

WAKE COUNTY, NC 442  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
08/07/2008 AT 15:16:23

BOOK:013206 PAGE:01947 - 01962

NORTH CAROLINA

WAKE COUNTY

Prepared by and hold for: Garland L. Askew, Box #13

**DECLARATION OF  
ATHENS GROVE CONDOMINIUM**

This Declaration is made on August 7, 2008 by BGM Investment Company, a North Carolina corporation, hereinafter referred to as "Declarant." Declarant hereby states and declares as follows:

A. Declarant is the owner of that tract of real estate located in Wake County, North Carolina, described as being Lots 43 and 44 according to a plat entitled "Subdivision Plat Athens Grove" of record at Plat Book 2008, Page 1554, Wake County Registry. The tract of real estate and all rights and privileges appurtenant thereto are hereinafter collectively referred to as "the Condominium Property."

B. Declarant desires and intends to convert three (3) two-story buildings on the Condominium Property into a maximum of twelve (12) residential condominium units (four (4) units per building) pursuant to N.C.G.S. Chapter 47C.

C. Declarant also desires and intends to subject the Property to certain covenants, conditions and restrictions to be binding upon all owners of any interest in the condominium and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns.

THEREFORE, pursuant to N.C.G.S. §47C-2-101, Declarant hereby executes this Declaration to create Athens Grove Condominium, and declares that henceforth the condominium and all units thereof shall be held and owned subject to the following terms, provisions, covenants, conditions and restrictions, which shall be binding upon all owners of any unit of the condominium and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns:

1. Definitions. The definitions set forth in N.C.G.S. §47C-1-103 shall apply to this Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

(a) "Association" shall mean Athens Grove Condominium Association, Inc., a North Carolina nonprofit corporation, its successors and assigns, which Association is a Sub-

Association (as defined in the Master Declaration).

(b) "Common Elements" shall mean all real estate within the Condominium Property other than the Units, including without limitation, the following: all water lines and sewer lines located outside public street rights-of-way and City utility easements, all central and appurtenant installments for such services such as power, light, telephone, cable television, hot and cold water, including all pipes, wires, cables, and conduits in connection therewith. In addition, "Common Elements" shall have the same meaning as "Common Area" as defined in the Master Declaration.

(c) "Common Expenses" shall mean expenditures made by or financial liabilities incurred by or on behalf of the Association, together with any allocation to reserves, including without limitation:

- (i) All sums lawfully assessed against the Unit Owners by the Association;
  - (ii) Expenses of administration, maintenance, repair, or replacement of the Common Elements;
  - (iii) Expenses agreed upon as Common Expenses by the Association;
  - (iv) Expenses declared to be Common Expenses by the provisions of the Act, by this Declaration or by the Bylaws;
  - (v) Premiums for hazard and such other insurances as this Declaration, the Act or Bylaws may require the Association to purchase;
  - (vi) Utility expenses, including sewer, water and electricity, which is provided to the Common Elements or which is provided by the Association to all Unit Owners; and
  - (vii) Ad valorem taxes, public assessments, and government liens levied against the Common Elements.
  - (viii) Payments owed to the City of Raleigh pursuant to any Stormwater Agreement, except for payments in such Stormwater Agreement owed to the City by the Declarant.
  - (ix) Any other Common Expenses as that term is defined in the Master Declaration.
- (d) "Declarant" shall mean BGM Investment Company, its successors and assigns.
- (e) "Declaration" shall mean this Declaration of Athens Grove

To the extent that any inconsistency or conflict exists between this Declaration and the Master Declaration, the Master Declaration shall control.

(f) "Master Association" shall mean and refer to Athens Grove Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

(g) "Master Declaration" shall refer to the "Declaration of Covenants, Conditions and Restrictions of Athens Grove Cluster Unit Development, recorded in Book 13206, Page 1790, Wake County registry.

(f) "Unit" shall mean a physical portion of the condominium designated for separate ownership or occupancy by a Unit Owner. "Unit" shall have the same meaning as "Condominium Lot" in the Master Declaration.

(g) "Unit Owner" shall mean the Declarant or other person who owns a Unit. Unit Owner shall have the same meaning as the definition of "Owner" in the Master Declaration.

2. Name. The name of the condominium created by this Declaration is "Athens Grove Condominium."

3. Maximum Number of Units. The maximum number of units of Athens Grove Condominium which the Declarant may create at any time is twelve (12).

