) no net fishing shall be allowed or permitted on either the Larger Pond or the Smaller Pond;

(d) no dumping or discharging of any substance into the Larger Pond or the Smaller Pond shall be allowed or permitted;

(e) the Association shall not be responsible for supervising any activities or uses of or on the Larger Pond or the Smaller Pond by any Owner, or his/her family, guests, invitees, licensees or tenants;

(f) at all times when the Larger Pond or the Smaller Pond is being utilized for any purpose by a family, guest, invitee or licensee, the Owner shall be responsible for supervising such use; and

(g) except in cases of emergency, no spot light or search light shall be shown over or across the Larger Pond or the Smaller Pond.

The Association may modify these rules and regulations and preempt new rules and regulations so long as they do not violate the purposes of said ponds and the Code requirements of the City of Raleigh.

It is recognized the six (6) detention ponds are a zoning ordinance requirement and are to be maintained as water quality resources and stormwater control structures. The detention ponds shall be maintained by the Association as a Common Expense. The budget for the Association includes sums for annual maintenance of the detention ponds, a sinking fund reserve for silt removal every six (6) years and structural replacement of the detention ponds every twenty-five (25) years.

Each Owner has the responsibility for the method, manner or means by which any Owner, the members of his family, guests, invitees, licensees, tenants, contract purchasers or others acting through Owner shall use and enjoy the detention ponds. Accordingly, neither the Association nor Declarant shall be liable to any licensees, tenants, contract purchasers or others acting through the Owner, except where physical injury to a natural person is proximately caused by the gross negligence or recklessness of the Association or Declarant, as the case may be. This disclaimer and standard of liability shall be binding on the Association, Declarant, all Owners, members of their families, guests, invitees, licensees, tenants, contract purchasers and others acting through Owner. If this disclaimer and standard of liability should be held inapplicable to or not binding upon any class or sub-class of persons referenced above by a court of competent jurisdiction, it shall nonetheless survive and remain in full force and effect as to all other classes or sub-classes. Nothing contained in this Section shall be deemed a waiver or modification of any common law or statutory defenses otherwise available to the Association or Declarant including, but not limited to, contributory negligence. Any Owner whose conduct was a concurring or a proximate cause of any injury or damage for which the Association or Declarant is sued, such Owner shall indemnify and hold the Association and Declarant harmless in the event the claim on behalf of any such person injured or damaged is reduced to judgment or otherwise paid by the Association or Declarant, or both.

In addition to the six (6) detention ponds located on the Property, one subsurface pipe detention device will be installed, all constituting the stormwater control devices. None of the six (6) detention ponds is to be utilized for any purpose other than stormwater control ponds.

Section 8. Dwelling Facades. The front facades of Dwellings constructed on the Property shall be constructed of stone, brick, hardyplank or vinyl or a combination of these materials.

Section 9. Restricted Parking Rights. No boats, trailers, campers, motor homes, limousines, trucks, tractors or similar personal property owned by a Member, family members or tenants shall be parked within the right of way of any public or private street, nor shall any of these be parked on the Properties except in an enclosed garage, or in areas, if any, designated by the Association. Members, their family members and tenants shall keep their garage doors closed at all times excepting ingress and egress into and out of said garage. The Association shall have the right to adopt appropriate rules for the temporary parking of these items on the Properties and to establish fines for violators.

Section 10. Garbage. Unless the City of Raleigh establishes more stringent requirements, trash cans and other waste containers shall be stored in garages and shall only be visible the day before and the day of garbage pickup by the City of Raleigh. The Association shall have the right, but not the duty, to adopt appropriate rules for the screening of trash containers not stored in garages, if any.

Section 11. Garages. Garages may not be enclosed for living space and shall remain as required parking.

Section 12. Berms.

(a) The cluster development lots, developed along the northern boundary of the Property where the parcels located in the subdivision known as Enclave at Forestville Farms are contiguous with the Property, shall be a minimum of fifty-five hundred (5500) square feet in size. Before the issuance of any certificate of occupancy for a Dwelling within five hundred (500) feet of this boundary, a berm will be provided along this boundary which is a minimum of four (4) feet in height constructed with a maximum slope of 2:1. This berm will be landscaped with evergreen trees a minimum of three (3) feet in height when planted and will be planted with a maximum of twenty (20) feet apart. The evergreen trees on the berm will attain a minimum height of ten (10) feet in five (5) years. This berm will be located within the perimeter protective yard required by the Raleigh City Code as shown on the subdivision plat for Massey Preserve, recorded in Book of Maps 2006, Pages 1588-1594, Wake County Registry. The berm will not be constructed in areas determined by the City to have a spacing of existing trees fourteen (14) feet apart or closer.

