



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF INCORPORATION

OF

ATHENS WOOD OWNERS ASSOCIATION, INC.

the original of which was filed in this office on the 12th day of March, 2003.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 12th day of March, 2003

Elaine F. Marshall

Secretary of State

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Date Filed: 3/12/2003 2:42:00 PM
Elaine F. Marshall
North Carolina Secretary of State

STATE OF NORTH CAROLINA
DEPARTMENT OF THE SECRETARY OF STATE

**ARTICLES OF INCORPORATION
OF
ATHENS WOOD OWNERS ASSOCIATION, INC.**
(A North Carolina Nonprofit Corporation)

In compliance with the requirements of Chapter 55A of General Statutes of North Carolina, the undersigned, a resident of the State of North Carolina and of full age, has this day formed a corporation, not for profit, and does hereby certify the following:

ARTICLE I
NAME

The name of the corporation is **Athens Wood Owners Association, Inc.** (hereinafter the "Association"). The Association is not a charitable or religious corporation as defined in Section 55A-1-40(4) of General Statutes of North Carolina.

ARTICLE II
PRINCIPAL OFFICE

The principal office of the Association is located at 2514 Reliance Avenue, Apex, Wake County, North Carolina 27502. The location of the principal office may be changed by a majority vote of the Board of Directors.

ARTICLE III
REGISTERED OFFICE AND INITIAL REGISTERED AGENT

The registered office of the Association is located at 2514 Reliance Avenue, Apex, Wake County, North Carolina 27502. The location of the registered office may be changed by a majority vote of the Board of Directors. The name of the initial registered agent at the above address is Michael Dean Chadwick.

ARTICLE IV
PURPOSE AND POWER OF THE ASSOCIATION

The Association does not contemplate a pecuniary gain or profit to the Members thereof. Subject to the provisions of Chapter 47F (as amended and recodified from time to time, the "Planned Community Act") and Chapter 55A (as amended and recodified from time to time, the "Non-Profit Act") of the General Statutes of North Carolina, the specific purposes for which the Association is formed are:

1. to own and maintain the Common Areas within the subdivision known as Athens Wood Subdivision located in Raleigh, Wake County, North Carolina (the "Planned Community"), as such Planned Community is more particularly described in a Declaration of Covenants, Conditions and Restrictions for Athens Wood Subdivision recorded, or to be recorded, in the Office of the Register of Deeds of Wake County, North Carolina (said Declaration and all valid amendments thereto from time to time are collectively referred to as the "Declaration");
2. to provide for architectural control within the Planned Community;
3. to provide for maintenance and preservation of the residential Lots and Common Areas, and to promote the health, safety and welfare of the residents within the Planned Community and any additions thereto as may hereafter be brought within the jurisdiction of the Association; and
4. to exercise all of the powers necessary or desirable to perform the obligations and duties set out in these Articles, the Declaration, the Association's By-Laws and otherwise conferred by law, including without limitation, the following:
 - (a) exercise all the powers and privileges and to perform all duties and obligations of the Association as set forth in the Declaration, as the same may be amended from time to time ;
 - (b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration;
 - (c) pay all expenses incurred in connection with collection of the charges and assessments set forth in subparagraph (b) above, and to pay all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against property owned by the Association;
 - (d) acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association; provided, however, that all conveyances and transfers of Common Areas must be done in accordance with all applicable laws;
 - (e) borrow money and, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association but in any event not less than 67% of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Planned Community Act, mortgage, pledge, deed in 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 Members and the Association as provided in the Declaration;

- (f) dedicate, sell 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 upon by the Members. No such dedication or transfer shall be effective unless Members entitled to cast at least 80% of the votes of the entire membership, but in any event not less than 67% of the votes of the membership excluding the Declarant, have signed a written instrument consenting or agreeing to such dedication, sale or transfer and unless such other agreement or consent as then required by the Planned Community Act and the ordinances, regulations and procedures, including variances, of the City of Raleigh has been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Association and the Owners established hereunder, including but not limited to every Owner's easement for access, ingress and egress to such Owner's Lot;
- (g) participate in mergers and consolidations with the other non-profit corporations organized for the same or similar purposes in accordance with the Planned Community Act; and
- (h) have and exercise any and all powers, rights, and privileges which a not-for-profit corporation may now or hereinafter have or exercise.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other powers which may now or hereafter be permitted by the Non-Profit Act or the Planned Community Act, as the same may be amended from time to time.

ARTICLE V **MEMBERSHIP AND VOTING RIGHTS**

Every Owner of a Lot shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. Ownership of said Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this subdivision. Following termination of the Property as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

No Owner, whether one or more Persons shall have more than one (1) membership for each Lot owned. In the event the Owner of a Lot is more than one Person, the votes associated with such Lot shall be cast as provided in the Planned Community Act.

The Association shall have two (2) classes of voting membership.

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Member, if any. Class A Members shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be a Class A Member upon the termination of Class B Membership.

Class B: The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon either of the following events, whichever occurs first:

- (a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional land is annexed to the Planned Community without the assent of Class A Members for the development of such additional land by the Declarant, as provided in this Declaration, but in any event the Class B membership shall terminate when 75% of the Lots have been deeded to homeowners;
- (b) On January 1, 2008; or
- (c) Upon the surrender of the Class B membership by the Declarant.

ARTICLE VI **BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of three (3) Directors, who need not be Members of the Association. So long as there is a Class B membership, the affairs of the Association shall be managed by a Board of Directors consisting of three (3) directors appointed from time to time by the Declarant. The Directors appointed by the Declarant need not be Members of the Association unless otherwise required by applicable law.

Not later than sixty (60) days after the termination of the Class B Membership (or such earlier date as required by law), the Members shall elect a new Board of Directors as provided by the Planned Community Act, which Board may be composed of some or all of the Directors that had served as Directors by appointment by the Declarant. Thereafter, Directors shall be elected at the annual meeting of the Members. All Directors shall be elected for a term of one (1) year or until his or her death, resignation, removal or until his or her successor is elected. The number of Directors and their terms of office may be changed by amendment of the Association's By-Laws, provided that the number of Directors shall not be less than three (3) nor more than nine (9) and the number of Directors shall always be an odd number. Any directorships not filled by the Members shall be treated as vacancies to be filled by and in the discretion of the Board of Directors except as otherwise provided by the Planned Community Act or other applicable laws. A majority of the Directors elected by the Members, or such other number or percentage as then may be provided by the Planned Community Act, shall be Members of the Association or officers, directors, shareholders, trustees, partners, members or managers of Members which are entities.

ARTICLE VII
FINANCE

The Association is a non-stock corporation and no part of the profits (if any) of the Association shall inure to the pecuniary benefit of its Members or to any other person except as provided in the Planned Community Act or the Non-Profit Act or otherwise as may be permitted by law.

ARTICLE VIII
DISSOLUTION

The Association may be dissolved only upon the signed written assent of Members entitled to at least eighty percent (80%) of the votes appurtenant to each class of membership. Upon dissolution of the Association, other than the incident to a merger or consolidation, the assets of the Association shall be sold, transferred and distributed in accordance with the Planned Community Act and the Non-Profit Act. Upon dissolution of the Association, other than incident to a merger or consolidation, and unless prohibited by applicable law, the Common Areas owned by the Association first shall be offered to an appropriate public body or agency to be used for purposes similar to those for which the Common Areas are intended. If such offer is accepted, the Common Areas shall be deeded to such appropriate public body or agency. In the event that such dedication is refused acceptance, such Common Areas shall be deeded to any nonprofit corporation, nonprofit association, nonprofit trust or other nonprofit organization to be used for purposes similar to those for which the Common Areas are intended.

ARTICLE IX
DURATION

The period of existence of this Association is perpetual.

ARTICLE X
AMENDMENTS

Amendments of these Articles shall require the assent of the Members entitled to at least sixty-seven (67%) of the entire membership.

ARTICLE XI
FHA/VA APPROVAL

As long as there is Class B membership, the following actions require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Veterans Administration: annexation of additional properties, mergers and consolidations, dissolution, mortgaging of Common Areas, dedication of or other transfer of Common Areas to persons other than the Association, and amendment of these Articles.

ARTICLE XII
INDEMNIFICATION

The Corporation shall indemnify its directors, officers, employees and committee members to the maximum extent required or permitted by applicable law, including but not limited to Part 5 of Article 8 of Chapter 55A of the North Carolina General Statutes, as amended from time to time, or by any similar statute by which it is amended, supplemented or repealed. Any person who serves in any such capacity of or on behalf of the Corporation shall be deemed to have done so in reliance upon and in consideration of such indemnification. Such indemnification shall inure to the benefit of such person and his or her heirs, successors, assigns and legal representatives, and it shall not be exclusive of any other rights to which such person may be entitled. Any repeal or modification of this shall be prospective only and shall not adversely affect any limitation hereunder with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE XIII
DEFINITIONS

Except as clearly indicated to the contrary in these Articles, the definitions contained in the Declaration shall be applicable in these Articles.

ARTICLE XIV
CONFLICTS

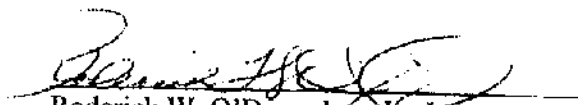
In the case of any conflict between these Articles of Incorporation and the By-Laws of the Association, these Articles shall control; and in the case of any conflict between the Declaration and these Articles of Incorporation or the By-Laws of the Association, the Declaration shall control. These Articles of Incorporation are subject to the requirements of Chapter 47F and Chapter 55A of the North Carolina General Statutes, as amended, replaced and recodified from time to time. In the event these Articles of Incorporation conflict with the provisions of said statutes, it is hereby acknowledged and agreed that the provisions of such statutes will control.

ARTICLE XV
INCORPORATOR

The name and address of the incorporator is as follows:

Roderick W. O'Donoghue, Jr.
1100 Navaho Drive, Suite 106
Raleigh, Wake County, North Carolina 27609

IN WITNESS WHEREOF, I, the undersigned incorporator have hereunto set my hand and seal this 25th day of February, 2003.


Roderick W. O'Donoghue, Jr., Incorporator

**BY-LAWS
OF
ATHENS WOOD OWNERS ASSOCIATION, INC.**

ARTICLE I - NAME AND LOCATION

The name of the corporation is Athens Wood Owners Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located at 2514 Reliance Avenue, Apex, Wake County, North Carolina 27502, but meetings of Members and directors may be held at such places within the State of North Carolina, Wake County, as may be designated by the Board of Directors.