4. Description of Units. The twelve (12) units presently existing or to be converted are contained in those three (3) two-story brick buildings located on the Property and designated Buildings 900, 908, and 914. Each building contains four (4) units, designated Unit A, Unit B, Unit C, and Unit D, with each unit having a first and second floor. The buildings and the units within each building are more fully described and depicted by those plans found in Condominium File 188, <sup>188-41-45</sup> Wake County Registry, which plans are incorporated herein and are hereinafter referred to as "the Plans." The identifying number for each unit is as shown on the Plans. A copy of the Certificate of Substantial Completion is attached hereto as Exhibit "A".

5. Boundaries of Units. The horizontal boundaries of each unit are the interior surfaces of its perimeter walls. The vertical boundaries of each unit are the interior surfaces of its ceilings and floors. In determining whether materials or items are common elements, limited common elements or parts of a unit, the terms and provisions of N.C.G.S. §47C-2-102 shall apply, and are incorporated herein.

6. Limited Common Elements. In determining whether materials or items are limited common elements and how they should be allocated, the terms and provisions of N.C.G.S. §47C-2-102 shall apply, and are incorporated herein. In addition, any part of a heating, ventilation and air conditioning system exclusively serving a unit that is located outside of the boundaries of the unit is a limited common element to be allocated exclusively to that unit.

7. Party Walls. The walls, flooring and ceilings connecting adjacent units are "Party Walls" and are situated on or about the boundary line separating units. In the case of any

walls, flooring and ceilings that are herein described as party walls, all furring, wallboard, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit and all other portions of such walls, floors or ceilings are a part of the common elements, pursuant to N.C.G.S. § 47C-2-102(1).

Each wall which is built as a part of the original construction of a unit and placed on the dividing line between the units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use. Notwithstanding any other provisions of this Declaration, a Unit Owner who by his negligence or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

8. Special Declarant Rights. The Declarant reserves the following special declarant rights, which shall apply to all of the Property and which must be exercised within two (2) years of the date of recording of this Declaration:

- (a) to complete all improvements shown on the Plans;
- (b) to maintain a single, one-room sales office and/or management office within one of the units;
- (c) to maintain signs advertising the condominium on the common elements;
- (d) to use easements through the common elements for the purpose of making improvements to the Property;
- (e) to amend this Declaration as necessary to correct clerical error, to make changes other than material changes (as defined in subsection 18 (c) below), or if required by any federal agency (see subsection 18(c) below); and
- (f) to appoint or remove any officer or member of the executive board of the Association, subject to the limitations stated in N.C.G.S. §47C-3-103(d) and (e), which are incorporated herein.

9. Reservation of Easements. Pursuant to N.C.G.S. §47C-2-116, the Declarant hereby reserves unto itself, its successors and assigns, such easements over all of the common elements of the condominium as may be reasonably necessary to exercise the Special Declarant Rights specified in section 7 above.

10. Allocated Interests. The undivided interests in the common elements, the common expense liability and votes in the Association (collectively, "the allocated interests") are to be allocated among all units equally on a per unit basis. The allocation of interests and obligations among the presently existing units is one-twelfth (1/12) per unit.

11. Athens Grove Condominium Association, Inc. Every unit owner shall be a member of the Association. Ownership of a fee interest in a unit shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. The basic purposes and duties of the Association shall be to manage the condominium pursuant to the terms and provisions of Article 3 of Chapter 47C of the North Carolina General Statutes, this Declaration, any Bylaws promulgated by the Association and any Rules and Regulations promulgated by the Association or its executive board; and to promote and to protect the enjoyment and beneficial use and ownership of the units. The Association shall have all of the powers stated in N.C.G.S. §47C-3-102, the terms and provisions of which are incorporated herein. The Association shall also have the power to enforce in its own name the terms and provisions of this Declaration, any bylaws promulgated by the Association and any Rules and Regulations promulgated by the Association. In addition, the Association shall have the power to:

- (a) Adopt and amend bylaws and rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
- (c) Hire and terminate managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements;
- (j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements and for services provided to unit owners;
- (k) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines not to exceed one hundred dollars (\$100.00) for violations of the declaration, bylaws, and rules and regulations of the Association and without further hearing, for each day more than five (5) days after the decision that the violation occurs;
- (l) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates or statements of unpaid assessments;
- (m) Provide for the indemnification of and maintain liability insurance

- for its officers, executive board, directors, employees and agents;
- (n) Exercise all other powers that may be exercised in North Carolina by a nonprofit corporation; and
- (o) Exercise any other powers necessary and proper for the governance and operation of the Association.

