

WAKE COUNTY, NC 422
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
08/07/2008 AT 15:04:21

BOOK:013206 PAGE:01790 - 01828

NORTH CAROLINA

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS OF ATHENS GROVE CLUSTER UNIT
DEVELOPMENT**

WAKE COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 7th day of April, 2008, by **BGM Investment Company** a North Carolina corporation (hereinafter "Declarant"), **JOHN S. TOWLES** (hereinafter "Trustee"), and **PARAGON COMMERCIAL BANK** (hereinafter "Paragon") and all other parties hereafter acquiring any of the described property;

WITNESSETH:

WHEREAS, Declarant is the owner of Lots 1 through 44, **ATHENS GROVE CLUSTER UNIT DEVELOPMENT**, as is shown on a recorded plat hereinafter referenced in Article I below;

WHEREAS, Declarant intends to develop such lots into a residential community containing detached single family dwelling units and condominium units;

WHEREAS, Declarant desires to ensure the attractiveness of the development and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the development, and to provide for the maintenance and upkeep of the Common Area, as hereinafter defined, and to that end desires to subject the real property, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable, for the efficient preservation, protection and enhancement of the values and amenities in said subdivision and to ensure the residents' enjoyment of the specific rights, privileges and easements in the Common Area, as hereinafter defined, and to provide for the maintenance and upkeep of the Common Area, to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering and enforcing these covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created;

Hold # 13

WHEREAS, Declarant has caused or will cause to be incorporated under North Carolina law, ATHENS GROVE HOMEOWNERS ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions;and

WHEREAS, Declarant has heretofore executed a note secured by a deed of trust to the Trustee for the benefit of Paragon covering said Property, the same being dated January 18, 2006, and being recorded in Book 11778, Page 2456, Wake County Registry (the "Deed of Trust") and Declarant has requested the Trustee and Paragon to consent to the imposition of said Declaration on said Property and they have agreed to join in this instrument for the purpose of indicating their consent to the same.

NOW, THEREFORE, in consideration of the premises, Declarant hereby declares that all of the property shown on the initial recorded plat and such additional lands thereto as may be hereafter annexed into the Association is and shall be held, sold, used, mortgaged, transferred, conveyed and occupied subject to the following easements, restrictions, covenants, conditions, charges and liens all of which shall run with the title or interest in said real property and any part thereof, and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

PROPERTIES SUBJECT TO THIS DECLARATION

The property that shall be subject to this Declaration is located in the City of Raleigh, Raleigh Township, Wake County, North Carolina, and is more particularly described as Lots 1 through 44, according to a survey plat entitled "Subdivision Plat Athens Grove ", recorded in Map Book 2008, at Page ~~1554~~, _____ and _____, together with all the open space, utility, drainage and pedestrian access easements as shown thereon. The Declarant hereby subjects the above described property to this Declaration and to the jurisdiction of the Association. Additional properties may be subjected to this Declaration within seven (7) years from the date of this instrument either by the Declarant unilaterally or by the membership as an amendment. All additions shall comply with Article VI, Part A, Section 13 of this Declaration.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Athens Grove Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns. See also Article VI, Part A, Section 1(d) of this Declaration.

Section 2. "Common Property" and "Common Area" shall mean all real property owned by the Association and the easements granted to the Association for the common use, benefit and enjoyment of the Property by the Owners. Provided, however, all real property owned by and easements granted to a Sub-Association are Sub-Association Common Property as defined herein and not the Common Property of the Association. See also Article VI, Part A, Section 1(h) of this Declaration.

Section 3. "Condominium" is defined as a portion of the Property on which a condominium has been created pursuant to the North Carolina Condominium Act (Chapter 47C of the North Carolina General

Statutes, as amended from time to time.

Section 4. "Condominium Lot" shall mean a condominium unit as defined in Chapter 47C of the North Carolina General Statutes, as amended, recodified and replaced from time to time, which is located within the condominium portion of the Property. The condominium portion of the Property shall be located on Lots 43 and 44 of Athens Grove Cluster Unit Development, according to a plat recorded in Map Book 2008, Page 1554, Wake County Registry. A Condominium Lot is a type of Lot as described in Article VI, Part A, Section 1(r) of this Declaration.