These are the Bylaws of the Association, a non-profit corporation under the laws of the State of North Carolina, the Articles of Incorporation of which were filed with the Office of the Secretary of State. The Association has been organized for, among other purposes, the purpose of administering the operation and management of the Common Areas of the Athens Wood Subdivision (the "Planned Community"), a subdivision located in Wake County, North Carolina, as shown on a plat recorded in Book of Maps 2001, Page 1592, and described in the Declaration of Covenants, Conditions and Restrictions For Athens Wood Subdivision, and all amendments thereto, in the Office of the Register of Deeds of Wake County, North Carolina.

ARTICLE II - DEFINITIONS

Except as specifically provided otherwise in these Bylaws, the definitions in the Declaration are incorporated by reference into these Bylaws. Further, the following definitions apply to these Bylaws:

2.1 "Declarant" shall mean ATHENS WOOD PARTNERS with respect to Lots which it owns and 1ST AMERICAN BUILDERS, L.L.C. with respect to those Lots which it purchases, their respective successors and assigns, as provided in the Planned Community Act. 1ST AMERICAN BUILDERS, L.L.C. shall cease to be a Declarant at such time as its contract to purchase the Lots terminates prior to its purchase of all the Lots. Athens Wood Partners shall cease to be a Declarant with respect to the Lots purchased by 1st American Builders, L.L.C. effective as of the dates of the recording of the various deeds for such Lots.

2.2 "Declaration" means the Declaration of Covenants, Conditions and Restrictions For Athens Wood Subdivision recorded in the Office of the Register of Deeds of Wake County, North Carolina, and all amendments thereto.

2.3 "Governing Documents" means these Bylaws, the Declaration and the Articles of Incorporation of the Association.

2.4 "Legal Requirements" means the requirements imposed by the laws and regulations of the State of North Carolina, Wake County and the City of Raleigh, as well as the requirements imposed by the Governing Documents.

2.5 "Planned Community Act" means the provisions of Chapter 47F of the General Statutes of North Carolina applicable to the Property, as such provisions shall be amended and recodified from time to time.

2.6 "Property" or "Properties" shall mean and refer to that certain real property described in the Declaration and such other real property subsequently made subject to the Declaration.

2.7 "Planned Community" shall mean the Athens Wood Subdivision located on Athens Drive in the City of Raleigh, Wake County, North Carolina, and consisting of the Properties.

ARTICLE III - ASSOCIATION OFFICES

3.1 Principal Office. The principal office of the Association shall be located at 2514 Reliance Avenue, Apex, Wake County, North Carolina 27502, or at such other place as shall be determined by a majority of the Board of Directors of the Association.

3.2 Registered Office. The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office. The registered office shall be at such place as shall be determined by a majority of the Board of Directors of the Association.

3.3 Other Offices. The Association may have offices at such other places as the Board of Directors may designate or as the affairs of the Association may require from time to time.

ARTICLE IV - MEMBERSHIP

4.1 Membership. Every person or entity who is a record Owner of a Lot, including the Declarant, is a Member of the Association and is subject to the Governing Documents and applicable Legal Requirements. 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 the Governing Documents. Whenever a Person ceases to be an Owner, termination of Membership shall not release or relieve any such Person from any liability or obligation incurred under the Declaration during the period of such Person's ownership, nor impair any rights or remedies which the Association or any other Owner has with regard to such former Owner. Following termination of the Planned Community, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

4.2 Classes of Membership. The Association shall have two (2) classes of voting membership.

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Member, if any, and shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be a Class A Member upon the termination of Class B Membership.

Class B: Class B Members shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon either of the following events, whichever occurs first:

- (a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional land is annexed to the Planned Community without the assent of Class A Members for the development of such additional land by the Declarant, as provided in the Declaration, but in any event the Class B membership shall terminate when 75% of the Lots have been deeded to homeowners;
- (b) On January 1, 2008; or
- (c) Upon the surrender of the Class B membership by the Declarant.

4.3 **Suspension.** The Board of Directors may suspend the rights of a Member and such Member's family, tenants, occupants, guests and invitees, to use the recreational facilities (including but not necessarily limited to the Permanent Open Space) during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for infraction or violation of any provision of the Declaration, these Bylaws or published rules and regulations of the Association.

ARTICLE V - MEETINGS OF MEMBERS

5.1 **Place of Meetings.** All meetings of Members shall be held at such place within the State of North Carolina and Wake County as shall be designated on the notice of the meeting or agreed upon by a majority of the votes of the Members entitled to vote thereat.

5.2 **Annual Meetings.** The annual meeting of the Members for the election of directors and the transaction of other business shall be held within the month of December each year at such time and at such place as determined by the Board of Directors. The annual meeting shall be held at least once a year.

5.3 **Substitute Annual Meeting.** If the annual meeting shall not be held within the month designated by these By-Laws, a substitute annual meeting may be called in accordance with the provisions of Section 5.4 of this Article V. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

5.4 Special Meeting. Special meetings of the Members may be called at any time by the President, a majority of the Board of Directors of the Association, or by Members owning not less than 10% of all votes in the Association.

5.5 Notice of Meetings. Written or printed notice stating the time and place and purpose of the meeting shall be given not less than 10 days nor more than 60 days before the date of any Members meeting, either by hand delivery or sent by prepaid U.S. Mail to the mailing address of each Member entitled to such notice, by or at the direction of the Secretary, to each Member of record entitled to vote at such meeting. Notice of any meeting shall be given as provided in the Planned Community Act, including a statement of the purposes of such meeting if required by such Act.

When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than 30 days in any one adjournment, it is not necessary to give any notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

5.6 Voting Lists. At least ten days before each meeting of Members, the Secretary of the Association shall prepare an alphabetical list of the Members entitled to vote at such meeting or any adjournment thereof, with the address of and number of votes held by each, which list shall be kept on file at the registered office of the Association for a period of ten days prior to such meeting, and shall be subject to inspection by any Member at any time during the usual business hours. This list shall be produced and kept open at the time and place of the meeting and shall be subject to inspection by any Member during the whole time of the meeting. If more than one person owns a Lot, the vote allocated to such Lot shall be cast in accordance with the provisions of the Planned Community Act.

5.7 Quorum. One-fourth (1/4) of the votes of each Class of Members of the Association entitled to vote, represented in person or by proxy at the beginning of the meeting, shall constitute a quorum at a meeting of Members for any action except as required by law or as otherwise provided in the Governing Documents. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

In the absence of a quorum at the opening of any meeting of Members, such meeting may be adjourned from time to time without notice, other than announcement at the meeting, until a quorum shall be present or represented, by a vote of the majority of the votes present in person or proxy; and at any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting. The quorum requirements shall be reduced for the next meeting after adjournment for lack of a quorum as provided in the Planned Community Act.

5.8 Proxies. At all meetings of Members, votes may be voted either in person or by one or more agents authorized by a written proxy executed by the Member or by his duly authorized attorney in fact. All proxies must be in writing and filed with the Secretary of the Association. A

proxy is not valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specifies therein the length of time for which it is to continue in force, or limits its use to a particular meeting, but no proxy shall be valid after ten years from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

5.9 Voting. The vote on any matter of a majority of the votes of each Class of Members present at a meeting of Members shall be the act of the Members on that matter, unless the vote of a greater number is required by the Declaration, these By-Laws, the Planned Community Act or by law.

5.10 Informal Action. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Persons who would be entitled to vote upon such action at a meeting, and filed with the Secretary of the Association to be kept as part of the Association's records.

5.11 Presiding Officer. The President of the Association, or in the absence of the President, the Vice-President, shall preside at all meetings of the Members. The Secretary of the Association shall act as the Secretary of the meeting, or in the absence of the Secretary, the President shall designate some other person to act as the Secretary of the meeting. In the absence of both the President and Vice-President, the Members present at the meeting shall elect a Presiding Officer for such meeting.

5.12 Order of Business. The order of business at the annual meeting and at any special meeting of the Members shall be as follows:

- (a) The calling of the meeting to order;
- (b) The calling of the roll;
- (c) The announcement by the Presiding Officer of the purpose of the meeting and of the nature of the business which may be presented by it;
- (d) The reading and approval of the minutes of any former meeting of the Members if such minutes have not been previously read and approved;
- (e) The presentation of and action, if required, upon reports of officers and committees;
- (f) unfinished business;
- (g) new business, including the election of directors for the forthcoming year if the meeting be an annual meeting; and
- (h) Adjournment.

ARTICLE VI - BOARD OF DIRECTORS

6.1 Number, Term and Qualification. The affairs of this Association shall be managed by a Board of Directors. So long as there is a Class B Membership, the affairs of this Association shall be managed by a Board of Directors consisting of three (3) Directors appointed by the Declarant, who need not be Members of the Association.

Not later than sixty (60) days after the termination of the Class B Membership (or such earlier date as required by law), the Members shall elect a new Board of Directors, which Board may be composed of some or all of the Directors appointed by the Declarant. Thereafter, Directors shall be elected at the annual meeting of the Members. All Directors shall be elected for a term of one (1) year or until his or her death, resignation, removal or his or her successor is elected. The number of Directors and their terms of office may be changed by amendment of these By-Laws, provided that the number of Directors shall not be less than three (3) nor more than nine (9) and the number of Directors shall always be an odd number. Any directorships not filled by the Members shall be treated as vacancies to be filled by and in the discretion of the Board of Directors except as otherwise provided by the Planned Community Act or other applicable statutes of North Carolina. A majority of the Directors elected by the Members, or such higher number as then required by the Planned Community Act, shall be Members of the Association or officers, Directors, shareholders, trustees, partners, members or managers of Members which are entities.

6.2 Nomination. Nominations for election to the Board of Directors shall be made by the Board of Directors. Nominations may also be made from the floor at the meeting. The Board of Directors shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

6.3 Election of Directors. Except as provided in Sections 6.1 and 6.5 of this Article VI, the Directors shall be elected at the meeting of Members and those persons who receive the highest number of votes shall be deemed to have been elected. If any Member so demands, the election of Directors shall be by secret written ballot. Cumulative voting is not permitted.

6.4 Removal. Any director may be removed at any time, with or without cause, by a vote of the Members holding a majority of the outstanding votes entitled to vote to elect that director. If any Directors are so removed, new Directors may be elected at the same meeting. Additionally, any director who has three (3) consecutive unexcused absences may be removed by majority vote of the Directors.

6.5 Vacancies. Any vacancy occurring in the Board of Directors (caused by death, resignation, removal or otherwise) may be filled by the affirmative vote of a majority of the remaining Directors even though less than a quorum, or by the sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the authorized number of Directors shall be filled only by election at an annual meeting or at a special meeting of Members called for that purpose.

6.6 Compensation. The Board of Directors may not compensate Directors for their services as such, but may provide for the payment of any or all actual expenses incurred by Directors in performing their duties.

ARTICLE VII - MEETINGS OF DIRECTORS

7.1 Regular Meetings. A regular meeting of the Board of Directors shall be held immediately after the annual meeting of the Members for the purpose of electing officers. In addition, the Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings.

