

Instrument Prepared By: Raleigh City Attorney’s Office and Alison R. Cayton of Manning, Fulton & Skinner, P.A.

Brief Description for Index: 5401 North Lots 15-17, Phases 4 & 12 Subdivision

Parcel Identifier: Out of PIN 1736685838, 1736688821 & 1736687466

Mail After Recording To: Planning Department
City of Raleigh
Attn: Development/Site Plan Administrator
P. O. Box 590
Raleigh, N.C. 27602

**DECLARATION OF CITY OF RALEIGH REQUIRED CITY CODE
PROVISIONS FOR DEVELOPMENTS WITH COMMON ELEMENTS
AND COMMON EXPENSES**

Required by Raleigh City Code of Ordinances, Part 10

City of Raleigh Case or File Number: S-18-14

Name of Development (as shown on recorded plat): 5401 North Lots 15-17 Ph 4 & 12 Subdivision

The real property described in Exhibit A (the “Property”) contains 11.06 acres

All or part of the Exhibit A real property is described in Book 15484, Page 720, Wake County Registry

Check if Exhibit B is applicableN/A. (The Development is a cluster unit development and the Exhibit A real property contains less than 20 acres and portions of the City approved cluster unit development are zoned Rural Residential, R-2 or R-4, or the Exhibit A real property contains less than 10 acres and portions of the City approved cluster unit development are otherwise zoned. Complete if checked, all of the Exhibit B real property is described in Book N/A, Page N/A, N/A County Registry.

Legal Name of Declarant: EV-5401 North, L.L.C., a Louisiana limited liability company

*City Code Covenant
Page 1
Revised June 21, 2011*

City Code Covenant Number (For a Multi-Phase Development): 1

[X] CHECK HERE IF PROPERTY WILL BE SUBJECT TO CHAPTER 47C OR CHAPTER 47F OF THE GENERAL STATUTES

Name of Association: 5401 North Residential Owners Association, Inc.

CHECK ANY OF THE FOLLOWING PORTIONS OF THIS DECLARATION THAT ARE APPLICABLE:

X Article III The Development is one or more of the following: (1) a cluster unit development, and/or (2) a townhouse development, and/or (3) a planned development conditional use overlay district.

_____ Article IV The Development is a cluster unit development.

X Article V The Development is a planned development conditional use overlay district.

X Article VI The Development contains City Greenways.

_____ Article VII The Development contains private streets.

_____ Article VIII The Development contains gated streets.

X Article IX The Development contains tree conservation areas that are being used by multiple lots to conform to City Code tree conservation regulations.

X Article X The Development approval contains the requirement for one or more other covenant provisions.

_____ Exhibit B

DECLARATION OF CITY OF RALEIGH REQUIRED CITY CODE PROVISIONS FOR DEVELOPMENTS WITH COMMON ELEMENTS AND COMMON EXPENSES

Required by Raleigh City Code of Ordinances Part 10

This Declaration of City of Raleigh Required City Code Provisions for developments with Common Elements and Common Expenses (this document is also referred to herein as the “City Code Covenant”) is made this 29 day of July, 2015, by EV-5401 North, L.L.C., a Louisiana limited liability company, the “Declarant”, who is the owner of certain real property located in Wake County, North Carolina, as described further in **Exhibit A** (the

RECITALS

WHEREAS, the City Council of the City of Raleigh has determined that to ensure that developments with Common Elements, Common Expenses, and owners' associations comply with the provision of the Code of Ordinances of the City of Raleigh, the provisions of this City Code Covenant shall apply to the Property; and

WHEREAS, Declarant shall subsequently record in the Registry one or more instruments (said instruments together shall hereinafter be called the "Declaration") providing, at a minimum, voting rights for Members in the Association and assessment allocations for Common Expenses, which assessments shall be sufficient to pay all applicable Common Expenses including, without limitation, Maintenance of all Common Elements; and the Declaration shall also state whether Stormwater Control Measures are Common Elements or Limited Common Elements or Sub-Association Common Elements or Sub-Association Limited Common Elements; and