Section 5. "Declarant" shall mean and refer to BGM Investment Company, a North Carolina corporation, its successors and assigns. See also Article VI, Part A, Section 1(j) of this Declaration.

Section 6. "House Lot" shall mean a Lot on which a detached single family dwelling is intended to be constructed. A House Lot is a type of Lot as described in Article VI, Part A, Section 1(r) of this Declaration.

Section 7. "Lot in Use" shall mean any Lot owned by any person or entity on which a condominium unit or a detached single family dwelling has been fully constructed and for which a certificate of occupancy has been issued by the City of Raleigh.

Section 8. "Property" is defined as the real property described in Article I of this Declaration.

Section 9. "Sub-Association" is defined as an entity organized for the purpose of owning, managing and/or maintaining the Sub-Association's Common Property including its common elements. Assessments imposed upon the Members of the Association by the documents establishing or governing a Sub-Association or subjecting an applicable portion of the Property thereto shall be in addition to, and not in lieu of, assessments imposed upon such Members by the Declaration.

Section 10. "Sub-Association Common Property" and "Sub-Association Common Area" are defined as portions of the Property owned or maintained by a Sub-Association for the use, enjoyment and/or benefit of its members.

Section 11. For other definitions see Article VI, Part A, Section 1 of this Declaration.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area and facilities now or hereafter established which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association.

(b) The right of the Association, with the assent of eighty (80%) per cent of each class of members to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided that this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewage, utility (including CATV) and drainage facilities upon,

over, under and across the Common Area without the assent of the Members when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or to another non-profit corporation with purposes similar to those of this Association;

(c) The right of the Association, with the written assent of Members entitled to at least eighty (80%) per cent of the votes of each Class of member to mortgage, pledge, deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the property rights of the Owners and Association as set forth herein.

(d) The right of the Association, with the written assent of Members entitled to at least eighty (80%) per cent of the votes of each Class of member to exchange any portion of the Common Area for other properties provided that: (i) the exchanged properties and other considerations are of like value and utility; (ii) the acreage and configuration of the remaining open space equal (including property to be received in such exchange) or exceed the requirements of the Raleigh City Code; and (iii) the exchange is approved by the City of Raleigh Planning Director.

(e) The right of the Association to adopt, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and for the Common Area as set forth in Article IX, Section 1 of this Declaration.

(f) The right of the Association to limit the number of guests of Members.

Section 2. Delegation of Use. The right and easement of use and enjoyment and access granted to every Owner in Section 1 of this Article may be delegated, in accordance with the By-Laws, by any Owner to the members of his family, his tenants or his contract purchasers who reside on the Property.

Section 3. Conveyance of Title to the Common Area. Declarant covenants, for itself and its successors and assigns, that it will convey title in fee simple to the Common Area to the Association prior to the conveyance of the first Lot to an Owner within any phase, section, or annexation. Such conveyance shall be free and clear of all encumbrances and liens, except utility, drainage, and pedestrian access easements of record or shown on the recorded plats of ATHENS GROVE SUBDIVISION.

Section 4. Parking Rights. The Association may regulate parking of boats, trailers and such other items on the Common Area. Notwithstanding the above, any regulation passed by the Association or contained in this Declaration that applies to public streets only applies to Lot Owners, their families, or their tenants.

Section 5. Television Antennas and Cablevision. The Association may supply cablevision and the cost of this service may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas on individual lots.

Section 6. Lease of Lots. Any lease between an Owner and a tenant for the lease of such Owner's Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, and that any failure by the tenant to comply with the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, shall be a default under the terms of the lease. All leases of Lots shall be in writing.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to a lien for dues and assessments shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to dues and assessments.

When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as a majority, among themselves determine, but fractional voting shall not be allowed.

Section 2. Classes of Membership. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have up to three classes of membership:

(a) **Class A Members.** Class A Members shall be all Owners of House Lots as defined in Article II, Section 5 herein, with the exception of the Declarant and shall be entitled to one (1) vote for each such House Lot owned. The Declarant may, however, be a Class A Member upon termination of Class C Membership.

(b) **Class B Members.** Class B Members shall be all Owners of Condominium Lots as defined in Article II, Section 3 herein, with the exception of the Declarant and shall be entitled to one (1) vote for each such Condominium Lot owned. The Declarant may, however, be a Class B Member upon termination of Class C Membership.