7.2 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two Directors. Such a meeting may be held as fixed by the person or persons calling the meeting.

7.3 Notice of Meetings. Regular meetings of the Board of Directors may be held without notice. The person or persons calling a special meeting of the Board of Directors shall, at least 10 days and not more than 60 days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

7.4 Waiver of Notice. Any director may waive notice of any meeting. The attendance by a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

7.5 Quorum. A majority of the number of Directors fixed by these By-Laws present at the beginning of the meeting shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

7.6 Manner of Acting. Except as otherwise provided in these By-Laws, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

7.7 Presumption of Assent. A director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

7.8 Informal Action by Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

7.9 Committees of the Board. The Board of Directors shall designate three (3) individuals, who need not be Members, to constitute an Architectural Committee as provided in the

Declaration and may appoint other committees as it deems appropriate. The designation of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors of any responsibility or liability imposed upon it or him by law.

ARTICLE VIII - POWERS/DUTIES OF THE BOARD OF DIRECTORS

- 8.1 Powers. The Board of Directors shall have the power to:
- (a) adopt and publish rules and regulations governing the use of the Common Area, and Amenities, and the personal conduct of the Members and their guests thereon, and to establish fines and penalties for the infraction thereof;
 - (b) suspend a Member's right to use of the recreational facilities as provided elsewhere in the Governing Documents and the Planned Community Act;
 - (c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, the Declaration or the Planned Community Act;
 - (d) declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board of Directors, unless such absence or absences are excused by the Board of Directors; and
 - (e) employ a manager, independent contractors, or such employees as they deem necessary, and to prescribe their duties. During Class B membership, all contracts shall contain a provision which allows the Association to terminate the contract at will upon sixty days notice without penalty.
- 8.2 Duties. It shall be the duty of the Board of Directors to:
- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of any class of Membership who are entitled to vote at such meeting;
 - (b) supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;
 - (c) as more fully provided in the Declaration and the Planned Community Act, to adopt a proposed budget for the Association at least sixty (60) days in advance of each annual assessment period, and send to each Member a written summary of the proposed budget and a written notice of the meeting of Members to consider ratification of the proposed budget at least ten (10) days and not more than sixty (60)

- days in advance of such meeting. Unless otherwise provided in the Planned Community Act, there shall be no requirement that a quorum be present at such meeting to consider ratification of the proposed budget. The proposed budget shall be ratified unless at that meeting a majority (or such other percentage as required by the Planned Community Act) of the votes of all Members rejects the proposed budget. In the event the proposed budget is rejected, the budget of the Association shall be the previous budget;
- (d) foreclose the lien against any Lot for which assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same;
 - (e) issue, or to cause an appropriate officer or agent to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment and the amount thereof;
 - (f) pay ad valorem taxes and public assessments levied against the real and personal property owned in fee by the Association;
 - (g) procure and maintain adequate liability and hazard insurance on property owned by the Association;
 - (h) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate or as required by law;
 - (i) cause the Common Area, recreational facilities and any other improvements thereto to be maintained;
 - (j) direct and supervise the affairs of the Association and require the Association to fulfill all of its obligations and duties set forth in the Declaration;
 - (k) appoint Members to the Architectural Committee for such terms as deemed appropriate; and
 - (l) take such action as may be necessary to comply with applicable laws.

ARTICLE IX - OFFICERS

9.1 Officers. The officers of the Association shall consist of a President, who shall at all times be a Member of the Board of Directors, and a Vice-President, a Secretary, a Treasurer and such Assistant Secretaries, Assistant Treasurers, and such other officers as the Board of Directors may from time to time elect. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where the action of two or more officers is required.

9.2 Election, Term and Qualification. The officers shall be elected by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, and each officer shall hold office for one (1) year unless he shall sooner die, resign, be removed, or his successor is elected or he or she otherwise shall be disqualified to serve.

9.3 Resignation and Removal. Any officer or Member of the Board may be removed by the Board, with or without cause, whenever in its judgment the best interests of the Association will be served thereby. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.4 Bonds. The Board of Directors may require an officer, agent, or employee of the Association to give bond to the Association, with sufficient sureties, conditioned on the faithful performance of the duties of his respective office or position, and to comply with such other conditions as may from time to time be required by the Board of Directors.

9.5 President. The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Board of Directors and Members. He shall sign, with the Secretary, an Assistant Secretary, or any other proper officer, any deeds, leases, mortgages, promissory notes, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be delegated by the Board of Directors or these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

9.6 Vice-President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting shall have all powers of and be subject to all the restrictions upon the President. The Vice-President shall perform duties as from time to time may be assigned to him by the President or Board of Directors.

9.7 Secretary. The Secretary shall: (a) keep the minutes of the meetings of Members, of Board of Directors and of all Committees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the Association records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; (e) keep or cause to be kept a record of the Association's Members, giving names and addresses of all Members and the number of votes held by each, and prepare or cause to be prepared voting lists prior to each meeting of Members as required by law; and (f) in general perform all duties incident to the office of Secretary

and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

9.8 Assistant Secretaries. In the absence of the Secretary or in the event of his death, inability or refusal to act, the Assistant Secretary, unless otherwise determined by the Board of Directors, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. They shall perform such other duties as may be assigned to them by the Secretary, by the President, or by the Board of Directors.

9.9 Treasurer. The Treasurer shall (a) have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such depositories as shall be selected; (b) prepare, or cause to be prepared, a true statement of the Association assets and liabilities as if the close of each fiscal year; (c) shall cause an annual audit of the Association books to be made by an independent certified public accountant at the completion of each fiscal year; (d) issue, at the direction of the Board of Directors, certificates as to whether assessments on a specified Lot have been paid; and (e) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors, or by these By-Laws.

9.10 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

9.11 Officers to Certify Amendments. The President or Vice President and the Secretary or Assistant Secretary may prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

ARTICLE X - MEMBERSHIP REGISTER

10.1 For the purposes of determining Members of the Association entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or in order to make a determination of Members for any other proper purpose, the Board of Directors may provide that the membership register shall be closed for a stated period but not to exceed, in any case, fifty (50) days and, in case of a meeting of Members, not less than ten (10) days immediately preceding the date on which the particular action, requiring such determination of Members is to be taken.

10.2 In lieu of closing the membership register, the Board of Directors may fix in advance a date as the record date for any such determination of Members, such record date in any case to be not more than fifty (50) days and, in case of a meeting of Members, not less than ten (10) days immediately preceding the date on which the particular action, requiring such determination of Members is to be taken.

10.3 If the membership register is not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, the date on which notice of the meeting is mailed shall be the record date for such determination of Members.

10.4 When a determination of Members entitled to vote at any meeting of Members has been made, as provided in this section, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the membership register and the stated period of closing has expired.

ARTICLE XI - GENERAL PROVISIONS

11.1 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours be subject to inspection by any Member, his agent or attorney. The Declaration, the Articles of Incorporation and the By-Laws of the Association and the financial statements for the Association for the immediately preceding fiscal year shall be available for inspection by any Member and any first mortgage holders, their insurer or guarantors, at the principal office of the Association, where copies may be purchased at a reasonable cost.

11.2 Assessments. As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessment which is not paid within thirty (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If an assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from its due date at the rate of twelve percent (12%) per annum or such other rate as established by the Association as provided in the Planned Community Act, but in no event shall such interest exceed the highest rate allowed by law, and shall be subject to late fees as approved by the Board of Directors and permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against such Owner's Lot provided under the Declaration. To the extent permitted or required by the Planned Community Act, interest, late fees, costs and reasonable attorney fees of any such action shall be added to the amount of such assessment. Each such Owner, by acceptance of a deed to a Lot expressly grants to the Association, its agents or assigns, the right and power to bring all actions against such Owner personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a Mortgage or a deed of trust lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. Such lien shall be in favor of the Association, which shall have the power to purchase the Lot subject to the lien at foreclosure and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or by abandonment of his Lot. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage on a Lot. Mortgagees are not required to collect assessments and nothing in these Bylaws shall require that failure to pay assessments shall constitute a default under a Mortgage insured by the U.S.

Department of Housing and Urban Development, the U.S. Veterans Administration or by any other governmental mortgage insurance program, such as those by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation or the Federal National Mortgage Association.

11.3 Delegation of Powers. The Board of Directors and the officers may delegate to other persons or a management agent the powers to collect assessments, fines, late fees, interest and other charges provided by the Governing Documents; to maintain bank accounts in the name of the Association and to deposit all funds of the Association into such bank accounts; to hire and discharge other agents and independent contractors; to supervise the use, maintenance, repair, replacement and modification of the Common Areas; to pay from the funds of the Association, the expenses and liabilities of the Association, including but not limited to compensation and reimbursements to such person or management agent; and to prepare statements of Common Expenses and statements concerning the status of paid and unpaid assessments.

11.4 Seal. The seal of the Association shall consist of two concentric circles between which is the name of the Association and the year of incorporation and in the center of which is inscribed "SEAL".

11.5 Waiver of Notice. Whenever any notice is required to be given to any Member or Director by law, by Declaration, or by these By-Laws, a waiver thereof in writing signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be equivalent to the giving of such notice.

11.6 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

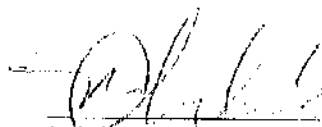
11.7 Amendments. Unless a higher percentage is required for certain amendments by applicable law, the Declaration or the Bylaws, the Bylaws may be amended by the affirmative vote or written ballot (as provided by law) of Members entitled to cast in the aggregate at least a 51% of the votes of the Association. Unless otherwise provided by the amendment, or as otherwise may be provided by applicable law, any amendment of the Bylaws shall be effective when approved in accordance with this Article. Unless then required by applicable law, such amendment need not be set forth in an amendment to the Declaration duly recorded in the Office of the Register of Deeds in Wake County, North Carolina, in order to be effective. Notwithstanding any provision in this instrument to the contrary, as long as the Declarant controls the Association and if the Property has been approved by the U.S. Department of Veterans Affairs ("VA") and/or the U.S. Department of Housing and Urban Development ("HUD") for loans guaranteed by the VA or HUD (but not otherwise), any amendment of these By-Laws may be vetoed by the VA or HUD.

11.8 Conflicts. In the case of any conflict between the Articles of Incorporation of the Association and these By-Laws, the Articles shall control; and in the case of any conflict between

the Declaration and these By-Laws or the Articles of Incorporation of the Association, the Declaration shall control.

11.9 Compliance with Statutes. These Bylaws are set forth subject to the requirements of Chapter 47F (the Planned Community Act) and Chapter 55A (the NonProfit Corporation Act) of the North Carolina General Statutes, as amended, replaced and recodified from time to time. In the event these Bylaws conflict with the provisions of said statutes, it is hereby acknowledged and agreed that the provisions of such statutes will control.