(b) The cluster development lots, developed along the southern boundary of the Property and adjacent to Wake County tax parcel PINS 1746-01-09-5253, 1746-01-19-5209, 1746-01-29-0164, 1746-01-29-5162, shall be a minimum of six thousand (6000) square feet in size. Before the issuance of any certificate of occupancy for a Dwelling within five hundred (500) feet of this boundary, a berm will be provided along this boundary which is a minimum of four (4) feet in height constructed with a maximum slope of 2:1. This berm will be landscaped with evergreen trees a minimum of three (3) feet in height when planted and will be planted with a maximum of twenty (20) feet apart. The evergreen trees on the berm will attain a minimum height of ten (10) feet in five (5) years. At the top of this berm, a closed fence shall be constructed. Such fence shall be a minimum of six (6) feet in height. This berm will be located within the perimeter protective yard required by the Raleigh City Code as shown on the subdivision plat for Massey Preserve, recorded in Book of Maps 2006, Pages 1588-1594, Wake County Registry. The berm

will not be constructed in areas determined by the City to have a spacing of existing trees fourteen (14) feet apart or closer. In that event, the fence still will be constructed.

ARTICLE IX - EASEMENTS

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

Section 2. Easement for Government Agencies. See Article II, Part A, Section 15 of this Declaration.

Section 3. Easement and Right of Entry for Repair, Maintenance and Reconstruction. In addition to the provisions set forth in Article II, Part A, Section 14 of this Declaration, such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Greenway Easement. A greenway easement has been dedicated to the City of Raleigh as shown on the recorded plat of the Properties in Book of Maps2006, Pages 1588-1594, Wake County Registry including additional phases which may be recorded by the Declarant in the Wake County Registry.

ARTICLE X - GENERAL PROVISIONS

Section 1. Providing for Traffic Flow. It shall be the responsibility of the Association to maintain uninterrupted traffic flow along all private streets and alleys within the Properties, if any. If it is necessary for "no parking" signs to be erected in order to accomplish this, this shall be done at the expense of the Association as a Common Expense. Vehicles parked in designated no parking areas may be towed at the expense of the owner of the vehicle. The owners of vehicles violating no parking restrictions shall pay a fine of seventy-five dollars ($75.00) per day for the first fine and one hundred and twenty-five dollars ($125.00) per day for subsequent violations. Fines shall be assessments secured by liens as set forth in Article VI of this Declaration. No fine shall be imposed without notice of the charge and opportunity to be heard before the executive board of the Association.

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

access to such areas or any other factor within the control of the Declarant, Association, or occupants.

Section 2. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. Insurance. In addition to the provisions set forth in Article II, Part A, Section 9 of this Declaration, the Board shall procure and maintain adequate liability insurance including Directors and Officers coverage.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 5. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots, and thereafter by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots; provided, however, that the Board of Directors may amend the Declaration, without the consent of the Owners, to correct any obvious error or inconsistency in drafting, typing or reproduction. All amendments shall be certified as an official act of the Association and shall forthwith be recorded in the Wake County Registry. All amendments shall become effective upon recordation.

Section 6. If any amendment to these covenants, conditions and restrictions is executed, each amendment shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors, shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined); and

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested;

CERTIFICATION OF VALIDITY
OF AMENDMENT TO
COVENANTS, CONDITIONS AND RESTRICTIONS OF MASSEY PRESERVE

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

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided, however, that no such amendment shall be valid until it has been indexed in the name of this Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots in the Properties. See also Article II, Part A, Section 4 of this Declaration.

Section 7. Amendment of Declaration without approval of Owners. The Declarant, without the consent or approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by an official of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale of such lots and improvements, or mortgage interest therein, as well as any other law or regulation relating to the control of the Property, 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.

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

Section 8. No amendment to this Declaration, or any other legal documents affecting stormwater control measures or the replacement fund, shall be made without the prior written consent of the Raleigh City Attorney or his/her Deputy. City approval shall be evidenced by the signature of the Raleigh City Attorney or his/her Deputy on the recorded original of the amendment. Any amendment to this Declaration that requires City approval is void *ab inito* if recorded without the required City signature

Section 9. Amendment to achieve tax-exempt status. The Declarant, for so long as it shall retain control of the Association, and thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 10. Perimeter Protective Yards. Perimeter Protective Yards are subject to use limitation and set back requirements of Raleigh City Code § 10-2101(b).

Section 11. Termination of Prior Contracts. Except for this Declaration, the Bylaws and the Association's Articles of Incorporation, any contract or agreement relating to the Property entered into by Declarant or the Association prior to the election of the Board of Directors by a full vote of all the Members may be terminated by the Association without penalty upon not less than ninety (90) days notice to the other party if it is found the contract or agreement is not bona fide or is unconscionable to the Members at the time entered into under the circumstances then prevailing.

Section 12. Amenities Area. At the entrance to the Property on Forestville Road, there will be an amenities area constructed having a minimum size of four (4) acres, which may include the existing pond upon the Property. Within this amenities area, there will be a minimum of three (3) privately-owned tot lots. Each of the tot lots shall be a minimum of nine hundred (900) square feet in size and will include a minimum of four (4) play stations.