(c) **Class C Member.** Class C Member shall be the Declarant and shall be entitled to four (4) times the regular vote for each Lot owned based on the class to which such Lot would otherwise belong. The Class C membership shall cease and be converted to Class A or Class B membership, as appropriate, upon the happening of any of the following events, whichever event shall first occur:

- (1) When the total votes outstanding in Class A membership and Class B membership equal the total votes outstanding in Class C membership. [provided, however, that Declarant shall retain its architectural review and approval rights under Articles VIII and IX until the Class C membership is converted in accordance with either sub-paragraph (2) or (3)]; or
- (2) On January 1, 2011; or
- (3) Upon the surrender of the Class C membership by the Declarant.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Property, 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:

- (1) Annual assessments or charges;
- (2) Special assessments for capital improvements; such assessments to be established and collected as hereinafter provided;
- (3) Specific Assessments as described in Section 6 hereafter; and
- (3) Other assessments set forth in Article VI, Part A, Section 5(a) of this Declaration.

The annual, special, specific and other assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to common open spaces shall be shared equally by the Owners of each Lot; provided, however, as to any Lot which is not a Lot in Use, the amount of the annual assessment for each such Lot shall be an amount equal to twenty-five percent (25%) of the amount of the annual assessment applicable to a Lot which is a Lot in Use.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement, and maintenance of the Common Areas, including the maintenance, repair and reconstruction of Stormwater Control Measures, driveways, walks, and parking areas situated on the Common Area, such maintenance to include the cutting and removal of weeds and grass, the removal of trash and rubbish, the replanting of trees and shrubs, or any other maintenance for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements or additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Area owned in fee simple by the Association, the procurement and maintenance of insurance in accordance with this Declaration or By-Laws, payment of all costs and expenses incurred by the Association pursuant to the terms of the Stormwater Replacement Protection Easement and Access Maintenance Installment Replacement Contribution Agreement between the Declarant, the Association, and the City of Raleigh recorded contemporaneously with the Declaration and hereinafter called the Stormwater Agreement, the employment of attorneys and engineers to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, signs, paving, grading, landscaping, Stormwater Control Measures, and any other expenses for which the Association is responsible, and such other needs as may arise. Except for stormwater control measures, the Association shall not have any obligation to maintain any Lot nor to maintain any portion of the Property which comprises part of the condominium portion of the Property, which condominium portion shall be maintained by a sub-association governing such condominium portion. See also Article VI, Part A, Section 1(h) of this Declaration.

Section 3. Reserves. In addition to the fund created and held by the City in accordance with the provisions of the Stormwater Agreement, the Association shall establish and maintain an adequate reserve fund or funds for the periodic maintenance, repair, and replacement of improvements to the Common Area and those other portions of the properties that the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for Common Expense.

Section 4. Budget Ratification. Within thirty (30) days after adoption of any proposed budget for the planned community, the executive board of the Association ("Associations' Board") shall

provide to all the Lot owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Association's Board shall set a date for the meeting of the Lot Owners to consider ratification of the budget, said meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There is no requirement that a quorum be present. The budget is considered ratified unless at that meeting the super-majority of the Lot Owners in the Association specified in Article VI, Part A, Section 5 (c) rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Association's Board.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. Any special assessment shall be payable at such times and at such installment as stated in the initial adoption.

Section 6. Specific Assessments. The Association shall have the power to levy specific assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Association may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Lot(s) into compliance with the terms of this Declaration or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot(s), their agents, contractors, employees, licensees, invitees, or guests; provided, however, the Association shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any specific assessment under this subsection (b).

Section 7. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum rate allowed by law or shall be charged late fees as established by the Board of Directors of the Association. The Association may bring an action at law against the Owner personally obligated to pay the same or file and foreclose a lien against the property pursuant to the provisions contained in G.S. 47F-3-116(a) and in either event interest, costs and reasonable attorney's fees of such action shall be added to the assessment. Any assessment levied against a lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that lot when a claim of lien is filed of record in the office of the clerk of superior court of the county in which the lot is located in the manner provided herein. A claim of lien shall set forth the name and address of the association, the name of the record owner of the lot at the time the claim of lien is filed, a description of the lot, and the amount of the lien claimed. Foreclosure is to be in the same manner as that of Deeds of Trust, foreclosed under Article 2A of Chapter 45 of the North Carolina General Statutes, except that if the debt secured by the lien consists solely of fines imposed pursuant to Section 7 of this Article, the lien may be enforced by judicial foreclosure as provided in

Article 29A of Chapter 1 of the North Carolina General Statutes. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency. See also Article VI, Part A, Section 5(d) of this Declaration.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any prior recorded mortgage or deed of trust and ad valorem taxes and other governmental assessments and charges. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lien 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 from the lien thereof.