WHEREAS, Declarant, as Owner of the Property, wishes to develop the Property in accordance with the rules, regulations, and ordinances of the City of Raleigh (including conditions of approval as shown in the aforesaid City of Raleigh Case Number) and the State of North Carolina; and

WHEREAS, Declarant intends to provide Common Elements that will serve the Property and that will benefit Owners of the Property (or some portion thereof), and to subject the Property to this City Code Covenant pursuant to the requirements of Part 10 of the Code of Ordinances of the City of Raleigh; and

WHEREAS, the Association is the property owners' association for the Development, and it joins in the execution of this City Code Covenant to acknowledge its obligations described herein

NOW THEREFORE, in order to comply with the requirements of Part 10 of the Code of Ordinances of the City of Raleigh, the Declarant hereby establishes this City Code Covenant in order to encumber, restrict, and obligate the Property, its associations, and any successor Owners of the Property (or any portion thereof), to the terms, covenants, conditions, restrictions, easements, charges, liens and obligations herein; each and all of which shall run with the Property in perpetuity and, as provided herein, be binding on and inure to the benefit of all Persons owning any right title or interest in the real property subject to this City Code Covenant and their heirs, personal representatives, successors and assigns. The Property subject shall be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed subject to this City Code Covenant.

ARTICLE I DEFINITIONS, CONSTRUCTION, AMENDMENTS AND MISCELLANEOUS

1. Definitions. As used in this City Code Covenant, the following words and terms have the following definitions. With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all. These definitions

are applicable to the following words and terms as they are used anywhere in this City Code Covenant.

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

(b) "Annexation Document" is defined as a document, by whatever name denominated, that is recorded for the purposes of subjecting Annexed Property to this City Code Covenant in accordance with the provisions for annexation specified herein.

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

(d) "Association" is defined as the corporation identified as the Association hereinabove, and which is organized and operated under the laws of the State of North Carolina as the property owners' association or homeowners' association for the Property. "Sub-Association" (if applicable) is defined as a corporation organized and operated under the laws of the State of North Carolina as the property owners association or homeowners' association for a portion of, but not all of, the Property. There may be one or more Sub-Associations (if applicable) with respect to the Property. An example of a Sub-Association is a homeowners' association for a townhouse development that is part of a cluster unit development which also has a separate Association for the entire cluster unit development. Whenever there is a reference herein to the Association, but which should refer to or include a Sub-Association (for example, a requirement of Maintenance of Common Element by the Association that is, in fact, Sub-Association Common Element to be Maintained by a Sub-Association, or reference to compliance with a Code provision that is applicable to the Association and/or Sub-Associations), such reference is deemed corrected accordingly.

(e) "Board" is defined as the board of directors of the Association, and is the Executive Board as defined in the Act. The Board is responsible for the management and administration of the Association as provided for in this City Code Covenant and in the Act.

(f) "City" or "City of Raleigh" is defined as the City of Raleigh, North Carolina, a North Carolina municipal corporation.

(g) "City Approval" is defined as the written approval of the City of Raleigh, as given by the City Planning Director by execution of the recorded original or copy of the applicable

document. When this City Code Covenant or any other Governing Document requires execution of a document by the City Planning Director or prior approval of a document or action by the City Planning Director, such execution or approval may be done or given by the City Planning Director or by such other Person authorized by the Code or the City Planning Director to perform such action on behalf of the City Planning Director.

(h) "City Code Covenant" is defined as this document, together with all exhibits and amendments to this document.

(i) "Code" is defined as the Raleigh City Code of Ordinances as it may be amended from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code. References herein to specific sections of the Code are to those sections as they exist at the time of the City's approval of this City Code Covenant for recording in the Registry, as evidenced by the execution of this City Code Covenant by the City Planning Director. However, the Property is subject to applicable Code provisions, whether or not the specific Code provision is cited herein, and whether or not any specific Code provision cited herein is cited correctly or incorrectly, or subsequently is amended.