ARTICLE XI - RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, other reputable mortgage lenders and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any first mortgage upon any Lot, or shall be the owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

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

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

(c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice

to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

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

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

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

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

WHEREAS, there has heretofore been executed and delivered to TRSTE, Inc., acting as Trustee, and WACHOVIA BANK, National Association, two Deeds of Trust recorded in Book 11343, Page 1270 and Book 11467, Page 300, Wake County Registry; and

WHEREAS, Declarant desires that said existing Deeds of Trust be subordinated to this Declaration of Covenants, Conditions and Restrictions for Massey Preserve Subdivision; and

WHEREAS, the holder of said Notes and Deeds of Trust has agreed to such subordination and has requested the Trustee to join in the execution thereof.

NOW, THEREFORE, said TRSTE, Inc., acting as Trustee, and, in consideration of Ten Dollars ($10.00) to them in hand paid, do hereby contract and agree with said Declarant that this Declaration of Covenants, Conditions and Restrictions shall be superior to the Deeds of Trust now held by said parties and to carry out said purpose, TRSTE, Inc., acting as Trustee, does hereby release, remise and forever quitclaim unto Declarant, their title to and lien upon the lands to the extent, but to the extent only, that the Deeds of Trust now held by them should be subordinate to the Declaration of Covenants, Conditions and Restrictions.

It is expressly understood and agreed that except for said subordination, the Deeds of Trust now held by said parties shall be and remain in full force and effect.

IN WITNESS WHEREOF, Declarant by its Manager, the Trustee through its duly authorized and empowered officer, have caused this instrument to be executed under seal the day and year first above written.

[The rest of this page is left blank. Signatures are on the following page.]

FORESTVILLE PARTNERS, LLC

BY: _____(SEAL)
Glenn M. Hartman, Member/Manager

BY: _____(SEAL)
Pablo Reiter, Member/Manager

BY: _____(SEAL)
Richard L. Weale, Member/Manager

MURDOCK & GANNON CONSTRUCTION, INC.

BY: _____(SEAL)
Stephen A. Gannon, President

TRSTE, INC., Trustee

BY: _____(SEAL)
C.S. Williard , President

WACHOVIA BANK, National Association

BY: _____(SEAL)
C.S. Williard , President

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Lynn G. Murdoch, a Notary Public of the County and State aforesaid, do hereby certify that Glenn M. Hartman, Member/Manager of FORESTVILLE PARTNERS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 27th day of June, 2006.

Lynn G. Murdoch, Notary Public

My Commission Expires: 4/21/11

LYNN G MURDOCH NOTARY PUBLIC WAKE COUNTY, NC

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Lynn G. Murdoch, a Notary Public of the County and State aforesaid, do hereby certify that Pablo Reiter, Member/Manager of FORESTVILLE PARTNERS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 27th day of June, 2006.

Lynn G. Murdoch, Notary Public

My Commission Expires: 4/21/11

LYNN G MURDOCH NOTARY PUBLIC WAKE COUNTY, NC

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Lynn G. Murdoch, a Notary Public of the County and State aforesaid, do hereby certify that Richard L. Weale, Member/Manager of FORESTVILLE PARTNERS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 27th day of June, 2006.

Lynn G. Murdoch, Notary Public

My Commission Expires: 4/21/11

LYNN G MURDOCH NOTARY PUBLIC WAKE COUNTY, NC

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Lynn G. Murdoch, a Notary Public of the County and State aforesaid, do hereby certify that Stephen A. Gannon of MURDOCK & GANNON CONSTRUCTION, INC., a North Carolina corporation, personally appeared before me this day and acknowledged the due and voluntary execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial stamp or seal, this 27th day of June, 2006.

Lynn G. Murdoch, Notary Public

My Commission Expires: 4/21/11

LYNN G MURDOCH NOTARY PUBLIC WAKE COUNTY, NC

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Anne B. Carter, a Notary Public of the County and State aforesaid do certify that C.S. Williard personally came before me this day and acknowledged that he is President of TRSTE, INC., Trustee, and that he as President being authorized to do so, voluntarily executed the foregoing on behalf of the corporation.

WITNESS my hand and notarial stamp or seal, this the 23 day of June, 2006.

Anne B. Carter, Notary Public

My Commission expires: 3-24-08

ANNE B. CARTER
NOTARY PUBLIC
Wake County, North Carolina
My Commission Expires March 24, 2008

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Anne B Carter, a Notary Public of the County and State aforesaid do certify that C.S. Williard personally came before me this day and acknowledged that he is President of WACHOVIA BANK, National Association, and that he as President being authorized to do so, voluntarily executed the foregoing on behalf of the corporation.