Section 9. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 10. Working Capital Fund. At the time of closing of the sale of each Lot by the Declarant, a sum equal to at least two (2) months assessment for each Lot shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. The purpose of said fund is to ensure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE VI

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 BGM Investment Company, its successors and assigns.

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

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

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

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

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

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

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

(r) "Lot" is defined as any numbered or lettered portion of the Properties, together with any

improvements thereon, which is shown upon any recorded plat of any part or all of the Properties, and which is not any of the following: dedicated street rights-of-way; Common Area; Open Space owned in fee simple by the Association; greenway or park lands owned in fee simple by the City.

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

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

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

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

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

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

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

(z) "Properties" is defined as all of the real property subject to any part or all of the terms of this Declaration. The amount of acreage of the Properties at the time of the recording of this Declaration is 10.28 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 2008, the annual assessment per Lot is \$36.50. 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 its liabilities as an Owner under this Declaration and other Governing Documents.

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

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

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

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

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

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

Section 14. Access Easement for Repair of Structures. A perpetual access easement over an adjoining

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

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

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

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

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

Section 18. Landscape Easements. The Association shall be responsible for Maintaining and replanting any shrub or tree located within any area designated on a recorded map of the Properties as a landscape easement or similar designation. Association expenses for Maintaining or replanting any shrub or tree located in a landscape easement or similar designation are Common Expenses. Whenever a slope

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

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

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

Section 2. Creation of Stormwater Assessments. Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) a Stormwater Assessment, as hereinafter defined, established and collected as hereinafter provided, and each Owner of a Lot, by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to covenant and agree to pay to the Association (or to any person who maybe designated by the Association to collect such monies) such Stormwater Assessment. For calendar year 2007, the Stormwater Assessment is \$143.81. 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 a new Stormwater Assessment for the Lots in the Annexed Property with respect to all new Stormwater Control Measures located in or serving such Annexed Property, and such new Stormwater Control Measures shall be designated as Common Area or Limited Common Area, as appropriate, on the recorded plat(s) of the Annexed Property. The new Stormwater 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: There is no more land to be added.

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 61;
- (b) maximum number of dwelling units per acre allowed in the cluster unit development is 6;

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

- (a) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- (b) The cost of reasonable Maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.
- (c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.
- (d) Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

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

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

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

ARTICLE VII

INSURANCE

Section 1. Insurance coverage on the Properties shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies upon the Common Area shall be purchased by the Association for the benefit of all the Association and the Owners.

(b) Coverage. All buildings and improvements and all personal property included in the Common Area and facilities shall be insured in an amount equal to one hundred (100%) percent insurable replacement value, as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards covered by the standard coverage endorsement.

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, if any.

Such policies shall contain clauses providing for waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than *One Million and No/100 Dollars (\$1,000,000.00)* per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner.

(d) Other Insurance. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary. This shall also include all insurance required under the Stormwater Agreement or insurance obtained to protect the Stormwater Control Measures as outlined in this Declaration's stormwater provisions.

(e) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as an assessment according to the provisions of Article V above.