(j) "Common Element" (or Common Property or Common Area, such terms being used interchangeably herein and in any Governing Document) is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Property, regardless of how such real property is described in a Governing Document. "Common Element" may be owned or leased by the Association or may be owned by another Person with the Association having a right or easement therein (for example, part or all of a private stormwater drainage easement located on either a Lot or real property that is not part of the Property and that serves more than one (1) Lot in the Property, or a right of the Association to use of a portion of a public street right-of-way pursuant to an encroachment agreement with the City). Common Elements include all of the following:

- (i) All of the items included in the definition of Common Areas in Section 10-3003 of the Code (or its successor provision).
 - (ii) All other items included in the definition of Common Elements, Common Area or Common Property in any Governing Document or recorded in any map or plat in the Registry.
 - (iii) All recorded tree conservation areas shown on any recorded plat of the Property
- A Common Element that is owned by or subject to being Maintained by a Sub-Association is "Sub-Association Common Element", even if it is referred to in this document or in any other Governing Document as Common Element instead of Sub-Association Common Element. Common Elements, if any, established by the Declarant or the Association for the benefit of fewer than all of the Owners and occupants of the Property, but which are not Sub-Association Common Elements, are Limited Common Elements and such Limited Common Elements and the Owners and occupants of the applicable portion of the Property for whose benefit the Limited Common Element exists are subject to the same Code provisions as those applicable to Common Elements. All references herein or in any recorded map or plat of the Property to any Common Element that is, in fact, a Sub-Association Common Element or a Limited Common Element are deemed corrected accordingly. Sub-Association Common Elements, if any, owned by or subject to being Maintained by a Sub-Association for the benefit

of fewer than all of the Owners and occupants of the applicable portion of the Property are Sub-Association Limited Common Elements and such Sub-Association Limited Common Elements and the Owners and occupants of the applicable portion of the Property for whose benefit the Sub-Association Limited Common Elements exists are subject to the same Code provisions as those applicable to Common Elements. All references herein or in any recorded plat of the Property to Limited Common Elements or Sub-Association Limited Common Elements that are, in fact, Common Elements or Sub-Association Common Elements, are deemed corrected accordingly.

(k) "Common Expense" is defined as all expenditures made by the Association and all financial liabilities of the Association, including allocation to reserves, and including all Association liabilities imposed by the Code [See, for example, Sections 10-3073(b)(3) and 10-2082.14(e)(3)], this City Code Covenant, the Declaration and other Governing Documents.

(l) "Declarant" is defined as the Person identified as the Declarant hereinabove and its assigns; provided, however, that no assignment of Declarant rights under this City Code Covenant shall be effective unless an assignment of Declarant rights is executed by Declarant and the assignee and recorded in the Registry. Declarant may assign its Declarant rights in part or in whole at any time and from time to time. The word "Declarant" also includes, without the necessity of a recorded assignment from the Declarant, any of the following: (i) a legal name change of the Declarant; (ii) a court appointed receiver for Declarant; (iii) a Trustee in bankruptcy for Declarant; (iv) a successor to Declarant by merger; (v) a purchaser at foreclosure (or grantee in a deed in lieu of foreclosure) of the portion of the Property owned by Declarant and who asserts part or all of the Declarant rights by a document recorded by such purchaser or grantee in the Registry.

(m) "Declaration of Maintenance Covenant and Protection Easements for Stormwater Control Facilities" is defined as any document with respect to the Property recorded in the Registry among the Declarant, an Association or a commercial Lot Owner (if applicable), and the City that relates to those matters in Code section 10-9027(b) or any successor Code provision, and includes all amendments and supplements to such documents.

(n) "Development" is defined as the real property approved for development by the City under the City of Raleigh Case or File Number shown on the first page of this City Code Covenant. The Property may be all or part of the real property that constitutes the Development.