WITNESS my hand and notarial stamp or seal, this the 23 day of June, 2006.

Anne B. Carter, Notary Public

My Commission expires: 3-24-08

ANNE B. CARTER
NOTARY PUBLIC
Wake County, North Carolina
My Commission Expires March 24, 2008

Exhibit A

BEING all of that parcel of land consisting of 144.24 acres according to that survey entitled Massey Preserve Subdivision Phase 1 and 2 by McIntyre & Associates, P.L.L.C. for Forestville Partners, LLC dated October 4, 2005 and shown on that plat recorded in Book of Maps 2005, Pages 1684 through 1686, Wake County Registry.

BEING all of Tracts 2 and 3 containing 10.01 acres each, as shown on a map prepared by Williams-Pierce & Assoc., P.A. dated December 6, 1993 and recorded in Book 1993, Page 1686, Wake County Registry.

EXHIBIT B

BEING all of that parcel of land consisting of 144.24 acres according to that survey entitled Massey Preserve Subdivision Phase 1 and 2 by McIntyre & Associates, P.L.L.C. for Forestville Partners, LLC dated October 4, 2005 and shown on that plat recorded in Book of Maps 2005, Pages 1684 through 1686, Wake County Registry.

BK012122PG00606

Exhibit C

STORMWATER OPERATIONS AND MAINTENANCE MANUAL AND BUDGET

MASSEY PRESERVE
A CLUSTER UNIT DEVELOPMENT

OWNERS

Murdock & Gannon Construction, Inc.
202 N. Dixon Street
Cary, North Carolina 27513

Forestville Partners, LLC
5209 Capital Boulevard
Raleigh, North Carolina 27616

Prepared by:

DEVELOPMENT CONSULTING SERVICES, INC.
1401 Aversboro Road, Suite 206
Garner, North Carolina 27529
(919) 625-0411 - Fax (919)772-3437

April 2006

STORMWATER OPERATIONS AND MAINTENANCE MANUAL AND BUDGET
MASSEY PRESERVE A CLUSTER UNIT DEVELOPMENT

I. INTRODUCTION

This manual establishes procedures for maintenance and operation of stormwater control measures for Massey Preserve, a Cluster Unit Development. These procedures are in compliance with the guidelines of the City of Raleigh Stormwater Management Design Manual. The City rules require that stormwater control measures be inspected annually and that they be maintained in perpetuity as part of the development. If repairs are required as part of the annual inspection, the work should be completed immediately following the inspection. The City of Raleigh should be contacted for time extensions if needed. It is important to note that the stormwater control measures are required to stay in strict compliance with the conditions set out in the approvals for this development, and that failure to maintain the stormwater control measures is a violation of the ordinances of the City of Raleigh potentially subjecting each lot owner of the property to significant daily civil penalties and other enforcement actions.

BACKGROUND

A. Stormwater Retention Pond

There will be no stormwater retention ponds as part of this project. Due to the percent impervious area, stormwater quality devices will not be required. Nitrogen requirements will be met through payment to the North Carolina Ecosystem Enhancement Fund (NCEEF) in accordance with Raleigh City Code 10-9022 and no BMP's, Best Management Practices, will be required

B. Level Spreaders

Concentrated flows that are discharged near existing Neuse River Buffers must be returned to sheet flow by the use of a level spreader. This project will involve the construction of eleven level spreaders. The level spreaders are to be located between lots 114 and 115, 58 and 59, 111 and 112, 103 and 104, 139 and 140, 130 and 131, 318 and 319, 197 and 198, 182 and 183, a level spreader adjacent to lot 200 and one adjacent to lot 6.

Stormwater Detention

C. Detention Pond

As previously indicated water quality devices will not be required. However, due to the fact that post construction runoff will exceed pre-construction runoff by more than 10% stormwater detention will be required. The purpose in the detention devices will be to return post construction runoff to at or below preconstruction conditions. Typically, stormwater detention ponds are devices that remain dry and do not hold water continuously. As part of the stormwater measures for this project six (6) detention ponds will be constructed as follows:

Stormwater Pond	Approximate dimensions	Riser Structure	Outlet Pipe	Location Orifice	between lots
1	60'x70'x4'	4'x4'	24"	8"	114/115
2	44'x75'x3'	4'x4'	24"	8"	130/131
3	40'x175'x4'	6'x6'	36"	10"	103/104
4	30'x145'x3'	4'x4'	24"	10"	111/112
5	30'x70'x3'	4'x4'	24"	10"	139/140
6	88'x88'x3'	4'x4'	24"	10"	183

The purpose of the ponds is to control the flow rate at which the water leaves the site. This is done by an orifice which is located at the bottom of the riser structure. The orifice ensures that the rate at which water leaves the site is equal to or less than the rate water left the site prior to construction of the subdivision. When it rains the water level in the pond should rise to near the top of the structure. The amount the water will rise will depend on the amount of rainfall. After the rain has stopped the pond should slowly drain until it is empty. These types of ponds are often referred to as dry ponds because most of the time they should be empty or dry. The riser structures are designed to carry the 100-yr storm event. Therefore the riser structures will serve as the emergency spillway. However, a 20 foot to 30 foot wide dam will be constructed at each pond in case any of the risers clog.