(f) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust and that the sole duty of the Association as Insurance Trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the By-Laws.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustees shall be first paid or provisions made there for.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

(c) Stormwater Control Measures. Notwithstanding the above, to the extent that any insurance proceeds are received by the Association relating to damages to the Stormwater Control Measures, such proceeds shall first be applied to the repair and/or restoration of the Stormwater Control Devices.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust 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 equal to six (6) months' assessments plus reserves accumulated.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 1. Plan Approval Requirement. No building, fence, wall or other structure shall be constructed, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including, but not limited to, the erection of antennas, satellite dishes or disks, aerials or awnings, or the placement of reflective or other material in the windows of a dwelling unit or other exterior attachment, until completed plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant (as long as Class C membership exists), the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. If the Declarant, the Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said completed plans and specifications have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with. The Association shall have the right to charge a reasonable fee, not to exceed \$25.00 for receiving and processing each application. Neither the Declarant, the Board of Directors nor the Architectural Committee shall approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety, or appearance of any Lot or the Common Area. Nothing herein shall be construed to permit interference with the development of the Properties by the Declarant in accordance with its general plan of development. The Declarant, the Board of Directors and the Architectural Committee shall have a right and easement of unobstructed access over and upon each Lot at all times to monitor compliance with the approved plans.

Section 2. Grounds for Disapproval/Defects. Refusal of approval of such plans, locations or specifications may be based upon any grounds, including purely aesthetic and environmental, which the Declarant, Board of Directors or Architectural Committee, as the case may be, in its sole discretion, shall deem sufficient. The Declarant, Board of Directors or Architectural Committee shall not be responsible for any deficiencies or defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications.

Section 3. Verification of Compliance with Plans. The Declarant, Board of Directors or Architectural Committee, as the case may be, or its appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Lot during site preparation or construction, erection or installation of improvements, to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

Section 4. Lot Restrictions. No portion of the Properties (except for temporary offices of

the Declarant and/or any model used by the Declarant) shall be used except for residential purposes and for purposes incidental or accessory thereto, except that the Declarant, each builder, real estate brokers, Owners and their agents may show Lots for sale or lease. Notwithstanding the foregoing, the Declarant and each builder and the agents and employees of each, shall have the right to: (i) use Lots and improvements thereon for sales offices, field construction offices, storage facilities; (ii) maintain fluorescent or spot lighted model homes which may be open to the public for inspection seven (7) days a week for such hours as the Declarant or builder deems appropriate or necessary; (iii) conduct any other activity on Lots to benefit sales efforts; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

An owner may let or rent his entire dwelling unit, but no portion of any dwelling unit shall be leased separately from the rest of the unit.

The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior approval of Declarant during Class C membership, or thereafter of the Association or the Architectural Committee and of the City of Raleigh, the size and shape of any Lot may be altered; provided that no Lot or group of Lots may be resubdivided so as to produce a greater number of Lots. More than one Lot may be use as one building site provided the location of any structure permitted thereon is approved in writing by Declarant during Class C membership and thereafter by the Board of Directors, and said Lots are recombined as provided in N. C. General Statute 160A-376(1). The Property is approved for detached single family dwellings and residential single family condominiums.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations. The Declarant (as long as Class C membership exists) or 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 front yard space of each House Lot and the Common Area. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof or for the violation of any of the covenants and conditions contained in this Declaration. Any fine or suspension of planned community privileges or services shall be imposed pursuant to the provisions of N.C.G.S. 47F-3-107.1.

Section 2. Land Use. No building shall be erected, altered, placed or permitted to remain on any House lot other than one detached single-family dwelling, a private enclosed garage, and outbuildings incidental to residential use, (except for temporary offices of the Declarant and/or any model used by the Declarant or builder) provided, however, that no buildings other than the dwelling and enclosed garage shall be allowed except with the prior written approval of the Declarant (as long as Class C membership exists), the Board of Directors or the Architectural Committee.

Section 3. Nuisances. No noxious or offensive activity shall be carried on upon the

Properties, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

Section 4. Pets. No animals, livestock or poultry of any kind, shall be raised, bred, kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. The maximum number of pets that may be kept on a House Lot is three (3) and the maximum number of pets that may be kept on a Condominium Lot is two (2). The owner of any such pet shall not allow such animal to be at large in the Properties. No person shall keep or maintain or permit the keeping of, on any lot in the Properties, any animal or fowl otherwise permitted to be kept which, by habitual or frequent sound, cry, howling, barking, squawking, meowing, or other noise, shall disturb the quiet, comfort or repose of any person in the Properties.

Section 5. Temporary structures. No structure of a temporary kind, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. Notwithstanding the foregoing, the Declarant and, with the approval of the Declarant, a builder, may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of houses.