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

(p) "Governing Documents" is defined as all of the following that are applicable to any part or all of the Property, as the same may be amended, restated, or supplemented from time to time: this City Code Covenant; Declarations of Maintenance Covenant and Protection Easements for Stormwater Control Facilities; the Declaration; the Articles of Incorporation and Bylaws of the Association; Annexation Documents; plats (or maps, those terms being used interchangeably herein) of the Property or any portions thereof recorded in the Registry; declarations of restrictive or protective covenants applicable to the Property or any portion

thereof; Subsequent Documents; all Sub-Association documents (with respect to those portions of the Property subject to such Sub-Association documents); and Withdrawal Declarations.

(q) “Governmental Authority” or “Governmental Authorities” is defined as the City, the Counties of Wake and/or Durham (as appropriate) North Carolina, the State of North Carolina, the United States of America, and all other governmental entities and quasi-governmental entities that have jurisdiction over the Property or any part thereof, and all applicable departments and agencies of any of them, whichever Governmental Authority or entities is/are applicable.

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

(s) “Lot” is defined as any numbered or lettered portion of the Property, together with any improvements thereon, which is shown on any recorded plat of any part or all of the Property, and which is not any of the following: a dedicated public street right-of-way; Common Elements; Sub-Association Common Elements; Open Space owned in fee simple by the Association; greenway, Open Space or park lands owned in fee simple by the City.

(t) “Maintain”, “Maintenance”, “Maintaining”, or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation, provided, however, this definition is not applicable to Article II Section 2 of this City Code Covenant.

(u) “Member” is defined as each Person who owns a Lot within the Property.

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

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

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

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

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

(aa) “Property” is defined as all of the real property which is subject to any part or all of the terms of this City Code Covenant, including both the real property subjected to this City Code Covenant as described in Exhibit A at the time of its recording and real property later subjected by an Annexation Document.

(bb) “Registry” is defined as the office of the Register of Deeds (or any successor office under applicable law) for the North Carolina County or Counties in which deeds, plats, easements, mortgages and deeds of trust for the Property are recorded. All references herein to recording or to any requirement to record a document or plat refer to recording in the Registry of the County or Counties in which the applicable portion of the Property is situated.

(cc) “Stormwater Control Measures” or “Stormwater Control Facilities”, such terms being used interchangeably herein, is defined as one or more of the following devices and measures, together with associated private drainage easements utilized for conveying stormwater (however identified on a plat, map or in a recorded document) that serve(s) the Property and which are located outside of public street rights-of-way and drainage easements accepted into public use by the City, including, but not limited to, conduits, inlets, channels, pipes, level spreaders, ditches, grassed swales, sand filters, wet ponds, dry detention basins, wetlands, permanently protect undisturbed open space areas (and similarly designated areas shown on any recorded plat of any portion of the Property), bio-retention areas, retention or detention ponds, and other devices and measures, necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) Lot in the Property. Private drainage easements, however identified on a recorded plat or recorded map or in a recorded document, that serve more than one (1) Lot are deemed to be dedicated to the Association for the benefit of the Property or applicable portions thereof.

(dd) “Subsequent Document” is defined as any document, map or plat affecting or encumbering the Property or any portion thereof that is recorded in the Registry after this City Code Covenant is recorded in the Registry.

(ee) "Withdrawal Declaration" is defined as a document, by whatever name denominated, that is recorded as allowed or required by the City Code Covenant for the purposes of withdrawing real property from this City Code Covenant.

2. Applicability. The Property, all provisions of Governing Documents and other separately recorded instruments applicable to the Property (or any portion thereof) are subject to the ordinances, regulations, and rules of the City, and shall be construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this City Code Covenant or in any other Governing Document. It shall be the responsibility of the Association and each Owner of each portion of the Property to comply with all provisions of the Code applicable to such portion of the Property. No Subsequent Document may avoid, vary, negate, or waive the obligations and rights of the Declarant, any Owner, or the Association (if applicable) established in this City Code Covenant without amendment of this City Code Covenant (with City Approval, as provided in Article I, Section 4 below) to allow such avoidance, variation, negation, or waiver.

3. Conflicts.

(a) The provisions of the Code control over any inconsistent provisions of this City Code Covenant or any other Governing Document.