Adopted this 10 day of February, 2003, by the undersigned, being all of the Directors of the Association.



Michael Dean Chadwick, Director



Fred G. Mills, Director



Donna P. Preiss, Director

WAKE COUNTY, NC 630
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
02/25/2003 AT 15:08:15

BOOK:009932 PAGE:02274 - 02305

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ATHENS WOOD SUBDIVISION**

Prepared by and Return To:
ROD O'DONOGHUE, JR., P.A., Attorneys at Law
(WCRD VAULT BOX 6)
1100 Navaho Drive, Suite 106
Raleigh, NC 27609

NORTH CAROLINA

WAKE COUNTY

THIS DECLARATION (the "Declaration") is made this 25 day of February, 2003, by **ATHENS WOOD PARTNERS**, a North Carolina general partnership, and **1ST AMERICAN BUILDERS, L.L.C.**, a North Carolina limited liability company, hereinafter collectively referred to as the "Declarant".

WITNESSETH:

WHEREAS, Athens Wood Partners is the owner of certain real property ("Property") in or near the City of Raleigh, County of Wake, State of North Carolina, which is more particularly described as follows:

Being all of **ATHENS WOOD SUBDIVISION**, including but not necessarily limited to Lots 1 through 29, inclusive, according to a plat (the "Plat") prepared by John Y. Phelps, Jr. Professional Surveyor and recorded in Book of Maps 2001, Page 1592, in the Office of the Register of Deeds of Wake County, North Carolina, **BUT SPECIFICALLY SAVING AND EXCEPTING THEREFROM** all of those parcels lying between Lot 1 and Lot 2 labeled "Now or Formerly William P. Jones", "Now

or Formerly Paul L. Jones" and "This Portion Of Athens Wood Subdivision, 0.143 Ac. To Be Added To Paul L. Jones Property" as shown and described on such Plat; and

WHEREAS, 1st American Builders, L.L.C. is purchasing all the Lots in the Property; and

WHEREAS, it is the intent of the Declarant hereby to cause the Property to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that the Property and every Lot (as hereinafter defined) which is a part of Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with such real property and shall be binding on all parties having any right, title or interest in the Property (as hereinafter defined) or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner (as hereinafter defined).

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to Athens Wood Owners Association, Inc., its successors and assigns.

Section 2. "Amenities" means the improvements, if any, constructed, erected or installed on the Common Area for the common use, benefit and enjoyment of the Property by the Owners.

Section 3. "Architectural Committee" means a committee of three individuals appointed by the Board of Directors.

Section 4. "Board of Directors" or "Board" mean those Persons elected or appointed and acting collectively as the Directors of the Association.

Section 5. "Common Area" shall mean all real property (including the Amenities) owned by the Association and the easements granted to the Association for the common use, benefit and enjoyment of the Property by the Owners. The Common Area to be owned by the Association shall be described in deeds to the Association and designated as such on recorded plats of the Property. Common Area shall include, without limitation, common elements, common properties, open space, landscape and streetscape easements, landscaped medians, sign easements and any stormwater drainage lines, ponds, stormwater and drainage easements or facilities serving one or more Lots and not located within any public street right-of-way nor otherwise maintained by any governmental authority or utility company.

Section 6. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association and maintaining the Common Area, including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this

Declaration, and the Bylaws and the Articles of Incorporation of the Association. Common Expenses include, but are not limited to, the following:

- A. All sums lawfully assessed by the Association against its Members;
- B. Expenses of administration, maintenance, repair or replacement of the Common Area;
- C. Expenses declared to be Common Expenses by the provisions of this Declaration or the Association's Organizational Documents;
- D. Expenses agreed to by the Members of the Association;
- E. Expenses for maintenance of the Common Area, including but not limited to private streets, entrance signs and monuments, and landscape and streetscape easements;
- F. Hazard, liability or such other insurance premiums as the Declaration or the Organizational Documents may require or authorize the Association to purchase;
- G. Ad valorem taxes and public assessment charges lawfully levied against the Common Area owned in fee simple by the Association;
- H. Unpaid assessments resulting from the purchase of a Lot at a foreclosure sale (such assessments shall be collectible from all Members of the Association, including the purchaser at the foreclosure sale, his successors and assigns);
- I. Utilities used in connection with the Common Area;
- J. Installation and maintenance of landscaping within the sign easement and any landscape and streetscape easements to the extent the same are not maintained by the City of Raleigh or other governmental body;
- K. Fees for services of accountants, attorneys and other professionals engaged by the Association; and
- L. All expenses classified as Common Expenses pursuant to the Planned Community Act.

Section 7. "Declarant" shall mean ATHENS WOOD PARTNERS with respect to Lots which is owns and 1ST AMERICAN BUILDERS, L.L.C. with respect to those Lots which it purchases, their respective successors and assigns, as provided in the Planned Community Act. 1ST AMERICAN BUILDERS, L.L.C. shall cease to be a Declarant at such time as its contract to purchase the Lots terminates prior to its purchase of all the Lots. Athens Wood Partners shall cease to be a Declarant with respect to the Lots purchased by 1ST American Builders, L.L.C. effective as of the dates of the recording of the various deeds for such Lots.

Section 8. "Declaration" means this Declaration of Covenants, Conditions and Restrictions.

Section 9. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first Mortgage on a Lot who has requested notice of certain matters from the Association as provided in this Declaration or the Organizational Documents.

Section 10. "Lot" shall mean a portion of the Property, other than the Common Area and street rights-of-way, intended for independent ownership and use as may be set out in this Declaration and as shall be shown on the recorded plats of the Property or amendments thereto. Where the context indicates or requires, the term Lot includes any improvements on the Lot.

Section 11. "Lot in Use" shall mean any Lot owned by any Person on which a detached single family dwelling has been fully constructed and for which a certificate of occupancy has been issued by the appropriate governmental agency.

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

Section 13. "Mortgage" means any mortgage, deed of trust, and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Section 14. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage.

Section 15. "Organizational Documents" shall mean and refer to the Articles of Incorporation and Bylaws of the Association, and all lawful amendments thereto.

Section 16. "Owner" shall mean and refer to the record owner, whether one or more Persons, of a fee simple interest (or undivided fee simple interest) in any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 17. "Person" means any individual, corporation, partnership, limited liability company, association, trustee, or other legal entity.

Section 18. "Planned Community Act" shall mean the provisions of Chapter 47F of the General Statutes of North Carolina applicable to the Property, as such provisions shall be amended and recodified from time to time.

Section 19. "Property" shall mean and refer to Property as more particularly described above on Page 1 of this Declaration and such additional real property as may be subjected to this Declaration and annexed and brought within the jurisdiction of the Association as hereinafter provided.

Section 20. "FHA" shall mean and refer to the Federal Housing Administration of the U.S. Department of Housing and Urban Development, "HUD" shall mean the U.S. Department of Housing and Urban Development, and "VA" shall mean and refer to the U.S. Department of Veterans Affairs.

Section 21. "Subdivision" shall mean Athens Wood Subdivision located on Athens Drive in Raleigh, Wake County, North Carolina and consisting of the Property.

ARTICLE II PROPERTY RIGHTS

Section 1. OWNER'S EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area and a right and easement over the Common Area as may be necessary for access, ingress and egress to and from streets and sidewalks and to and from such Owner's Lot, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. Subject to the provisions of applicable law, the right of the Association to regulate the use of and to charge reasonable admission and other fees for the use of any Amenity situated upon the Common Area;
- B. The right of the Association to suspend the right to use any Amenities by any Owner, his family, occupants, tenants, guests and invitees during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. Such rights also may be suspended, after notice and hearing, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for infraction or violation of any provision of this Declaration, the Organizational Documents or published rules and regulations of the Association;
- C. Except as restricted by applicable law, including but not limited to the ordinances, regulations and procedures, including variances, of the City of Raleigh, the right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority or utility, or for such purposes as may be agreed to by the Members, and subject to such conditions as may be agreed to by the Members, and provided that said dedication or transfer shall be approved as provided herein. No such dedication or transfer shall be effective unless Members entitled to cast at least 80% of the votes of the entire membership, but in any event not less than 67% of the votes of the membership excluding the Declarant, have signed a written instrument consenting or agreeing to such dedication or transfer and unless such other agreement or consent as then required by the Planned Community Act and the ordinances, regulations and procedures, including variances, of the City of Raleigh has been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Association and the Owners established hereunder, including but not limited to every Owner's easement for access, ingress and egress to such Owner's Lot;

- D. The right of the Association to limit the number of guests that a Member may allow to use the Common Area;
- E. The right of the Association, in accordance with its Organizational Documents and the Planned Community Act, to borrow money for the purpose of constructing, repairing, or improving the Common Area, including but not limited to the Amenities (or any portion thereof) and in aid thereof, with the written consent or approval of Members entitled to at least 80% of the votes of the entire membership, but in any event not less than 67% of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Planned Community Act, to mortgage, pledge, encumber or hypothecate said Common Area; provided, however, the right of such Mortgagee shall be subordinate to the rights and easements of the Association and the Owners established hereunder, including but not limited to every Owner's easement for access, ingress and egress to such Owner's Lot;
- F. The right of the Association, through its Board of Directors, to determine the time and manner of use of the Common Areas and Amenities, if any, by the Members and others;
- G. The right of the Association, through its Board of Directors, to formulate, publish and enforce rules and regulations;
- H. The right of the Declarant, during the period of Class B membership, with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area to any public agency, authority, or any utility for such purposes as benefits the Properties or any portion thereof. This Section may not be amended or deleted, without the written consent of Declarant; and
- I. The right of the Association, as provided by and consistent with Section 10-3073(a)(2) of the Raleigh City Code, as the same may be amended from time to time, to exchange all or part of the Common Area for other real property and consideration of like value and utility subject to the provisions of the Planned Community Act;

Section 2. DELEGATION OF USE: Any Owner may delegate his right of use and enjoyment to the Common Area, including but not limited to the Amenities, to the members of his family, tenants, occupants, contract purchasers or guests, who reside on such Owner's Lot, subject to the provisions of this Declaration.

Section 3. TITLE TO COMMON AREA. The Declarant covenants for itself, its heirs, successors and assigns, that in accordance with the Planned Community Act it will convey fee simple title in the Common Area to the Association, free and clear of all encumbrances and liens, except then current year's ad valorem real property taxes, utility, drainage and other easements as provided in this Declaration or as shown on recorded plats of the Properties, and an easement of enjoyment to which the Owners are entitled to share. Title to Common Area within real property annexed by the Declarant pursuant to this Declaration shall be similarly conveyed to the Association.