Section 6. Fences and signs. No fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Properties, including any Lot, without the prior written consent of the Declarant (so long as Class C membership exists), the Board of Directors or its designated Architectural Committee. The Committee may issue guidelines detailing acceptable fence styles or specifications, but in no event shall hogwire or chainlink fencing be approved. No signs shall be erected or allowed to remain on any Lot except with the written consent of the Board of Directors or its designated Architectural Committee.

Section 7. Dwelling Specifications. No dwelling shall be constructed or permitted to remain on any House Lot having an area of the main structure, heated and finished, exclusive of basements, porches, decks, garages and storage areas, of less than one thousand eight hundred (1,800) square feet. All yard and setback requirements shall comply with the City of Raleigh setback regulations.

No building shall be erected, altered, placed or permitted to remain on any House Lot other than one (1) detached single-family dwelling not to exceed two and one-half (2 ½) stories in height; a private garage for not more than two (2) cars; and [with the approval of the Declarant (so long as Class C membership exists), the Board of Directors of the Association or the Architectural Committee] an accessory building or structure for storage or other appropriate use not in excess of two hundred fifty (250) square feet in area.

The location and size of Condominium Lots and the building in which such Condominium Lots are located shall be subject to the architectural approval under Article VIII.

Section 8. Prohibited Structures. Mobile homes, shell homes, precut, pre-

assembled and package homes and all other similar type buildings are expressly prohibited on any Lot in the Property, except that the Declarant (so long as Class C membership exists), the Board of Directors or the Architectural Committee may, without being required to do so, approve a home or other out-building on any Lot with some of its components being precut and provided such components comply with pertinent City of Raleigh regulations.

Section 9. Accessory and Other Outbuildings. No accessory building of any nature whatsoever (including, but not limited to, detached garages, storage buildings, doghouses, and greenhouses) shall be placed on any House Lot without the prior written approval of the Declarant (so long as Class C membership exists), the Board of Directors, or the Architectural Committee, with said Declarant, Board or Committee to have the sole discretion relating to the location, appearance and type of accessory building which shall be permitted on any Lot. No outside clothes lines, tree houses, play houses, motorcycles, supplies, tractors, boats, trucks [other than one (1) pick-up truck rated one-half (1/2) ton or less], trailers, vans [other than one (1) non-commercial van owned and operated on a regular, daily basis by the Owner or occupant of the Lot], campers, or other equipment or vehicles (except for operative, licensed automobiles) shall be regularly parked or stored in any area on a House Lot except inside an enclosed building, behind screening approved by the Declarant, Board of Directors or Architectural Committee. Garbage and refuse containers, transformers, air conditioning, and other alternative energy devices shall either be concealed behind screening or integrated into the building design so as to be inconspicuous. All outdoor equipment and accessories on a Lot, such as play structures, benches, sculptures, etc., shall be concealed by approved screening or approved in writing by Declarant, the Board, or the Architectural Committee as compatible and harmonious with the surroundings. Each Owner of a House Lot will provide at least two (2) parking spaces for vehicles on such Owner's House Lot. The owners association for the condominium section of the Property shall have the power and authority to regulate parking within the condominium section.

Section 10. Appearance. Communication towers are expressly prohibited. All primary fuel storage tanks must be placed underground. No inoperable motor vehicles may be parked on any Lot if visible from any street in the Property. All mailboxes shall be of the same type and shall be provided to the first permanent Owner by the builder of the dwelling unit. Exterior foundation walls must be constructed of brick or masonry; block exterior foundation wall are expressly prohibited.

All driveways and walks must be paved with concrete unless a different material has been approved by Declarant during the period of Class C membership, and thereafter by the Board of Directors or the Architectural Committee, as the case may be. All Lots on which a dwelling unit is approved and built shall be landscaped in accordance with the City of Raleigh specifications. Total construction time, from the date of final approval of plans by the Declarant (as long as Class C membership exists), the Board of Directors or Architectural Committee to the completion of the dwelling unit for occupancy, shall not exceed twelve (12) months. All buffer areas are to be according to the requirements of the Raleigh City Code.