D. Underground Storage Pipe

As previously indicated water quality devices will not be required. However, due to the fact that post construction runoff will exceed pre-construction runoff by more than 10% detention will be required. The purpose in the detention devices will be to return post construction runoff to at or below preconstruction conditions. Stormwater detention will be controlled by the detention ponds as indicated above and by one oversized stormwater pipe with an orifice at one location as indicated on the construction plans. The detention pipe is located as follows:

Pipe Storage@	Pipe Size	Length	Orifice	Location between lots
FES 15	48"	100 lf	3"	58/59

The detention ponds and one over sized pipe will be controlling stormwater for Massey Preserve, a Cluster Unit Development. Detention Ponds do not have detention pipes. The plan was prepared by McIntyre and Associates, PLLC. This plan was reviewed and approved by the City of Raleigh in November, 2005.

The stormwater detention pipe is designed to discharge post-development flows below pre-development levels. The 2-year and 10-year storm events have been analyzed to evaluate this function of this pipe and outlet device. The analysis is located on the construction documents, which were approved by the City of Raleigh in November, 2005. The pipe will have an overflow for larger storm events.

II. MAINTENANCE OF SUBSURFACE STORMWATER PIPE AND POND

MAINTENANCE OF POND EMBANKMENTS

A. Vegetation

Once established the proposed ponds should have a good ground cover of grass. It is important to establish ground cover as quickly as possible to limit erosion. Due to the fact that the ponds will be dry ponds it may be possible to establish a stand of grass in the bottoms of each of the pond. It is recommended that the entire pond, including the bottom, be seeded. The slopes on the ponds will be constructed no greater than 2 horizontal to 1 vertical, i.e. for every 2 feet in the horizontal direction, the difference in grade elevation should be 1 foot, which should make maintenance manageable.

B. Erosion

Erosion occurs when the stormwater concentrates causing failure of the vegetation or when vegetation dies and sets up the environment for rill erosion and eventually gullies from the stormwater runoff. The pond dams should be inspected for these areas. Proper care of vegetative areas that develop erosion is required to prevent more serious damage to the embankment. Rills and gullies should be filled with suitable soil compacted and then seeded. Where eroded areas are observed, the cause of the erosion should be addressed to prevent a continued maintenance problem. Frequently problems result from the concentration of stormwater runoff to one point of the embankment crest instead of a uniform distribution of runoff. This can be corrected by reshaping the crest to more evenly distribute the stormwater runoff to areas that are not experiencing erosion problems.

Abutment Areas - The abutment is the line formed where the embankment fill comes into contact with the existing slope. Run-off from rainfall concentrates in these gutter areas and can reach erosive velocities because of the steep slopes. If a normal stand of grass or other ground cover cannot be maintained on the abutments, additional measures may be needed such as jute matting to provide for the establishment of a good ground cover.

- Upstream embankment slope - Erosion problems can develop on the upstream face of the dam due to the fluctuation of water level in the pond. This is a result of a combination of wave actions and ground saturation, which occurs as the water level falls and the saturated ground becomes subjected to the wave action. If erosion becomes a problem, it may necessitate the installation of additional stone armoring along the zone subject to fluctuating water level. This would consist of 18" of NCDOT Class B stone for erosion control underlain with Mirifi 140 geotextile fabric. It should be centered at the point of the erosion problem and covering an area two feet above and below the approximate center of the eroded area.

C. Seepage

Detection - An inspection of the downstream face of this dam should be made for seepage. Seepage may vary in appearance from a soft wet area to a flowing spring. It may show up first as only an area where the vegetation is lusher and darker green. Cattails, reeds, mosses and other marsh vegetation often become established in a seepage area. The downstream abutment areas where the embankment fill and natural ground interface are very common locations for seepage. Slides may result from excessively saturated embankment slopes. The natural foundation area immediately downstream of the dam abutment should also be inspected to ensure that "piping" is not occurring underneath the embankment. "Piping" may appear as a "boil", evident by a spring carrying soil. The soil usually deposits around the boil area and is evident by the sedimentary deposits accompanying it.

D. Cracks, Slides, Sloughing and Settlement

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

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

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

- Slides - Slides and slumps are serious threats to the safety of an embankment. Slides can be detected easily unless obscured by vegetation. Arch shaped cracks are indications that slides are slipping or beginning to slip. These cracks soon develop into large scarps in the slope at the top of the slide.