The Common Area shall be preserved for the perpetual benefit of the Owners of the Lots and the Common Area is restricted against private or public ownership for any other purpose other than as provided by the Planned Community Act. Common Area shall not be subsequently subdivided or conveyed by the Association except as permitted by and in accordance with this Declaration, the Planned Community Act and the ordinances, regulations and procedures, including variances, of the City of Raleigh.

Section 4. TAXES ON COMMON AREA: The Association shall be responsible for and shall cause to be paid out of annual assessments any ad valorem taxes and public improvement assessments levied against the Common Area.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP: Every Owner of a Lot shall be a Member of the Association. The foregoing is not intended to include Persons 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 a Lot. Ownership of a Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot. Following termination of the Properties as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

No Owner, whether one or more Persons, shall have more than one (1) membership for each Lot owned. In the event the Owner of a Lot is more than one Person, the votes associated with such Lot shall be cast as provided in the Planned Community Act.

Section 2. CLASSES OF MEMBERSHIP: The Association shall have two classes of membership:

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Member, if any. Class A Members shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be a Class A Member upon the termination of Class B Membership.

Class B: The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon either of the following events, whichever occurs first:

- (a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional land is annexed to the Planned Community without the assent of Class A Members for the development of such additional land by the Declarant, as provided in this Declaration, but in

any event the Class B membership shall terminate when 75% of the Lots have been deeded to homeowners;

- (b) On January 1, 2008; or
- (c) Upon the surrender of the Class B membership by the Declarant.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: The Declarant, for each Lot owned within the Properties, 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 the Association: (a) annual assessments or charges, and (b) special assessments as provided in this Declaration, such assessments are to be established and collected as hereinafter provided. The annual and special assessments, together with such interest thereon, applicable late fees and the cost of collection thereof, including reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon such Lot until paid in full. Each such assessment, together with such interest, late fees and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the person or entity which was the Owner of such Lot at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS: The assessments levied by the Association shall be used to exclusively pay Common Expenses (as defined in this Declaration and in the Planned Community Act) and for the purposes of promoting the beautification of the Property, the recreation, health, safety and welfare of the residents in the Property. Common Expenses shall include, but are not be limited to, the payment of taxes and liability insurance on the Common Area, the costs and expenses for improving, maintaining, repairing, replacing and operating the Common Area, and the costs and expenses of the enforcement of the Organizational Documents and the rules and regulations of the Association. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area. Such reserve fund is to be established and maintained out of regular assessments as a Common Expense, but if the reserve fund is inadequate, a special assessment may be made. The Association shall not have the obligation to maintain any Lot.

Section 3. MAXIMUM ANNUAL ASSESSMENTS.

(a) Until January 1 of the year immediately following the conveyance of the first Lot by the Declarant, the maximum annual assessment shall be \$180.00 per Lot.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot by the Declarant, the maximum annual assessment may be increased each year not more than 20% above the maximum annual assessment for the previous year without a vote of the Membership.

(c) From and after January 1 of the year immediately following the conveyance of the first Lot by the Declarant, the maximum annual assessment may be increased above 20% of the maximum annual assessment for the previous year by a vote of two-thirds (2/3) or more of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

(d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum annual assessment.

(e) Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses to the extent required by the Planned Community Act. If the assessments are insufficient to pay all Common Expenses, the Declarant may advance expenses for the maintenance and operation of the Association to the extent that annual assessments assessed against the Owners are inadequate for this purpose. Such advance shall be to the Association and on terms generally available to Declarant from its lending institution. At such time as the majority of the total votes of the Association are no longer held by the Declarant, its successors or assigns, the Declarant shall have no further obligation for maintenance and operation of the Association pursuant to the terms of this section. Notwithstanding the foregoing, Declarant, its successors and assigns, shall be responsible for the payment of assessments and other amounts pursuant to other sections of this Declaration.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS: In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment 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 or any other purpose permitted under the Planned Community Act. Any such special assessment shall have the assent of two-thirds (2/3) or more of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4: Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned and the required quorum at the next meeting shall be reduced by one-half of the required quorum for the previously adjourned meeting as provided in the Planned Community Act. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. UNIFORM RATE OF ASSESSMENT. All annual assessments shall be fixed at a uniform rate for all Lots; 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. Except as provided herein, special assessments shall be fixed at a uniform rate for all Lots without regard as to whether or not said Lot is a Lot in Use. Annual assessments and special assessments may be

collected on an annual, semi-annual, quarterly or monthly basis as determined by the Board from time to time.

Section 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: Annual assessments shall begin as to all Lots within a phase as shown on a recorded plat of the Property when the first Lot in such phase becomes a Lot in Use. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall adopt a proposed budget for the Association and set the amount of the annual assessment against the Lots at least 90 days in advance of each annual assessment period. The Board of Directors shall send to each Member a written summary of the proposed budget and a written notice of the meeting of Members to consider ratification of the proposed budget at least 10 days and not more than 60 days in advance of such meeting. Unless otherwise provided in the Planned Community Act, there shall be no requirement that a quorum be present at such meeting to consider ratification of the proposed budget. The proposed budget shall be ratified unless at that meeting a majority (or such smaller percentage as required by the Planned Community Act) of the votes of all Members rejects the proposed budget. In the event the proposed budget is rejected, the last ratified budget of the Association shall continue until a new proposed budget is ratified. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing, signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated as provided in the Planned Community Act.

Section 8. EFFECT OF NONPAYMENT OF ASSESSMENTS/REMEDIES OF THE ASSOCIATION. Any assessment which is not paid within thirty (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If an assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from its due date at the rate of twelve percent (12%) per annum or such other rate as established by the Association as provided in the Planned Community Act, but in no event shall such interest exceed the highest rate allowed by law, and shall be subject to late fees as approved by the Board of Directors and permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against such Owner's Lot provided under this Declaration. To the extent permitted or required by the Planned Community Act, interest, late fees, costs and reasonable attorney fees of any such action shall be added to the amount of such assessment. Each such Owner, by acceptance of a deed to a Lot hereby expressly grants to the Association, its agents or assigns, the right and power to bring all actions against such Owner personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a Mortgage or a deed of trust lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. Such lien shall be in favor of the Association, which shall have the power to purchase the Lot subject to the lien at foreclosure and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 9. SUBORDINATION OF THE LIEN TO MORTGAGE. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage on a Lot. Mortgagees are not required to collect assessments and nothing in this Declaration shall require that failure to pay assessments shall constitute a default under a Mortgage insured by the U.S. Department of Housing and Urban Development ("HUD"), the U.S. Department of Veterans Affairs ("VA") or by any other governmental mortgage insurance program, such as those by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation or the Federal National Mortgage Association. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any such Mortgage or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer; provided that the Association and Declarant have been notified of said foreclosure prior to the date thereof. Such unpaid assessments extinguished by the foreclosure sale shall be deemed to be a Common Expense collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

Section 10. TWO MONTHS OF ASSESSMENTS TO BE COLLECTED AT FIRST CLOSING. At the earlier of the closing of the first sale of each Lot after such Lot becomes a Lot in Use, or upon the occupancy of such Lot as a dwelling unit, in addition to all other assessments provided by this Declaration, a sum equal to two (2) months of the regular annual assessment applicable to such Lot shall be collected from the purchaser in the event of such sale or from the Owner in the event of such occupancy, and such sum shall be paid to the general operating fund of the Association to be used in the manner specified for annual assessments. This contribution shall not be considered an advance or prepayment against assessments to become due after such closing.

Section 11. EXEMPT PROPERTY: The following Property, subject to this Declaration, shall be exempt from the assessment created herein:

- A. All portions of the Property dedicated to and accepted by a local government authority; and
- B. The Common Area.

Section 12. INSURANCE COVERAGE: The Board of Directors or its duly authorized agent may have the authority to and shall obtain insurance for the Common Area, including but not limited to the Amenities, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard and shall also obtain a broad-form public liability policy covering the Common Area and all damage or injury caused by the negligence of the Association or any of its agents in an amount of not less than \$1,000,000.00. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be a Common Expense. All such insurance coverage shall be written in the name of the Association.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, tenants, invitees, contractors, employees or authorized

representatives, the cost of such maintenance or repair shall be added to and become part of the assessment applicable to the Lot owned by such Owner.

Section 13. ASSOCIATION FUNDS NOT ASSET OF OWNERS: All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any common expense or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration and the Organizational Documents of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or for any assessment which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association are an asset of the Association which may be used in the operation and management of the Properties.

ARTICLE V ARCHITECTURAL CONTROL AND GENERAL USE RESTRICTIONS

Section 1. PURPOSES: The Property is hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each Lot in the Subdivision; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of said Property; to guard against the erection thereof of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Property; to encourage and secure the erection of attractive dwelling units thereon, with appropriate locations thereof on Lots; to secure and maintain proper set-backs from the streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said Property and thereby to enhance the values of investments made by the purchasers of Lots therein.

Section 2. LOT RESTRICTIONS: Each Lot, as approved by the appropriate municipal authority, is intended for use as a single family residence and shall be used for single family residential purposes only. The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant during Class B membership, or thereafter of the Association's Board of Directors (or the Architectural Committee appointed by it) and of the appropriate municipal authority, 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 used as one building site provided the location of any structure permitted thereon is approved in writing by the Declarant during Class B membership and thereafter

by the Board of Directors, and said Lots are recombined as provided in N.C. General Statute 160A-376(1).

Section 3. PLAN APPROVAL REQUIREMENT: Other than improvements constructed, installed, planted or otherwise made by the Declarant, no building, wall, fence or other structure nor any hedge or mass planting shall be commenced, altered, erected, maintained or permitted to remain upon any Lot, nor shall any addition, alteration, replacement or change in exterior appearance be made thereto, nor shall any building, wall, fence, or other structure be rebuilt after destruction by any hazard until plans and specifications, showing the nature, kind, space, height, color, 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 during the period of Class B Membership, and thereafter, the Board of Directors or the Architectural Committee, as the case may be. In the event the Declarant, the Board of Directors or the Architectural Committee, as the case may be, fails to approve or disapprove such design and location within thirty (30) days after all completed plans and specifications and other information reasonably requested have been properly submitted, approval will not be required and this Article will be deemed to have been fully complied with. To the extent not prohibited by the Planned Community Act or by regulations of HUD or VA, the Association shall have the right to charge and collect a reasonable fee for review of such plans and specifications. Nothing herein contained shall be construed to require approval of any improvements constructed, installed, planted or otherwise made by the Declarant or to permit interference with the development of the Property by the Declarant so long as said development follows the general plan of development of the Property previously approved by FHA and/or VA or by the City of Raleigh.

Section 4. GROUND 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 and 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 5. 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.