Section 11. Lawns. Each House Lot on which there is a completed dwelling shall be maintained in a neat condition by the Owner thereof, or, as appropriate, the Association. In this context, the word "Lot" shall include that portion of the property from the outside of the structure

on the applicable Lot to the adjacent paved road surface. "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized and that the mulched areas be regularly re-mulched and kept weeded so that its appearance is in harmony with the neighborhood. All improved lots must have grass lawns; no gravel or similar type lawns are permitted. No above ground swimming pools, tool sheds or shacks, dog or other animal pens or houses or the like, and no unsightly lawn furniture or decorations shall be permitted in such lawn areas. No landscaped mounds or other landscaping improvements that would impede lawn maintenance shall be permitted on a Lot without the prior written consent of the Declarant or the Association.

Section 12. Failure to Maintain. If an Owner fails to maintain the Lot or the improvements thereon, the Association, after giving such Owner at least ten (10) days' written notice, shall be authorized to undertake such maintenance at the Owner's expense. By accepting title to his Lot, each Owner shall be deemed to grant access upon the Owner's Lot and dwelling for such purpose and such entry shall not constitute a trespass. If such maintenance is undertaken by the Association or the Declarant, the charge therefore and all costs of enforcement and collection shall be secured by a lien against the Lot as provided in Articles V and VI hereof.

ARTICLE X

EASEMENTS

Section 1. Establishment of Easements. All of the Properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, and grassed swales, gas lines, telephone and electric power lines, and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under, and across the Common Area conveyed to it such further easements as are requisite for the convenience, use, and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress, and regress across all Common Area now or hereafter owned by the Association for the purpose of construction of improvements within the Properties.

Section 2. Easements for Encroachments. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, bay windows, steps and walls.

Section 3. Access Easement. If any dwelling is located closer than five (5) feet from its Lot line, so long as such setback complies with the City of Raleigh applicable Zoning Ordinances, the Owner thereof shall have a perpetual access easement over the adjoining lot to the extent reasonably necessary to perform repair, maintenance, or reconstruction of his dwelling. 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. Easements for Government Access. An easement is hereby established over and across the Common Area for the benefit of any applicable governmental entities or agencies for setting, removing, and reading water meters, maintaining and replacing water lines owned and operated by the City of Raleigh, fire fighting, animal control, garbage collection, police protection and delivery of mail.

Section 5. Access to Lots. The Declarant (as long as Class C membership exists) or the Association and their agents or employees shall have access to any Lot from time to time during reasonable working hours and with prior oral or written notice to the Owner of such Lot for the maintenance of the Common Area or of facilities located thereon or of facilities located upon such Lot which serves the Common Area or another Lot. The Declarant (as long as Class C membership exists) or the Association and their agents shall also have access to any Lot at any time without notice as may be necessary to make emergency repairs to prevent damage to the Common Area or another Lot.

Section 6. Underground Utilities. The Declarant reserves the right to subject the Property to a contract with a North Carolina public utility holding a franchise with the State of North Carolina, for the installation of underground water, sewer and electric lines to the property which may require an initial payment and/or a continuing monthly payment to the public utility by the Owner of each Lot.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners, so long as any amendment is first approved by the City of Raleigh. When City approval of an amendment is required by the Code or by a provision of this Declaration (including Article VI), 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 Article VI of this Declaration must have prior City approval. Any amendment of Article VI or any other provision of this Declaration that requires City approval is void ab initio if recorded without the required City signature. If any amendment to these covenants, conditions, and restrictions is executed, each such 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.)

(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 ATHENS GROVE
SUBDIVISION**

ATHENS GROVE HOMEOWNERS ASSOCIATION, INC.

Section 4. FHA/VA Approval. In the event the Declarant or its successors or assigns has arranged for and provided purchasers of Lots with VA or FHA insured mortgage loans, then as long as any Class C membership exists, as provided in Article IV hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mortgaging of real property owned by the Association, deeding of Common Area to persons other than the Association, and amendment of this Declaration.

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

Section 6. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to:

(a) Inspect the books and records of the Association during normal business hours.

(b) Receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year.

(c) Receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings.

(d) Receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage.

(e) Receive written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any unit on which it holds the mortgage.

(f) Receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(g) Receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders.

(h) Be furnished with a copy of the master insurance policy.