(b) As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this City Code Covenant and all other Governing Documents are deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Property or any part thereof.

(c) The provisions of this City Code Covenant shall control over any inconsistent provisions of any other Governing Document unless this City Code Covenant is amended, with City Approval as provided in Article I, Section 4 below, to allow subordination of this City Code Covenant to such Governing Document. To the extent that any Governing Document affecting the Property conflicts with the provisions of the Code or the General Statutes of the State of North Carolina, the conflicting provision shall be automatically cured to comply with the Code and the General Statutes of the State of North Carolina. To the extent that the requirements of the Code and the General Statutes of the State of North Carolina conflict, the more stringent provision shall prevail and apply.

(d) Notwithstanding any other provision of this City Code Covenant, any provision of this City Code Covenant or other Governing Document that is more restrictive than an applicable provision of the Code (for example a building setback distance required by a Governing Document that is greater than required by the Code) is not an inconsistent provision of this City Code Covenant unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(e) To the extent that definitions or provisions in a Subsequent Document are different than the definitions or provisions utilized in this City Code Covenant yet bear a similar meaning, the provisions of this City Code Covenant shall apply as if the defined term or

provision of this City Code Covenant was utilized. Specific exceptions to this provision may only be achieved through amendment to this City Code Covenant as provided in Article I, Section 4 below.

(f) If additional City Code Covenants are recorded for other portions of the Development, those additional City Code Covenants shall have the priority of this City Code Covenant with respect to Subsequent Documents for those portions of the Development subject to the additional City Code Covenant.

(g) Allocation of assessment obligations among Owners in any Subsequent Document does not constitute a conflict with this City Code Covenant; provided, however, that the rights of the City in this City Code Covenant or in any Declaration of Maintenance Covenant and Protection Easements for Stormwater Control Facilities, including, without limitation, the rights of the City to enforce liens and collect monies from Owners and an Association, shall not be impaired or adversely affected by any such allocation of assessment obligations in any Subsequent Document.

4. Amendment of City Code Covenant.

(a) Amendments to this City Code Covenant are valid from the time of recording in the Registry. Any amendment of this City Code Covenant must have prior City Approval. Any amendment of this City Code Covenant that requires City Approval is void *ab initio* if recorded without the required City Approval. Any amendment to an exhibit attached and incorporated into this City Code Covenant will similarly require an amendment to this City Code Covenant.

(b) During the first ten (10) year period following the date of the recording of this City Code Covenant in the Registry, the Declarant may amend this City Code Covenant with City Approval and without the consent or joinder of any other Person, so long as Declarant owns any portion of the Property, provided, however, that any Exhibit B description of Development Land amended to add real property or delete real property also must be executed by all Persons, in addition to Declarant, who own any of the real property being added to or deleted from the Exhibit B description of the Development Land (defined in Section 5 of Article IV hereof).

(c) If the amendment provisions of Section 4(b) above are no longer applicable to the Property, this City Code Covenant may be amended with City Approval and with the consent of the Owners of Lots who are entitled to cast 67% or more of the votes in the Association (such votes being determined in accordance with the provisions of the Governing Documents (and of the Act, for those Property subject to the Act).

5. No Merger. The rights, privileges and easements in this City Code Covenant shall not merge by operation of law or terminate but shall remain in full force and effect despite the fact that the same Owner may own title to all the real properties which are affected by this City Code Covenant.

6. No Waiver. The failure of any Owner, an Association, or the City in any one or more instances to insist upon compliance with any provision or covenant herein or to exercise any

right or privilege herein shall not constitute or be construed as a waiver of such or any similar provision, covenant, right or privilege including the right to cure a breach or default, but the same shall continue and remain in full force and effect, as if no such forbearance had occurred.

7. Effectiveness. This City Code Covenant is effective from and after its recording in the Registry.

8. Severability. The articles, numbered sections, paragraphs, sentences clauses and phrases of this City Code Covenant are severable and if any phrase, clause, sentence, paragraph, number section or Article of this City Code Covenant shall be declared invalid by the valid judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, number sections or Articles.