ARTICLE VI RESTRICTIONS AND USE OF PROPERTY

Section 1. LOT SIZE: A Lot shall have a width at the minimum building setback line and an area that meets the minimum requirements of the City of Raleigh, North Carolina. Notwithstanding, any Lot shown on a recorded plat of the Subdivision which has been approved by the Declarant and the City of Raleigh (by one or more of its departments having responsibility for

such approval) shall be deemed to meet such requirements. Adjustments may be made in the line between two Lots so long as the area of any affected Lot is not reduced by more than ten percent (10%), the adjustments do not violate the ordinances of the City of Raleigh, and other restrictions set forth in this Declaration and any valid amendments hereto are observed. Upon any recombination of Lots, the setbacks and side line clearances from new Lot lines shall be applicable and set backs from former Lot lines shall no longer be required. No combination of Lots shall increase the number of Lots above the number existing before recombination, except as specifically provided in this Declaration.

Section 2. LAND USE: No portion of the Property shall be used for any purpose other than single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one-half stories in height, a garage for not more than two motor vehicles and non-metal outbuildings incidental to residential use. Provided, however, that Declarant reserves the right for itself and its assigns to use any dwelling or other building located on one or more Lots as sales offices and/or models which may be shown to prospective purchasers of Lots in the Subdivision. No business activities of any kind whatsoever shall be conducted on any portion of the Property; provided, however, the foregoing covenant shall not apply to the business activities associated with the development of the Subdivision and sales of the Lots or to the construction and maintenance of dwellings and other improvements on the Lots or the Amenities on the Common Area and the various activities of the Association in furtherance of its powers and purposes as hereinafter set forth.

Section 3. DWELLING SIZE: No dwelling shall be permitted on any Lot unless the dwelling has a ground area of the main structure, exclusive of decks, porches, breezeways, steps, basements and garages, of at least 1,700 square feet of heated living area for a one-story dwelling and 900 square feet of heated living area on the first floor for a dwelling of more than one story, however the total square footage shall not be less than 1,700 square feet of heated living area. The Declarant during the period of Class B Membership and thereafter by the Board of Directors or the Architectural Committee, as the case may be, in its sole discretion, may permit deviations of ten percent (10%) or less from this minimum square footage requirement by a waiver recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 4. BUILDING LOCATION: The minimum building setback requirements of this Declaration shall apply in addition to any other applicable building setbacks shown on a recorded plat of the Subdivision. No building shall be located on a Lot nearer to any front Lot line than 20 feet, nor nearer to any rear Lot line than 30 feet, nor nearer to any side Lot line than 10 feet. Buildings located on corner Lots shall be located a minimum of 10 feet from a side street in addition to the applicable front setback. For the purpose of this covenant, eaves, steps, patios, decks and open porches shall not be considered a part of a building, provided however, that the setbacks required for steps, patios and decks shall be one-half (½) of the otherwise applicable setback (for example, the rear setback for a deck shall be 10 feet). Nothing herein shall be construed to permit any portion of a building on a Lot to encroach upon another Lot or to be located on a Lot in violation of the ordinances of the City of Raleigh. Deviations from the minimum building setback requirements contained herein may be waived first by obtaining a variance from the City of Raleigh (if required by its then existing ordinances) and then by having a Declaration of Waiver, which describes the

nature of the variance and the date on which the City of Raleigh (if required) granted the variance, signed by the Declarant, if during the period of Class B Membership, and thereafter by the Board of Directors or the Architectural Committee, as the case may be, and recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 5. EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved over the areas designated therefore and as shown on the recorded plats of the Subdivision and over the rear ten (10) feet and each side five (5) feet of every Lot. In addition, sign easements are reserved over various Lots as shown and designated on the recorded plats of the Property for the installation and maintenance of entrance signs, landscaping, utilities and drainage facilities. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of entrance signs, monuments or features, landscaping, utilities, or which may change the direction or flow of drainage channels in the easements. The Association shall be responsible for maintaining, or contributing to the maintenance of, entrance signs and landscaped areas in easements reserved to it for such purposes. The easements established for each Lot and all improvements in such easements shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company, the Declarant or the Association is responsible. The Declarant reserves the right to create and impose additional easements or rights of way over any Lot or Lots owned by Declarant for street, drainage and utility installation purposes by the recording of appropriate instruments and such shall not be construed to be a violation of or to invalidate any portion of this Declaration. Further, Declarant reserves the right and easement to enter upon any Lot for the purpose of altering the flow of surface water in, on or across such Lot in order to correct surface water drainage problems existing on such Lot or any other Lot which is subject to these restrictions. Any alterations made to any Lot pursuant to the foregoing easement shall be made at the sole cost and expense of Declarant and shall not unreasonably interfere with the Owner's use and enjoyment of the Lot. Declarant hereby agrees that in exercising the rights reserved above, it shall promptly remove all debris, materials, excess soil and rock from an affected Lot, fill all excavations, replace all topsoil and reseed grass on all disturbed earth. Declarant may give its written consent to an Owner to alter the flow of surface water in, on or across such Owner's Lot in order to correct surface water drainage problems existing on such Lot; provided, however, that the Declarant during the period of the Class B Membership, and thereafter the Board of Directors or the Architectural Committee, as the case may be, must give its written approval to the Owner's plan to alter the flow of surface water on such Owner's Lot.

Section 6. TEMPORARY STRUCTURE: No Owner shall at any time place or permit to remain on such Owner's Lot or any other portion of the Property, any mobile, manufactured or modular home, or any tent, shack or other temporary structure with the limited exception of construction trailers for use as offices for overseeing construction and sales during the construction process and then only for the use of the contractor performing such construction and sales. Such construction trailers shall not be permitted to remain on the Property after the period of construction and sales.

Section 7. ANIMALS: No animal, livestock or poultry of any kind shall be raised or kept on any Lot, except that no more than 2 dogs, cats or other usual household pets may be kept and

maintained thereon, provided that such pets shall not be a danger or menace to others, that they are not kept or maintained for any commercial purposes or in such a manner to be offensive, threatening or dangerous to the residents of the Properties and provided further that they are kept, maintained and controlled in compliance with: (i) all applicable laws, ordinances and regulations of the State of North Carolina, Wake County and any municipality within whose jurisdiction the Properties are located, (ii) such rules and regulations as the Board of Directors may adopt from time to time, and (iii) the keeping of such animals does not increase the premiums for any insurance maintained by the Association or which will result in the cancellation of any such insurance. In the event of a dispute over whether an animal is a permitted household pet for purposes hereunder, the determination of the Declarant during the period of Class B Membership and thereafter by the Board of Directors shall be final. Puppies and kittens in excess of the numbers set forth above may be kept only until old enough to be safely separated from their mother. The Board of Directors shall have the absolute power to prohibit any particular pet from being kept on the Properties, including inside a residence, if the Board of Directors, in its sole and absolute discretion, determines that the pet is threatening, menacing, dangerous, a nuisance or otherwise has a negative impact on the Properties. Pets shall not be permitted to run loose in the Properties and any containment area for pets shall be located only in the rear portion of a Lot at a sufficient distance from the property lines so as not to constitute an unreasonable annoyance to a neighbor.

Section 8. UTILITY YARD: Garbage cans shall be placed or screened in some manner so that they are not visible from the street.

Section 9. MAIL BOX POSTS: All mail box support posts shall be of material and design as initially approved by the Declarant and thereafter by the Board of Directors or the Architectural Committee, as the case may be.

Section 10. SIGNS: No Owner shall display, or cause or allow to be displayed, to public view on his Lot any sign, placard, poster, billboard, or identifying name or number on any portion of a Lot, the Common Area or the right-of-way of any street or road within the Property except as permitted in this Declaration or as required by the City of Raleigh. Notwithstanding the foregoing, the Declarant and each Owner, or their respective agents, may place a single "For Sale" or "For Rent" sign on any Lot they own. During the development of the Property and the marketing of Lots, the Declarants and their real estate agents may maintain offices and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. No Owner, other than the Declarant, shall display, or cause or allow to be displayed, to public view on his Lot any "For Sale" or "For Rent" sign which exceeds 24 inches in width or 24 inches in height. The Board of Directors may adopt Rules and Regulations concerning the color and placement of signs by Owners other than the Declarant. A sign advertising a yard sale or other temporary activity may be displayed on a Lot for no more than seventy-two (72) consecutive hours. Notwithstanding the foregoing, the Board of Directors has the authority to require any sign, other than a sign maintained by the Declarant, be removed if it determines, in its sole discretion, such sign to be detrimental to the Subdivision. Easements are reserved as shown and designated on the recorded plats of the Property to erect and construct entrance signs and landscape or streetscape areas.

Section 11. DRIVEWAYS: All driveways shall be concrete unless a different material has been approved by the Declarant during the period of Class B Membership, and thereafter by the Board of Directors or the Architectural Committee, as the case may be.

Section 12. NUISANCES: No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof and all valid laws, orders, rules, requirements, ordinances and regulations of all governmental agencies having jurisdiction thereof relating to any portion of the Property shall be observed. No noxious or unreasonably offensive activities shall be carried on upon any Lot or other portion of the Property, nor shall anything be done thereon which may be or become a nuisance or unreasonable annoyance to the neighborhood. Activities associated with the development of the Subdivision and the construction of dwellings on the Property shall not be deemed offensive nor an annoyance or nuisance if conducted in accordance with the ordinances of the City of Raleigh.

Section 13. PARKING: Each Owner of a Lot will provide at least two (2) parking spaces for vehicles on such Owner's Lot. Other than in connection with the development of the Subdivision or the construction and initial sales of dwellings in the Subdivision, no automobile, motorcycle or other vehicle shall be parked on any right of way of any public or private roads or streets within the Property. Further, other than in connection with the development of the Subdivision or the construction and initial sales of dwellings in the Subdivision, no recreational vehicles, campers, motor scooters, motorcycles, motor bikes, planes, boats, trailers, motor homes, trucks having more than 1 rear axle or commercial vehicles of any kind shall be parked on any Lot except inside an enclosed garage nor on any right of way of any public or private roads or streets within the Property. There shall be a 15 day time limit to which an automobile may be repaired on the premises of any Lot and all automobiles parked on any Lot or any other portion of the Property are to have currently valid license plates issued by a state in the United States and insurance coverage which satisfies North Carolina Department of Transportation requirements for insurance coverage of motor vehicles licensed in the State of North Carolina.

Section 14. MAINTENANCE OF LOTS: Each Owner shall keep his Lot, and any improvements situated thereon, free from tall grass, undergrowth, dead trees, trash and rubbish and properly maintained so as to present a neat and attractive appearance and otherwise in accordance with this Declaration. During construction of a dwelling on a Lot, the Owner shall keep the Lot in a safe and presentable condition and shall properly discard and dispose of construction debris on an on-going basis. In the event the Owner of any Lot shall fail to maintain such Lot and the improvements situated thereon in accordance with this Declaration as reasonably determined by the Board of Directors of the Association, the Association, after approval by a two-thirds (2/3) vote of the Members present in person or by proxy at a duly called meeting, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and any improvements situated thereon. The cost of such work shall be added to and become a part of the current annual assessment to which such Lot is subject, but such cost shall be immediately due and payable to the Association.