12. Restrictions on Use. All units shall be subject to the following restrictions on use:

(a) Each unit shall be used for residential purposes only. No commercial activities shall be conducted in or from any unit, except home occupations that do not involve physical access or visitation to the unit by any member of the general public and that do not involve any increased use whatsoever by any person of any of the common elements of the condominium or any general services provided to the condominium (such as trash removal).

(b) The maximum number of occupants of any one unit shall be that number which is the product of the number of bedrooms in a unit, as originally designed, times two, regardless of the age of any of the occupants.

(c) Noxious, offensive or loud activities shall not be conducted within any unit. Each unit owner shall refrain from any use of his or her unit which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other unit owner or occupant.

(d) All governmental codes, regulations and ordinances applicable to a unit shall be observed.

(e) No unit may be subdivided nor shall any right to a partition thereof exist.

(f) No animals of any kind shall be kept or maintained within any unit or on any of the common elements of the condominium except that dogs, cats or other household pets may be kept or maintained, provided they are not kept or maintained for commercial purposes and provided that the maximum number of pets in any unit shall be no more than two (2). All pets shall be kept on a leash at all times when outside the units.

(g) No unit shall be used for hotel or other transient residential purposes. Every lease relating to any unit must be in writing, must be for a term of at least six (6) months and must provide that the tenant is obligated to observe all applicable terms and provisions of this Declaration, the bylaws of the Association and any rules and regulations promulgated by the Association or its executive board.

(h) All window coverings or dressings within a unit (i. e., curtains, blinds, draperies, shades, etc.) shall be installed and maintained in accordance with provisions of the Association.

(i) No sign shall be exhibited on or from any unit except for one 18" x 24" "For Sale" sign located in a front window of the unit.

(j) Unit Owners shall not park or store any motorcycle, camper, trailer, trailer vehicle, or similar vehicle anywhere on the premises. No trucks shall be permitted except for standard 2-ton or less pickup trucks or similar sized trucks.

(k) Each Unit Owner shall be responsible to pick up pet waste from the respective Unit Owner's pets.

(l) Each unit shall be allotted up to two (2) parking spaces in the parking areas, subject to any rules and regulations governing the same adopted by the Board of Directors.

13. Maintenance and Assessments. The Association shall maintain all of the common elements of the condominium, including the limited common elements, and assess all of the units for the costs thereof, pursuant to N.C.G.S. §§47C-3-107 and 113, the terms and provisions of which are incorporated herein. The Association shall have the power to assess the units as set forth in those statutes, and as follows:

(a) Regular Assessments. The Association shall establish an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements. The Association shall charge each unit on a quarterly or monthly basis (as determined by its executive board) a Regular Assessment as its share of the common expenses and its contribution to the reserve fund.

(b) Special Assessments. In addition to the Regular Assessments authorized in subsection (a) above, the Association may charge each unit, in any fiscal year of the Association, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement upon and to any part of the common elements, including fixtures and personal property related thereto; provided that any such Special Assessment must be approved by the affirmative vote of at least two-thirds (2/3) of all units existing at the time of the vote, cast in person or by proxy at a meeting duly held in accordance with the bylaws of the Association. If authorized by the Association, Special Assessments may be paid by unit owners in monthly or quarterly installments, as determined by the executive board of the Association.

(c) Rates of Regular and Special Assessments. Regular and Special Assessments shall be assessed against all units equally on a per unit basis.

(d) Commencement of Regular and Special Assessments. Each unit shall be and become subject to Regular and Special assessments from and after the date of recording of this Declaration.

(e) Initial Assessments. In order to provide initial operating funds for the Association, each unit shall be assessed an Initial Assessment at the time of first occupancy of the unit. The Initial Assessment shall be due and payable at closing on sale of the unit to the first unit owner who intends to occupy the unit or lease the unit for occupancy. The amount of the Initial Assessment shall be an amount equal to three (3) months' Regular Assessment for each

unit. The Initial Assessment due from each unit pursuant to this subsection shall be in addition to all other assessments created hereunder, and shall not be credited against any other assessment.

(f) Maintenance of Limited Common Elements. Any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed only against the unit to which that limited common element is allocated.