9. Enforcement. Violation or breach of any term, provision, covenant or condition contained in this City Code Covenant or in any Governing Document shall give the Association, its Board, the Declarant and every Owner the right to prosecute a proceeding at law or in equity against the Owner, his or her family members, tenants, agents and contractors who or which have violated, are attempting to violate, or are permitting (or allowing to exist) the violation or breach on its Lot or any portion of the Property, any term, provision, covenant or condition contained in this City Code Covenant or in any Governing Document. The right to prosecute such proceeding shall include, without limitation, the right to bring actions to enjoin or prevent such violation or breach or to cause said violation or breach to be remedied. Each Owner, by acceptance of a deed to any portion of the Property hereby acknowledges that no adequate remedy exists at law to cure such violations or breaches.

ARTICLE II SPECIFIC OBLIGATIONS OF THE RALEIGH CITY CODE

1. Permanently Protected Undisturbed Open Space Areas. Within any Undisturbed Open Space areas (and similarly designated areas) shown on any recorded map or plat of the Property, there must not be any land disturbing activity, any placement of impervious surfaces, any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code), any new development or expansion thereof, or any new use, construction or encroachment, without first obtaining a watercourse permit from the City. Permanently Protected Undisturbed Open Space Areas (and similarly designated areas) may or may not be Open Space as defined in this City Code Covenant

2. Tree Conservation. The Association has a conservation easement for the planting of trees and for the protection, preservation, and Maintenance of the trees situated within any tree conservation areas shown on any recorded plat of the Property. No tree disturbing activity, as defined in Part 10, Chapter 2 of the Code, shall be permitted in tree conservation areas in violation of the Code. Any tree disturbing activity undertaken in tree conservation areas or in Undisturbed Open Space areas (and similarly designated areas) shown on recorded plats of the Property without a permit from the City or otherwise in violation of the Code is a violation of the Code and may result in significant financial consequences to the Owner and to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of both the City and of the Association, enter tree conservation areas to perform active tree protection measures (as defined in the Code), to plant trees, to remove dead or diseased

trees, or to plant replacement trees, provided, however, unless otherwise required by other provisions of this City Code Covenant or by a Subsequent Document, the consent of the Association shall not be required if the tree conservation area in which the Owner desires to perform active tree protection measures or plant trees, remove dead or diseased trees and to plant replacement trees is located on that Owner's Lot.

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

4. Insurance Commencing not later than the time of the first conveyance of a Lot to a Person, other than the Declarant, the Association shall procure and Maintain (i) hazard insurance on the Common Elements, insuring against all risk of loss commonly insured against, including fire and extended coverage of peril, and (ii) liability insurance, in an amount of not less than one million dollars (\$1,000,000.00), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use ownership or Maintenance of Common Elements. The premiums for such insurance shall be a Common Expense.

5. Indemnification. No immunity, exculpation or indemnification provision of any Governing Document shall relieve one or more Owners from such Owner's liabilities as an Owner.

6. On-Street Parking. Any restriction on the right to park vehicles on public streets contained in any Governing Document shall be applicable only to the Owners and their family members and tenants.

7. Sight Triangles. No sight-obstructing or partially-obstructing wall, fence, foliage, berm, parked vehicle or sign between two feet (2') and eight feet (8') tall, as measured above the curb line elevation or the nearest traveled way if no curb exists, shall be placed within any area designated on a recorded map or plat of the Property as a sight triangle or other similar designation. An easement over sight triangles is reserved for the benefit of the Declarant, the Association, and the City, and their respective agents and contractors, for the purpose of removing any such obstruction, and a Person entering onto a Lot pursuant to such easement for

the purpose of removing such obstruction shall not be deemed a trespasser and shall not be liable for damages to the Association or the Owner of the Lot with respect to the obstruction removed from the sight triangle. It shall be the responsibility of the Association (as to Common Area) or Owner of the Lot, as soon as reasonably practicable following removal of any obstruction from the sight triangle, to restore the portion of the Property previously occupied by the removed obstruction to the condition required or permitted by the Code and the Governing Documents.