Section 15. OUTSIDE ANTENNAE. No exterior antennae, dishes, discs, towers or other device or structure, or support thereof, for transmitting or receiving radio, television, satellite,

electromagnetic or other waves, pulses or signals (collectively, "Antenna"), shall be erected on any Lot within the Properties unless and until approval for the same has been granted by the Declarant or the Board of Directors or its Architectural Committee in accordance with the architectural approval provisions of this Declaration. To the extent this restriction may later be determined to be unenforceable pursuant to applicable laws; including but not limited to any rules and regulations promulgated by the Federal Communication Commission (as from time to time may be amended), an Owner shall nevertheless be restricted in its placement of said Antenna to an area which is least visible from the front of the house on a Lot and which causes or is likely to cause the least interference with the placement and use of Antenna by other Owners. Any permitted Antenna shall be installed, maintained and replaced in accordance with rules and regulations adopted by the Board from time to time.

Section 16. RULES AND REGULATIONS. The Board of Directors shall have the power to formulate, adopt, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the yard spaces of each Lot and the Common Area. All rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the Owners and available to them for reasonable inspection during normal business hours. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owner's prior to their effective date. Such rules and regulations shall be binding upon the Owner's (with the exception of the Class B Member), their families, tenants, occupants, contractors, agents, guests and invitees, until and unless such rule or regulation shall be specifically overruled, canceled, or modified by the Board of Directors or by the affirmative votes of a majority of the Members in a regular or special meeting. After notice and opportunity to be heard, the Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for a violation of the Association's rules and regulations, including but not limited to a suspension of the Owner's rights to use any recreational facilities. All rules and regulations shall be uniform with respect to the Lots.

Section 17. NUMBER OF OCCUPANTS. No Lot shall be rented to or occupied by a greater number of unrelated individuals than the number of bedrooms in the dwelling on such Lot as approved in accordance with Article 5 of this Declaration. In no event shall a Lot be rented to or occupied by a number of individuals, whether or not unrelated, which exceeds twice the number of bedrooms in the dwelling on such Lot as approved in accordance with Article 5 of this Declaration. For purposes of this restriction, "unrelated individuals" means individuals who are neither within the same immediate natural or adopted family (spouses, grandparents, parents, children and grandchildren) nor who are legal guardian and ward; provided, however, siblings shall be considered unrelated individuals unless one of their parents also occupies the same Lot as such parent's principal residence.

Section 18. LEASES 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 and shall be for a term of not less than 90 days.

Section 19. COMPLIANCE WITH LAWS: No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and each Owner shall comply with all valid laws, ordinances, rules and regulations of all governmental entities having jurisdiction thereof.

Section 20. NO BUSINESSES. Except as specifically provided in this Section, no trade, business, industry, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot or other part of the Properties, except that any Owner may lease his Lot for residential purposes; provided, however, the foregoing covenant shall not apply to the business activities associated with the development of the Properties and sales of the Lots and the construction and maintenance of houses and other improvements on the Lots, and to the various activities of the Association in furtherance of its powers and purposes. The Declarant and its agents and builders may use any Lot or Lots and any house thereon for office, sales or display purposes.

An Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all applicable zoning requirements, without the need for a variance; (c) the business activity does not involve door-to-door solicitation of residents of the Properties; (d) the business activity does not, in the reasonable judgment of the Board of Director, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Properties which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; (e) the business activity is consistent with the residential character of the Properties, does not create a hazardous or dangerous condition nor threaten the security or safety of other residents of the Properties, and is not a nuisance nor an unreasonable annoyance or offensive use, all as may be determined in the sole discretion of the Association's Board of Directors.

The terms "business", "trade", "industry", "occupation" and "profession" as used in this Section, shall be construed to have their ordinary, generally-accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to person other than the provider's immediate family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or whether a license is required. The leasing of a Lot in accordance with this Declaration shall not be considered a business or trade within the meaning of this Section.

ARTICLE VII EASEMENTS/BUFFERS

Section 1. UTILITIES: Easements for the installation and maintenance of utilities (including, but not limited to water, sewer, gas, electricity, telephones, telecommunications, cable television and other utilities, such as a master antenna system) and drainage channels and facilities are reserved as indicated on the recorded plats of the Property. Within these easements no structures,

planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

Section 2. EASEMENT FOR GOVERNMENTAL AGENCIES: An easement is hereby established over the Common Area for the benefit of applicable governmental agencies, public utility companies and public service agencies (and any other Person providing services to the Property under agreement with or at the direction of the Association) as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage channels and facilities, utilities, fire fighting, garbage collection, postal delivery, emergency and rescue activities, law enforcement activities and other governmental duties and services. An easement is hereby established for the benefit of the City of Raleigh over the Common Area and over the front five (5) feet of each Lot for the setting, removal and reading of water meters, the maintenance and replacement of water, sewer and drainage channels and facilities and the collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area and/or Lots.

Section 3. WALKS, DRIVES, PARKING AREAS AND UTILITIES: The Property shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage channels and facilities, gas lines, telephone and electric power lines, cable television lines and other utilities as shall be established prior to subjecting the Property to this Declaration, and the Association shall have the power and authority to grant and to establish in, over, upon and across the Common Area conveyed to it such further easements as are requisite or desirable for the convenient use and enjoyment of the Common Area and/or Lots.

Section 4. EASEMENTS TO ASSOCIATION:

- A. An easement is hereby granted to the Association, its officers, agents, employees, and authorized representatives, including but not limited to management companies, to enter in or to cross over the Common Area in connection with the exercise of any right, duty or obligation of the Association under this Declaration or its Organizational Documents.
- B. An easement is hereby granted to the Association, its officers, employees, contractors, agents and authorized representatives, including but not limited to management companies, within, over, under and across those portions of Lot 1 designated, shown and described as "Sign Esm't" and "Typical Sign Easement" on a recorded plat of such Lot for the installation, construction, reconstruction, improvement, replacement, maintenance, repair and use of signs identifying the Properties, and for incidental and auxiliary uses related to such signs, including but not limited to lighting, electric utilities, landscaping and irrigation. No improvements shall be placed nor shall any improvements be permitted to remain within such easement areas other than (i) initial improvements by the Declarant during the period

of Class B membership in the Association, (ii) improvements by the Association after the period of Class B membership in the Association, and (iii) improvements approved by the Declarant, the Board of Directors of the Association or the Architectural Committee in accordance with this Declaration. An easement is hereby granted to the Association, its officers, agents, employees, and authorized representatives, including but not limited to management companies, to enter in or to cross over the Common Area in connection with the exercise of any right, duty or obligation of the Association under the Declaration or the Organizational Documents.

Section 5. EASEMENT AND RIGHT OF ENTRY FOR REPAIR, MAINTENANCE AND RECONSTRUCTION: If a detached single family dwelling is located closer than five (5) feet from its Lot line, 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 such dwelling. Such repair, maintenance or reconstruction shall be done expeditiously, in good and workmanlike manner and in compliance with all applicable laws, ordinances and regulations, 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 6. ACCESS EASEMENT: Each Owner shall have the right to ingress and egress over, upon and across the Common Area, if any, as necessary for access to his Lot and shall have the right to lateral support for his Lot.

Section 7. EASEMENT RESERVED BY DECLARANT FOR DEVELOPMENT: Until December 31, 2010, notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns including, but not limited to Persons constructing dwellings and other improvements on the Common Area or Lots, a nonexclusive, right, privilege and easement over, under, in, and/or on the Common Area, without obligation and without charge, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Property, including but not limited to construction of the Amenities and installation of utilities. The reserved easement shall constitute a burden on the title to the Property and specifically includes, but is not limited to:

- A. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on and through the Common Area; and the right to construct the Amenities; and the right to tie into any portion of the Property with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities, constructed or installed in, on, under, and/or over the Property any damage caused by the exercise of such rights shall be repaired and the damaged property shall be restored to as near the same condition, as reasonable and practical, as that which existed prior to the exercise of such rights;

- B. The right to construct, install, replace, relocate, maintain, authorize, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, desirable, or incidental to the construction and sale of residences on the Lots;
- C. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any Property, including, without limitation, Property conveyed to the Association, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto; and
- D. This section may not be amended without the written consent of Declarant.

Section 8. DEVELOPMENT RIGHTS RESERVED. Notwithstanding any provisions or restrictions contained in this Declaration, and rules and regulations adopted hereunder or any amendments to the foregoing, it shall be expressly permissible for the Declarant, and its respective agents, employees and approved builders during the period of Class B membership to maintain such facilities and carry out such construction activities as may be reasonably required, convenient or incidental to the development, improvement, completion and sale of any portion of the Properties, including without limitation, the installation and operation of sales and construction trailers and offices, sales models and appropriate signs; provided, however, that in the event a sales office has been maintained in any portion of a Lot such sales office must be removed and the original intended and approved use of such structure must be restored prior to conveyance from the Declarant or its assigns to any third party purchaser.

Section 9. DRAINAGE. The Declarant reserves for itself and its assignees, including but not limited to the Association, the right and easement to enter upon any Lot or the Common Area for the purpose of altering the flow of surface water in, on or across such Lot or Common Area in order to correct surface water drainage problems existing on any Lot or the Common Area. Any alterations made pursuant to the foregoing easement shall be made at the sole cost and expense of the Declarant or its assigns, as the case may be, and shall not unreasonably interfere with the Owner's use and enjoyment of his Lot. Declarant hereby agrees that in exercising the rights reserved above, all debris, materials, excess soil and rock from an affected Lot shall be removed, all excavations shall be filled, all topsoil and grass on all disturbed earth shall be replaced and reseeded. Declarant may give its written consent to an Owner to alter the flow of surface water in, on or across such Owner's Lot in order to correct surface water drainage problems existing on such Lot; provided, however, that the Declarant during the period of the Class B Membership, and thereafter the Board of Directors or the Architectural Committee, as the case may be, must give its written approval to the Owner's plan to alter the flow of surface water on such Owner's Lot.

ARTICLE VIII
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. BY DECLARANT: If on or before December 31, 2006, the Declarant should develop additional lands within the boundaries of the tract described in attached Exhibit A, such additional lands may be annexed by the Declarant to the Property without the assent of the Association, its Board of Directors or its Members.

Section 2. BY ASSOCIATION: Except as provided in Section 1 above, any other annexation of additional land shall require the assent of two-thirds (2/3) of each Class of Membership of the Association.