(g) Assessments for Fines. The Association may assess individual units for any fines owed to the Association by the owner(s) of the unit for violations of this Declaration or any Bylaws or Rules and Regulations promulgated by the Association. Any such fine shall comply with the provisions of N.C.G.S. § 47C-3-102(11).

(h) Certificates of Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating whether all assessments against a specified unit have been paid. A properly executed certificate of the Association as to the status of assessments against a unit shall be binding upon the Association as of the date of its issuance.

(i) Payment and Collection of Assessments. Each of the applicable assessments described above, together with interest thereon and the costs of collection thereof, including reasonable attorney's fees, and together with late fees, if any, shall be a lien upon each unit and the personal obligation of all of the owners of such unit. Assessments shall be paid in such manner and on such dates as the executive board of the Association may establish, which may include discounts for early payment, reasonable late fees for late payment and special requirements for unit owners with a history of late payment. No unit owner may exempt himself from liability for assessments by non-use of common elements, abandonment of his unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each unit owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Association. Any assessment against any unit which remains unpaid for a period of thirty (30) days after delivery of a request for payment thereof shall be past due, and a late charge may be imposed by the Board of Directors pursuant to the provisions of N.C.G.S. § 47C-3-102(11). The Association shall have the power to take whatever action is necessary, at law or in equity, to collect any past due assessment, together with interest, late fees and costs of collection, including reasonable attorney's fees. When an assessment becomes past due, the lien created hereunder may be filed by the Association against the delinquent unit owner in the office of the Clerk of Superior Court of Orange County. The lien may be foreclosed by the Association in like manner as a mortgage on real estate under power of sale pursuant to Article 2A of Chapter 45 of the North Carolina General Statutes.

(j) Subordination of Lien to First Mortgages. The lien created by subsection (h) above shall be subordinate to the lien of any first mortgage. Sale or transfer of any unit shall not affect the lien of any assessment, except that the sale or transfer of any unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of any



assessment against the unit that first became due prior to such sale or transfer.

14. Insurance. The Association shall purchase, maintain in force and administer insurance coverage as provided by N.C.G.S. §47C-3-113, the terms and provisions of which are incorporated herein. In addition, the Association shall meet the following requirements regarding insurance:

(a) Property Insurance. All common elements of the condominium (including all limited common elements), except land, excavations, foundations and other items normally excluded by property insurance policies, shall be insured by the Association in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association, with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards or risks covered by a standard extended coverage endorsement.

(b) Liability Insurance. The Association shall acquire and maintain in full force and effect a policy of insurance which insures the Association against any liability arising out of the use, ownership, maintenance and control of the common elements, any commercial space leased or owned by the Association and any public rights-of-way within the Property, with limits of liability therefor of not less than One Million Dollars (\$1,000,000.00) per occurrence, which policy shall include an endorsement to cover liability of the Association to a single unit owner.

(c) Other Insurance. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Administration, Veterans Administration or Federal National Mortgage Association.

(d) Waiver of Subrogation. All policies of insurance required to be carried hereunder shall contain waivers of subrogation.

(e) Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or its agent at any given time during the term of the bond (however, in no event shall the amount of the bond be less than a sum equal to three (3) months' aggregate assessments against all units plus reserve funds).

(f) Qualifications of Insurance Carriers. The Association shall obtain the insurance coverage specified herein only from carriers licensed and admitted to transact business in North Carolina and which have received an A- or better rating by the latest edition of A.M. Best's Insurance Rating Service.

(g) Proceeds. All contracts of property insurance purchased by the Association shall be for the benefit of all of the unit owners and their mortgagees, as their

interests may appear, and shall provide that all proceeds thereof shall be payable to the Association or its authorized representative as insurance trustee under this Declaration. Each unit owner and his mortgagee, if any, shall be beneficiaries of each insurance policy in the percentage of the unit owner's undivided interest in the condominium. The sole duty of the Association or its authorized representative as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein. Subject to the provisions of N.C.G.S. §47C-3-113, proceeds of insurance received by the insurance trustee shall be distributed to or for the benefit of the beneficiaries in the following manner:

- (i) Proceeds shall first be paid to cover the cost of reconstruction and repair of any damage covered;
- (ii) Proceeds shall then be paid to the trustee to reimburse it for costs reasonably incurred in discharging its duties as trustee; and
- (iii) Any remaining proceeds shall then be distributed to the beneficiary or beneficiaries of the trust, as their interests may appear.