8. Annexed Property. Real property which was not part of the City-approved Development, or real property that was part of the City-approved Development but which was not subjected to this City Code Covenant at the time of its initial recording, may be annexed to this City Code Covenant in the same way amendments to this City Code Covenant are allowed pursuant to Article 1 Section 4 hereof and thereby made part of the Property as Annexed Property, provided that all of the following conditions are met with respect to the real property to be annexed, and further provided that, the ten (10) year period within which Declarant may annex real property to this City Code Covenant without the consent or joinder of any other Person is applicable so long as Declarant owns any portion of the Property or owns the Annexed Property being annexed to this City Code Covenant and:

(a) the Annexed Property is contiguous to the Property or directly across a street from the Property or separated from the Property by property owned by a Governmental Authority;

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

(c) annexation of such Annexed Property meets any other applicable requirements of this City Code Covenant;

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

(e) annexation of the real property subject to the above-referenced City of Raleigh Case or File Number shall occur before the sunset date specified therein, including any extended sunset date granted by the City.

Any Annexation Document shall be in the form set forth by the City, and it shall not be recorded until it has City Approval. Any Annexation Document recorded without the required City Approval is void *ab initio*. Open Space in the Annexed Property is subject to all provisions of the Code, this City Code Covenant, and the Declaration relating to Open Space.

Annexation of the Annexed Property shall be effective upon the later of the recording of the Annexation Document in the Registry or such later date as specified in the Annexation Document, and the Annexed Property described therein shall be subject to all of the provisions of this City Code Covenant and to the jurisdiction of the Association pursuant to the terms of this City Code Covenant, the Declaration and other Governing Documents. Each Owner of a Lot in Annexed Property shall be a Member of the Association, and the Annexed Property and each Owner of any portion thereof shall be subject to assessment by the Association in accordance

with the terms of this City Code Covenant, the Declaration, the Annexation Document, other Governing Documents and the Code, the Declaration of Maintenance Covenant and Protection Easements for Stormwater Control Facilities, as applicable. The Association shall have the duties, responsibilities and powers set forth in this City Code Covenant, the Declaration and other Governing Documents with respect to Annexed Property. Except as may otherwise be expressly provided in this City Code Covenant, the Declaration or any Annexation Document, the Property, including the Annexed Property, shall be managed and governed by the Association as an entirety. Except for assessments for Limited Common Elements, assessments for Common Expenses collected from Owners in the Annexed Property may be expended by the Association for Common Expenses anywhere in the Property without regard to the particular portion of the Property from which such assessments came.

9. Withdrawn Property. Portions of the Property may be withdrawn from this City Code Covenant at the request of Declarant and with the prior City Approval of a Withdrawal Declaration executed by the Declarant (and the Owner, if not Declarant, of the specific portion of the Property being withdrawn), describing the specific portion of the Property withdrawn from this City Code Covenant and recorded in the Registry. The withdrawal shall be effective on the date the Withdrawal Declaration is recorded in the Registry, or on such later date specified therein. No withdrawal shall be approved by the City Planning Director when the portion of the Property to be withdrawn causes the remaining Property or portions of the Property to be withdrawn to be in violation of the Code, or when Common Elements of the Association continue to be used by the Lots and Owners of Lots in the withdrawn property, other than in such manner as the Code and Governing Documents allows the Common Elements of the Association to be used by non-members of the Association. Prior to approving the withdrawal of any portion of the Property from the City Code Covenant, the Planning Director shall determine that the Common Expenses of the Association can be fully funded by the remaining portions of the Property within the assessment limitations established in the Governing Documents. Any portion of the Property that is withdrawn from the Declaration may be owned, held, transferred, sold, conveyed, leased, used, occupied, mortgaged and developed in any manner allowed under the Code and shall be released from the terms and provisions of the City Code Covenant on the date the withdrawal becomes effective as provided herein, subject to any terms of the Withdrawal Declaration and except that all easements specifically affecting such withdrawn portions of the Property, as shown on plats recorded in the Registry or as described in documents recorded in the Registry, shall remain in force and effect unless released or terminated by all Persons having rights to exercise such easements.