- Settlement - Settlement occurs both during construction and after the embankment has been completed and placed in service. To a certain degree this is normal and should be expected. It is usually the most pronounced at the location of maximum foundation depth or embankment height. Excessive settlement will reduce the free board (difference in elevation between the water surface and the top of the dam). Any area of excessive settlement should be restored to original elevation and condition to reduce the risk of overtopping. A relatively large amount of settlement (more than 6") within a small area could indicate serious problems in the embankment's foundation or perhaps the lower part. Settlement accompanied by cracking often proceeds failure.

- What to do if seepage, cracks, slides or settlement are detected:

  If any of the above items are detected, these may be signs of significant problems which could lead to the structure's failure. A geotechnical or civil engineer should be consulted regarding the origin of these problems and for the assessment of the appropriate solutions for correcting them.

E. Rodent Control

Generally in this urban environment, rodents are not a problem. Rodents such as ground hogs, muskrats and beavers are attracted to dams and reservoirs and can be quite dangerous to the structural integrity and proper performance of the embankment and spillway. Groundhogs and muskrats thrive on burrowing in the manmade earth embankments that become pathways for seepage. In the event that burrows are detected within the dam then the rodents should be dealt with by removal.

F. Overtopping

The water level of the ponds should be monitored during periods of heavy rainfall and stormwater runoff. The likelihood of the device overtopping anywhere other than the riser is slight due to the 1 to 2 feet of freeboard above the emergency / primary spillway and storage capacity of the proposed ponds. However, overtopping could result if a large slide or slough in the upstream or downstream slope of the embankment significantly lowers the pond crest. Overtopping could also occur if the riser structure is not working properly.

G. Piping

Piping is usually indicated by a rapid increase in seepage rate or a muddy discharge at or near the downstream toe. Sinkholes on or bubbling at or near the downstream toe may be an indication that piping is beginning. The downstream side of all devices and embankments, particularly in the area of the outlet device (riser structure), should be monitored regularly for any signs of change.

H. Major Repairs

A major repair is any repair in which the cost exceeds one-third or more of the initial construction cost of the stormwater control measures. An example of a major repair would be if any part of the stormwater measure had to be replaced. If any part of the structure needed to be replaced it would require the use of heavy equipment such as a back hoe.

MAINTENANCE OF STORMWATER DETENTION PIPE

A. Erosion

Due to the nature of a subsurface detention device erosion should not be a critical issue. Erosion occurs when the stormwater concentrates causing failure of the vegetation or when vegetation dies and sets up the environment for rill erosion and eventually gullies from the stormwater runoff. The outlet device on the detention pipe should be inspected for these areas. Proper care of vegetative areas that develop erosion is required to prevent more serious damage to the channel at the outlet. Where eroded areas are observed, the cause of the erosion should be addressed to prevent a continued maintenance problem. This can be corrected by reshaping the rip rap dissipator pad at the detention pipe outlet to more evenly distribute the stormwater runoff to areas that are not experiencing erosion problems.

B. Failure of outlet devices

The failure of the outlet device (i.e. the orifices) could lead to the failure or the Stormwater Control Measure. The orifices which are located within the detention ponds and one at the outlet end of the detention pipe pose the greatest risk for failure. These orifices range from 4 to 12 inches in diameter and therefore pose a significant risk to getting clogged. The orifices should be inspected for signs of clogging. It is recommended that the pipes be checked at least monthly to ensure the removal of debris that could lead to clogging and failure of the Stormwater Control Measure. Additionally, rip rap dissipators will be installed at the outlets of these pipes for erosion control purposes during the initial construction. The velocity of the stormwater exiting the orifices should be low enough that if a good stand of grass is established the rip rap dissipators will not be necessary. However, if grass is not established or if erosion is occurring at the exit of the orifices, the rip rap dissipators should be maintained or reinstalled. This issue should be addressed on the attached Orifices Inspection Checklist, Combined Exhibit 1, each time the devices are inspected.

III. OPERATION

A. Record Keeping

Operation of the stormwater control devices should include recording of the following:

- Annual Inspection Reports - A collection of written reports including annual inspections required by subsection B below shall be kept by Massey Preserve Homeowner's Association on record in the forms as provided in Section V of this manual.

- Observations - All visual observations should be recorded. Where periodic visual inspections are performed following significant rainfall events, which would be more than 5 inches of rain in a 24 hr period, these inspections should be logged into the Periodic Inspections, Operation & Maintenance Form in Section V of this manual.

- Maintenance - Written reports of maintenance and/or repairs should be recorded on the Periodic Inspection, Operation and Maintenance Form as provided in Section V of this manual.

- Other Operational Procedures - The owner should maintain a complete and up-to-date set of plans (as-built drawings) and all changes made to the stormwater control devices over time should be recorded on the as-builts.