Section 3. PROCEDURE: Annexation of additional land shall be accomplished by recording in the Wake County Registry a Declaration of Annexation, duly executed by the Declarant, if the Declarant has the right to annex pursuant to Section 1 above, and by the Association if pursuant to Section 2 above, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant under Section 1 above, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation except the City of Raleigh, if required by its ordinances. Upon annexation, the land shall be used only for residential and ancillary purposes and shall be subject to this Declaration and all Owners shall automatically become Members of the Association.

Section 4. COMMON AREA: Subsequent to recordation of the Declaration of Annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the lands annexed as such Common Area is developed, as set forth in Article II, Section 3 of this Declaration.

ARTICLE IX
RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

Section 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS: "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

Section 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS: So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by an accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by May 15th of each calendar year;

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation or the By-laws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self management by the Association;

(c) To receive notice of any condemnation or casualty loss affecting the Common Area or any portion thereof;

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Area, other than those specific rights vested in the Association under Article II hereof; and

(f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such institutional Lender, or to the place which it may designate in writing.

Section 3. REQUIREMENTS OF INSTITUTIONAL LENDER: Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by certified mail at the address of the Association's registered agent identifying the Lot or Lots upon which any such Institutional Lender holds any first mortgage together with sufficient pertinent facts to identify such mortgage, or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

ARTICLE X UNDERGROUND UTILITIES

The Declarant reserves the right to subject a Lot (prior to the conveyance of such Lot to a third party) and any other portion of the Property, to contracts with public utility companies for the installation of underground utility service and the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to the power and light company by the Owner of each Lot. Upon acceptance of a deed to a Lot, each Owner agrees to pay to such company the continuing monthly payment or the one time lump sum charge therefor..

Declarant further reserves the right to connect to each Lot necessary water and sewer service which may require a continuous monthly charge to the Owner of the Lot. Upon acceptance of a deed to the Lot each Owner agrees to pay said continuing monthly charges, if any.

ARTICLE XI
OWNER RESPONSIBILITY

Anything contained herein to the contrary notwithstanding, an Owner shall be responsible and liable for any and all violations of these Declarations by his occupants, tenants, employees, contractors, authorized representatives, guests and invitees as provided under the Planned Community Act, but in accordance with the guidelines and requirements of HUD at the time of the recording of this Declaration, absolute liability is not imposed on the Owners with respect to for damage to Common Area or Lots.

ARTICLE XII
GENERAL PROVISIONS

Section 1. ENFORCEMENT: The Association and each 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 the Declaration and the Organizational Documents. Failure by the Association or by any Owner to enforce any such restriction, condition, covenant, reservation, lien or charge shall in no event be deemed a waiver of the right to enforce any such restriction, condition, covenant, reservation, lien or charge at any other time or in connection with the same or any other event, nor shall it be deemed a waiver of the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

Section 2. INSURANCE: The Board of Directors shall procure and maintain public liability and property damage insurance, insuring: each member of the Board of Directors; the manager, if any; and the Association against any liability to the public or to the Owners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use of the Common Area, or such other areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board of Directors, but in no event shall it be less than \$1,000,000.00 per occurrence with regard to the Association and each individual director.

There shall also be obtained such other insurance coverage as the Board of Directors shall determine from time to time to be desirable and necessary. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors as a common expense of the Association.

Section 3. SEVERABILITY: Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 4. AMENDMENT: The covenants, conditions and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the

Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time, this Declaration shall automatically be extended for successive periods of ten (10) years each. Except as specifically otherwise provided herein, the covenants, conditions and restrictions of this Declaration may be amended as provided in this Article by the affirmative vote of or by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots. Any amendments must be recorded in the Office of the Register of Deeds of Wake County, North Carolina, or such other place as designated for the recording of documents affecting real estate (the "Wake County Registry")

Section 5. VA/HUD APPROVAL: As long as there is a Class B membership, the following actions will require prior approval of the VA and/or HUD: annexation of additional properties, mergers, consolidations and dissolution of the Association, mortgaging of Common Areas, dedication of or other transfer of Common Areas to persons other than the Association, and amendment of this Declaration.

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

A. Reasonably assure itself that the amendment has been approved or 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 the 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 these were executed. The following form of certification is suggested:

"CERTIFICATION OF VALIDITY OF AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF ATHENS WOOD SUBDIVISION

By authority of its Board of Directors, Athens Wood Owners Association, Inc. hereby certifies that the foregoing instrument has been duly approved or executed by the Owners of sixty-seven percent (67%) of the Lots of Athens Wood Subdivision and is therefore a valid amendment to existing covenants, conditions and restrictions of Athens Wood Subdivision.

ATHENS WOOD OWNERS ASSOCIATION, INC.

By: (President or Vice President)

ATTEST:

(Secretary or Assistant Secretary)"

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

All amendments shall be effective from the date of recordation in the Wake County Registry; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded and indexed as provided in this section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all Persons thereafter purchasing any Lot. All amendments shall be approved as set forth herein, as required.

Section 7. FIDELITY BONDS: The Association shall maintain blanket fidelity bonds or other similar insurance coverage for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, fidelity bonds or other similar insurance coverage shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three months' aggregate assessments on all Lots plus reserve funds.

Fidelity bonds required herein shall:

- A. name the Association as an obligee;
- B. contain waivers by the issuers of the fidelity bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and
- C. to the extent available without the payment of an additional premium, provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any institutional lender servicing on behalf of the Federal National Mortgage Association any loan secured by any Lot.

The premiums on all such fidelity bonds for the Association (including premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

Notwithstanding anything to the contrary, in lieu of fidelity bonds, insurance providing similar coverage or protection may be provided and references to "fidelity bonds" shall include such insurance.

Section 8. VOTING: Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Association's By-Laws.

Section 9. GENDER AND GRAMMAR: The singular, wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make provisions hereby apply to either corporations or individuals, man or woman, shall in all cases be assumed as though in each case fully expressed.

Section 10. GOVERNMENT LIABILITY EXEMPTIONS: In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police or other public service when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, the Owners or their occupants. In no case shall the City of Raleigh or the State be responsible for maintaining any private street. Such responsibility, if any, shall rest with the Association and Owners in that any such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 11. ADDRESS: Each Member agrees to keep 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 as so completed shall be sufficient evidence as the Ownership of each Lot. If a Member fails to provide the Association with its address or otherwise fails to keep its 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.

Section 12. PROHIBITION AGAINST ASSOCIATION ENTERING INTO LONG TERM CONTRACT WHILE DECLARANT IN CONTROL OF BOARD OF DIRECTORS: Any contract or agreement entered into by the Association during any period of Class B Membership shall be subject to the right of the Association to terminate such contract or agreement, without cause, which is exercisable without penalty at any time upon not more than 90 days notice to the other party.

Section 13. CONFLICT OF DOCUMENTS. In the case of any conflict between the Declaration and the Articles of Incorporation or By-Laws of the Association, the Declaration shall control, and in the case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles shall control.

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

IN WITNESS WHEREOF, the undersigned, have caused this instrument to be executed by its duly authorized Manager as of the _____ day of _____, 2003.

DECLARANT:

ATHENS WOOD PARTNERS,
a North Carolina general partnership

By: Donna P. Preiss
Donna P. Preiss, Managing Partner

By: Fred G. Mills
Fred G. Mills, General Partner

1st AMERICAN BUILDERS, L.L.C.,
a North Carolina limited liability company

By: Michael Dean Chadwick
Michael Dean Chadwick, Manager

STATE OF NORTH CAROLINA

COUNTY OF Wake

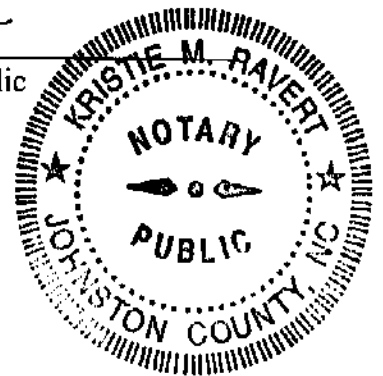
I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that **MICHAEL DEAN CHADWICK**, personally appeared before me this day and acknowledged that he is the Manager of **1st AMERICAN BUILDERS, L.L.C.**, a North Carolina limited liability company, and that he executed the foregoing instrument for and on behalf of said limited liability company.

WITNESS my hand and official seal, this the 25th day of February, 2003.

(SEAL-STAMP)

Kristie M. Ravert
Notary Public

My Commission expires: 9-18-05



STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that **DONNA P. PREISS**, Managing Partner, and **FRED G. MILLS**, a General Partner, of **ATHIENS WOOD PARTNERS**, a North Carolina general partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said general partnership.

WITNESS my hand and official seal, this the 25th day of February, 2003.

(SEAL-STAMP)

Kristie M. Ravert
Notary Public

My Commission expires: 9-18-05

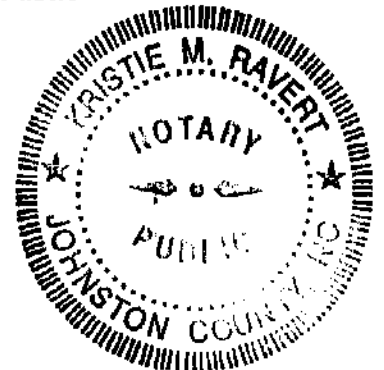


EXHIBIT A

DESCRIPTION OF PROPERTY SUBJECT TO ANNEXATION BY DECLARANT

TRACT 1:

All of those certain tracts or parcels of land situate in or near the City of Raleigh, Wake County, North Carolina, more particularly described as follows:

Being all of Lot 8, Lot 9 and Lot 10, according to a plat entitled "RECOMBINATION SURVEY - JONES HEIRS PROPERTY" prepared by BB Associates, Inc. and recorded in Book of Maps 1999, Page 2163, in the Office of the Register of Deeds of Wake County, North Carolina, to which plat reference is made for a more particular description.

TRACT 2:

All of those certain tracts or parcels of land situate in or near the City of Raleigh, Wake County, North Carolina, and lying south of Athena Woods Lane between Lot 1 and Lot 2 according to the Plat referenced below, and more particularly described as follows:

Being all of those parcels lying between Lot 1 and Lot 2 labeled "Now or Formerly WILLIAM P. JONES", "Now or Formerly PAUL L. JONES" and "This Portion Of Athens Wood Subdivision, 0.143 Ac. To Be Added To Paul L. Jones Property" as shown and described on a plat (the "Plat") prepared by John Y. Phelps, Jr. Professional Surveyor and recorded in Book of Maps 2001, Page 1592, in the Office of the Register of Deeds of Wake County, North Carolina, to which Plat reference is made for a more particular description.

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

North Carolina - Wake County

The foregoing certificate S of _____
_____ KESLIE M. RAVERT _____

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

Laura M. Riddick, Register of Deeds
By: Fredrick C. Zappone
Assistant/Deputy Register of Deeds

This Customer Group _____ # of Time Stamps Needed

This Document _____ New Time Stamp
_____ # of Pages