(h) Unit Owners Policies of Insurance. The Owner of any Condominium Unit (including the holder of any mortgage thereon) may obtain additional insurance (including a "Condominium Unit Owner's Endorsement" for improvements and betterments to the condominium unit made or acquired at the expense of the Owner) at his own expense. Such insurance shall be written by the same carrier as that purchased by the Board of Directors pursuant to the provisions hereof or shall provide that it shall be without contribution as against the same. The Declarant recommends that each Owner of a Condominium Unit in the project obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a "Tenant's Homeowners Policy". Or equivalent, to insure against loss or damage to personal property used in or incidental to the occupancy of the Condominium Unit, additional living expense, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a "Condominium Unit Owner's Endorsement" covering losses to improvements and betterments to the Condominium Unit made or acquired at the expense of the Unit Owner.

15. Disclaimer by City of Raleigh. Pursuant to the City of Raleigh's municipal code, the City of Raleigh refuses to be responsible for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to certain roads or streets that are not public due to inadequate design or construction, blocking of access routes or any other factor within the control of the Declarant, Association or occupants.

Accordingly, the Board of Directors is hereby empowered to make all efforts to assure that there is adequate access to all units and shall not allow any blocking of access or defects in access to remain uncorrected.

Further, pursuant to Raleigh City Code Section 10-3074(b), the City of Raleigh and all other governmental agencies are hereby absolved of both liability and responsibility for maintenance of private streets within the Property.

16. Availability of Documents and Records of the Association. The Association shall make reasonably available for examination true copies of this Declaration and of all bylaws, rules and regulations, books, records and current financial statements of the Association, to the following: (a) unit owners and their agents and mortgagees, and (b) contract purchasers of units and their agents and prospective mortgagees. Upon written request from any governmental agency holding, insuring or guaranteeing any mortgage against any unit of the condominium, the Association shall provide a copy of an audited financial statement of the Association for the immediately preceding fiscal year to the requesting agency within a reasonable period of time.

17. Notices to Lenders. Upon written request from any entity holding, insuring or guaranteeing a mortgage against any unit of the condominium, the Association shall provide the requesting entity with timely written notice of:

- (a) any proposed amendment to this Declaration;
- (b) any proposed termination of the condominium;
- (c) any condemnation of or loss, destruction or damage to the condominium which affects a material portion of the condominium or any unit against which there is a mortgage held, insured or guaranteed by the requesting entity;
- (d) any delinquency of sixty (60) days or more in payment of any assessments due from the owner(s) of any unit against which there is a mortgage held, insured or guaranteed by the requesting entity; and
- (e) any lapse, cancellation or material modification of any insurance coverage held by the Association.

18. General Provisions.

(a) Parties Bound. All persons and entities acquiring any interest in any of the units, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the units, shall likewise be bound.

(b) Duration. The provisions of this Declaration shall run with and bind the Property perpetually, unless rescinded pursuant to subsection (c) below.

(c) Amendment or Rescission. Except as provided herein, this Declaration may be amended or rescinded only by a written instrument executed by the Association and

authorized by the affirmative vote of at least two-thirds (2/3) of all units existing at that time, cast in person or by proxy at a meeting duly held in accordance with the bylaws of the Association; provided that the terms and provisions of this Declaration may be amended by the Declarant at any time within two (2) years of the date of recording of this Declaration, without the approval of the Association or any other party, as necessary (i) to correct clerical error, (ii) to make changes other than material changes (as defined below) or (iii) if the proposed amendment is required to obtain any approval of HUD, FHA, VA, FNMA or FHLMC; and provided any amendment is first approved by the City of Raleigh if required by the Raleigh City Code. When City approval of an amendment is required by the Code or by a provision of this Declaration, 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 Declaration that requires City approval is void ab initio if recorded without the required City signature. Any amendment or rescission must be recorded at the Wake County Registry to be effective.

A material change shall be considered as one which changes any of the following:

- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (iii) reduction in reserves for maintenance, repair, and replacement of common elements;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the general or limited common elements or rights to their use;
- (vi) redefinition of any unit boundaries;
- (vii) convertibility of units into common elements or vice versa;
- (viii) expansion or contraction of the project, or the addition, annexations, or withdrawal of property to or from the project;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of units;
- (xi) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her unit;
- (xii) a decision by the Association to establish self-management if professional management had been required previously by Association documents or by an eligible mortgage holder;

(xiii) restoration or repair of the project (after damage or partial destruction) in a manner other than that specified in the documents; or

(xiv) any provisions that expressly benefit mortgage holders, insurers or guarantors.