Annual Inspection

Stormwater control measures shall be inspected by a North Carolina registered professional engineer, North Carolina Licensed surveyor or North Carolina licensed landscape architect annually, and the reports and certification statements shall be filed with the City of Raleigh Department of Public Works Stormwater Division in accordance with section 10-9028 of the Raleigh City Code. Any discrepancies shall be corrected within thirty (30) days. The pipe/pond inspection checklist on page 11 of this manual (Combined Exhibit 1) and the Orifices Inspection Checklist on page 12 of this manual (Combined Exhibit 1) shall be the forms used for the annual inspection reports. The Certification Statement on page 14 of this manual (Exhibit 3) shall be attached to the annual inspection reports when delivered to the Stormwater Division. The first date for the annual inspection shall be the anniversary of the certification of the stormwater control measures as built per Raleigh City Code 10-9025(c) and should reoccur thereafter on the same date annually.

Copies of all inspection reports, including, but not limited to, annual inspection reports shall be maintained by the Massey Preserve Homeowner's Association, Inc., in a record file.

Maintenance Check Items

I. Monthly or after significant rain events (5" or greater/event over 24 hours):

A. Check and clear all orifices of any obstructions.
B. Check all pipes located at detention ponds, remove trash, and repair eroded areas before next rainfall.

II. Semi-Annually

A. Inspect the collection system (i.e. catch basin, yard inlets, easements) for proper functioning. Clear accumulated trash from basin grates and basin bottoms and check for obstructions in the piping used for the detention facilities.
B. Check inlet pipes for undercutting. Repair if necessary.
C. Repair any broken detention pipes
D. Reseed disturbed vegetative areas and fertilize in October and April.
E. Clear accumulated trash from detention pipes and orifices.

III. Annually

A. Annual inspection by the engineer
B. Check Sediment level

IV. General

A. All components of impoundment system to be kept in good working order. Repair or replacement of components will meet the original design specifications.
B. Copies of all inspection reports and records of any preventative maintenance activities, remedial, or corrective action shall be maintained.
C. This property and impoundment is also subject to the Operation and Maintenance Manual filed relative to this project.

IV. Budget

A. Annual Budget

Annual Inspection & Report Registered Engineer	1 visit @ 6hrs/visit x $95/hr	=	$ 570.00
Semi-Annual Inspection & Report Registered Engineer	2 visits @ 4hrs/visit x $95/hr	=	$ 760.00
Miscellaneous Visits		=	$ 700.00
Replacement contribution to the City of Raleigh		=	$2,436.10
Maintenance Cost for mowing, seeding, fertilizing And trash removal.		=	$ 3000.00
Liability Insurance and property insurance premiums		=	$ 1,800.00
Sediment cost removal (every 3 years) annualized cost		=	$ 2000.00
	Total	=	$ 11,266.10
	Recommended Budget	=	**$ 11,300.00**

B. Sinking Fund Budget

Stormwater Control Devices

Pipe 1, 48"RCP	100 LF	@ $	45.00/LF =	$4,500.00
Junction Box	1 EA	@ $	1,500/EA =	$1,500.00

Ponds

Earth Dams	700 CY	@ $	2.85/CY =	$ 1,995.00
Seeding	5 AC	@ $2,700.00/AC =		$ 13,500.00

Sub-total= $21,495

Total General Replacement Account Amount = $21,495

C. Contribution Requirements

Developer/Initial Contribution $21,495.00 x 15% = $3,224.25

Homeowner's Association
2/3 of $21,495.00 x .85 = $12,180.50(1st 5 years).
1/3 of $21,495.00 x .85 = $6,090.25(2nd 5 years).

YEAR NUMBER	YEAR	ANNUAL REPLACEMENT CONTRIBUTION
1	2006	$5,660.35
2	2007	$2,436.10
3	2008	$2,436.10
4	2009	$2,436.10
5	2010	$2,436.10
6	2011	$1,218.05
7	2012	$1,218.05
8	2013	$1,218.05
9	2014	$1,218.05
10	2015	$1,218.05

V. Inspection, Operation and Maintenance Checklist

- Pipe/Pond Inspection Checklist - Riser • Drains Page 11
- Orifices Inspection Checklist - Embankment • Pool Page 12
- Periodic Inspection, Operation and Maintenance Records Page 13
- Annual Inspection Certification Statement Page 14
- Maintenance Agreement Page 15

BK012122PG00615

COMBINED EXHIBIT 1
PIPE / POND INSPECTION CHECKLIST

DATE:_____

TIME:_____

MASSEY PRESERVE STORMWATER DETENTION DEVICES, RALEIGH, N.C.