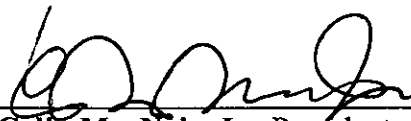
Section 7. Transfer of Authority. Any and all authority delegated specifically to the Declarant shall be transferred to the Board of Directors of the Association when Class C membership ceases pursuant to Article IV, Section 2(c), Sub-paragraph (2) or (3) of this Declaration.

Section 8. Address. Each Member agrees to keep the Association informed of his address at any time and any notice sent or delivered to said address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Ownership for preparation of a membership roster and the roster so completed shall be sufficient evidence as the Ownership of each Lot. If a Member fails to provide the Association with his address or otherwise fails to keep his address current, the Association may use the address shown on the Wake County tax records for the Owner of the Lot for which such membership exists as the Member's address.

Paragon and Trustee execute this Declaration for the sole purpose of subordinating the lien of the Deed of Trust to the terms and provisions contained herein.

IN WITNESS WHEREOF, The parties have caused this instrument to be executed this the 7th day of April, 2008.

BGM INVESTMENT COMPANY

By: 
Colin MacNair, Jr., President

PARAGON COMMERCIAL BANK

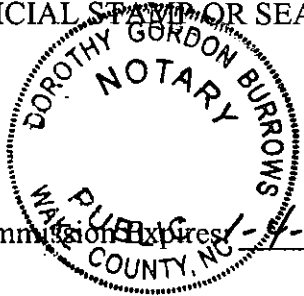
By: W. Michael Worsham
W. Michael Worsham, Sr. Vice President

[Signature]
John S. Towles, Trustee

NORTH CAROLINA WAKE COUNTY

I, a Notary Public in and for said County and State, certify that COLIN MACNAIR, JR., as the president of BGM INVESTMENT COMPANY, a North Carolina corporation, personally appeared before me this day, being personally known to me, acknowledged to me that he voluntarily signed the foregoing instrument on behalf of the corporation for the purpose stated therein as president of the corporation, under authority duly given, on this the 7th day of April, 2008.

[OFFICIAL STAMP OR SEAL]



[Signature]
Official Signature, Notary Public

DOROTHY GORDON BURROWS
Notary's Printed or Typed Name

My Commission Expires 1-7-2014

NORTH CAROLINA

WAKE COUNTY

ACKNOWLEDGEMENT

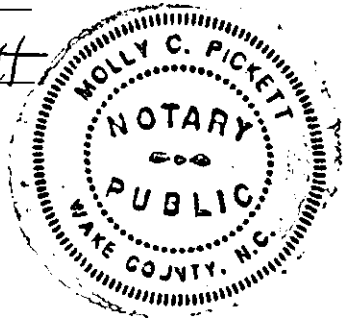
I, the undersigned Notary Public, certify that W. Michael Worsham personally came before me this day and acknowledged that he is the SV President of Paragon Commercial Bank, a North Carolina banking corporation, and that he, as such officer, being authorized to do so voluntarily executed the foregoing instrument on behalf of said entity.

WITNESS my hand and official stamp or seal this the 8 day of April, 2008.

(SEAL)

[Signature]
Notary Public
Printed Name: Molly C Pickett

My Commission Expires: 10/16/08



NORTH CAROLINA

ACKNOWLEDGEMENT

WAKE COUNTY

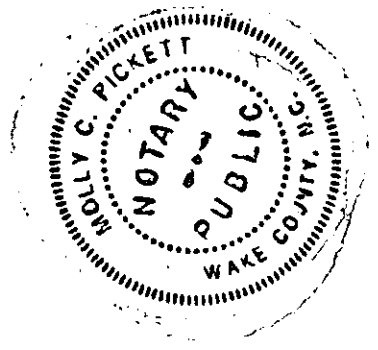
I certify that the John S. Towles, Trustee, personally appeared before me this day, each acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated:

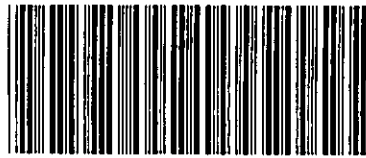
WITNESS my hand and official stamp or seal this the 8 day of April, 2008.

Molly C Pickett
Official Signature of Notary Public

Molly C Pickett
Notary's Printed or Typed Name

(Seal) My commission expires: 10/16/08





BOOK:013206 PAGE:01790 - 01828

**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
_____ *39* _____ New Time Stamp
_____ # of Pages