This Declaration may further be unilaterally amended by the Declarant for the purpose of recording a verified statement of a registered architect or licensed professional engineer certifying that the plans heretofore filed or being filed simultaneously with such amendment fully depicting the layout, ceiling and floor elevations, unit numbers and dimensions of the units as built.

(d) Enforcement. The Declarant, any unit owner and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and obligations imposed by this Declaration. The Declarant, the Association or any unit owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration, and/or to recover damages therefor. The Declarant, the Association and/or any unit owner shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action from the breaching or violating unit owner(s).

(e) Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

(f) Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

(g) Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

(h) Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.

(i) References to Statutes. All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to or replacements of such provision.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be duly executed by its authorized officer on the date shown above.

BGM Investment Company

By: [Signature]  
Colin MacNair, Jr., President

NORTH CAROLINA, WAKE COUNTY.

I, Linda L. Ring, a Notary Public, do hereby certify that Colin MacNair, Jr., president of BGM Investment Company, a North Carolina corporation, personally appeared before me this day and acknowledged that he voluntarily executed the foregoing instrument as president on behalf of the corporation.

Witness my hand and official seal this the 7 day of August, 2008.

My commission expires 11.04.11



Linda L. Ring  
Notary Public

LINDA L. RING  
Printed or Typed Name of Notary

STATE OF NORTH CAROLINA, WAKE COUNTY.

The foregoing certificate of \_\_\_\_\_, A Notary Public of the designated Governmental unit, is certified to be correct. This instrument was presented for registration this \_\_\_\_\_ day of \_\_\_\_\_, 2008, at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and duly recorded in the office of the Register of Deeds of Wake County, North Carolina, in Book \_\_\_\_\_ Page \_\_\_\_\_. This the \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_, Register of Deeds

By: \_\_\_\_\_  
Assistant/Deputy Register of Deeds

EXHIBIT "A"

# AIA Document G704™ – 2000

## Certificate of Substantial Completion

<b>PROJECT:</b> <i>(Name and address)</i> Athens Grove Condo 900 Athens Drive Raleigh NC 27606	<b>PROJECT NUMBER:</b> 3107	<input type="checkbox"/> OWNER
	<b>CONTRACT FOR:</b> Remodeling	<input type="checkbox"/> ARCHITECT
	<b>CONTRACT DATE:</b> March 1, 2007	<input type="checkbox"/> CONTRACTOR
<b>TO OWNER:</b> <i>(Name and address)</i> BGM Investment Co. 1513 Walnut St. Cary NC 27511	<b>TO CONTRACTOR:</b> <i>(Name and address)</i> Crouch Contracting Inc. 1745 Brooks Av. Raleigh NC 27606	<input type="checkbox"/> FIELD
		<input type="checkbox"/> OTHER

**PROJECT OR PORTION OF THE PROJECT DESIGNATED FOR PARTIAL OCCUPANCY OR USE SHALL INCLUDE:**

The Work performed under this Contract has been reviewed and found, to the Architect's best knowledge, information and belief, to be substantially complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

RANDOLPH D ZELEVANSKY *Randolph Zelevansky* 6/24/08  
ARCHITECT BY DATE OF ISSUANCE

A list of items to be completed or corrected is attached hereto. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

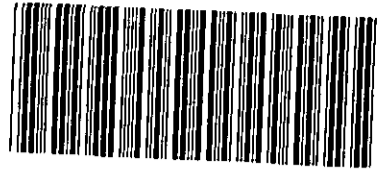
Cost estimate of Work that is incomplete or defective: \$ \_\_\_\_\_

The Contractor will complete or correct the Work on the list of items attached hereto within ( ) days from the above date of Substantial Completion.

CONTRACTOR BY DATE

The Owner accepts the Work or designated portion as substantially complete and will assume full possession at 3:00 PM (time) on 6-24-08 (date).  
BGM Investment Company *Catherine Han* June 24, 08  
OWNER BY DATE  
president

The responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance shall be as follows: *(Note: Owner's and Contractor's legal and insurance counsel should determine and review insurance requirements and coverage.)*



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**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**

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