INSPECTORS_____
OWNER/DEVELOPER: Murdock & Gannon Construction, Inc.
202 N. Dixon Street, Cary NC 27513
Forestville Partners, LLC
5209 Capital Blvd., Raleigh, NC 27616

POND / STORAGE PIPES

		CHECK/CIRCLE CONDITION NOTED	OBSERVATIONS	ACTION: REPAIR	MONITOR	INVESTIGATE
STORAGE DEVICES			**TYPE:** _____			
TOP RISER	trash rack (N/A)					
	cracks/deterioration					
	displacement					
	improper alignment/displacement					
	cracks/joint deterioration					
	seepage					
DISSIPATOR	seepage/piping (N/A)		N/A			
	undercutting(N/A)					
	cracks/deterioration					
	displacement					
	erosion					
OUTLET			**TYPE: RIP-RAP**			
Rip-rap condition						
Erosion						

GENERAL COMMENTS, SKETCHES & FIELD MEASUREMENTS

BK012122PG00616

COMBINED EXHIBIT 1 ORIFICES INSPECTION CHECKLIST

DATE:_____

TIME:_____

MASSEY PRESERVE STORMWATER DETENTION DEVICES, RALEIGH N.C.
INSPECTORS_____
OWNER/DEVELOPER: Murdock & Gannon Construction, Inc.
202 N. Dixon Street, Cary, NC 26513
Forestville Partners, LLC
5209 Capital Blvd., Raleigh, NC 27616

ORIFICES

CHECK/CIRCLE CONDITION NOTED		OBSERVATIONS	ACTION: REPAIR	MONITOR	INVESTIGATE
U/S SLOPE	vegetation/rip rap				
	beaching/slides/cracks				
	undermining/erosion				
	rodent burrows				
CREST					
	ruts/erosion				
	cracks/settlement				
	poor alignment				
D/S SLOPE	vegetation/erosion				
	rodent burrows				
	sloughs/slides/cracks				
	seepage/wetness				
POOL	erosion/ground cover				
	Sedimentation level				
	water quality(N/A)				
ABUTMENT					
	vegetation/erosion				
	sloughs/slides/cracks/settlement				
	seepage/wetness(N/A)				

BK012122PG00617

EXHIBIT 2

PERIODIC INSPECTION, OPERATION AND MAINTENANCE

MASSEY PRESERVE
STORMWATER DETENTION PIPES
RALEIGH, NC

DATE	TIME	RAIN (")	POOL LEVEL	WEATHER CONDITIONS	GENERAL OBSERVATIONS OR COMMENTS	RECORDED BY

DATE	MAINTENANCE PERFORMED	COMMENTS	RECORDED BY

DATE	EQUIPMENT OPERATED	COMMENTS	RECORDED BY

BK012122PG00618

EXHIBIT 3

CERTIFICATION STATEMENT

PROJECT NAME: Massey Preserve Subdivision

OWNER/DEVELOPER: Murdock & Gannon Construction. Inc.
Forestville Partners, LLC

INSPECTION DATE:_____

I certify that the stormwater control measures and open space areas referenced in this document have been maintained in conformance with the approved Stormwater Operations and Maintenance Manual and Budget. This certification is made based on personal observation of the site and review of the maintenance records.

Signed _____ Date: _____

(seal)

Note: Must be signed, sealed and dated by North Carolina Registered Professional Engineer, Registered Landscape Architect or Professional Land Surveyor.

EXHIBIT 4

MAINTENANCE AGREEMENT

PROJECT: _____

RESPONSIBLE PARTY: _____

ADDRESS: _____

_____

_____

I. Monthly or after significant rain events (5" or greater/event over 24 hours):
   A. Check and clear all orifices of any obstructions.
   C. Check all pipes located at detention ponds, remove trash, and repair eroded areas before next rainfall.

II. Semi-Annually
   A. Inspect the collection system (i.e. catch basin, yard inlets, easements) for proper functioning. Clear accumulated trash from basin grates and basin bottoms and check for obstructions in the piping used for the detention.
   B. Check inlet pipes for undercutting. Repair if necessary.
   C. Repair any broken detention pipes.
   D. Reseed disturbed vegetative areas and fertilize in October and April.
   E. Clear accumulated trash from detention pipes and orifices.

III. Annually

   A. Annual inspection by the engineer
   B. Check sediment level

IV. General

   A. All components of impoundment system to be kept in good working order. Repair or replacement of components will meet the original design specifications.
   B. Copies of all inspection reports and records of any preventative maintenance activities, remedial or corrective action shall be maintained.
   C. This property and impoundment is also subject to the Operation and Maintenance Manual filed relative to this project.

STATE OF _____
COUNTY OF _____

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: _____.

Date:_____, 2006.

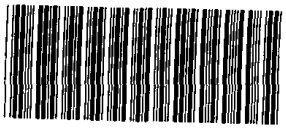
(Official Seal)

_____

printed name:_____, Notary Public

My commission expires:_____

BK012122PG00621



BOOK:012122 PAGE:00556 - 00621

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
66 # of Pages

22.004-1/20/06

This document was created with Win2PDF available at http://www.win2pdf.com.
The unregistered version of Win2PDF is for evaluation or non-commercial use only.
This page will not be added after purchasing Win2PDF.