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

11. Access for Governmental Agencies. A perpetual, non-exclusive right of access over all Lots and Common Elements (including private streets and private utility easements, if any)

within the Property is hereby established for the benefit of Governmental Authorities for installing, removing and reading water meters, Maintaining and replacing water and sewer facilities, fire lanes and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, solid waste collection and the delivery of mail.

12. Easements Over Common Elements. Each Owner and lawful occupant of the Property has a non-exclusive easement over the Common Elements for access, ingress, and egress from such Owner's Lot to and from streets, parking areas and walkways. Except for Limited Common Elements, the use of is limited to Owners and lawful occupants of Lots served by same, and subject to rules and regulations established by the Governing Documents, each Owner has a non-exclusive right and easement for the use and enjoyment of the Common Elements

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

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

If an Association or Sub-Association responsible for Maintaining any water line or sanitary sewer line fails to properly discharge its Maintenance responsibility, the City, in its sole discretion, may perform such Maintenance work and recover the full costs expended by the City from each of the Lots and the Owners thereof. Except in the case of emergencies (for example, and without limitation, sewage flowing into the stormwater system), prior to beginning any

work, the City will provide a minimum of thirty (30) days written notice to the Association or Sub-Association, as the case may be, and in instances of dissolution of the Association or Sub-Association, notice shall be mailed to the registered agent for service of process of the Association or Sub-Association, and to the Secretary of State when mailed notice is ineffective. If the City exercises its rights hereunder and Maintains all or a portion of the water lines and/or sanitary sewer lines, then, following acceptance and payment of the work by the City, the City shall send written notice of the costs of such work to the Lot Owners at the address listed in the tax office, and the Owners shall be responsible for reimbursement to the City of all such costs within thirty (30) days after the mailing of such notice. This notice of payment shall allocate the full cost of the work to the Lots. Allocations shall be made on the basis of:

- (1) The frontage abutting on the project at an equal rate per square foot of frontage, or
- (2) The number of Lots served by the Maintained utility line, at an equal rate per Lot, or
- (3) A combination of these two bases.

The City's final decision as to the method of allocating costs shall be final and conclusive and not subject to further review or challenge.

All such allocated costs shall be deemed an assessment against the Lots in the amount billed by the City for each such Lot and, pursuant to the Act, the Association and the Sub-Association, as the case may be, hereby assigns to the City its right to collect such portion of the Common Expenses attributable to the Maintenance of the water lines and sanitary sewer lines, and in the event of nonpayment to the City of its Maintenance costs, the Association or Sub-Association, as the case may be, and its right to file liens against the delinquent Lots, without a vote of the Owner, the Association, or Sub-Association. Any Lot Owner who or which does not pay to the City the share of such costs attributable to such Owner's Lot within the thirty (30) day period set forth above shall be in default. In the event of such default, the City, as assignee of the applicable Association, may file a claim of lien the office of the Clerk of Superior Court in the county in which the Lot is located as provided in the Act and foreclose the lien in like manner as a mortgage on real estate pursuant to power of sale under Article 2A of Chapter 45 of the General Statutes, as may be amended, or bring an action at law against the defaulting Owner, or the City may take both actions, and, in addition to the amount billed by the City to the Owner, the City may recover from such Owner interest at the rate of eight percent (8%) per annum from the end of the 30-day period, a late payment charge of three hundred dollars (\$300) during the first forty-five (45) days after such default and five hundred dollars (\$500) after such 45-day period, and all costs of collection including, without limitation, court costs and reasonable attorneys' fees, or the City make take both such actions. Any lien claims filed by the City shall be signed by the City Manager or other Person authorized by the Code. The claim of lien may be filed any time after default and the lien shall continue in effect until all sums secured by the lien shall have been fully paid. Such claims of lien shall include all sums that are due and payable when the claim of lien is filed plus interest, late fees, and collection costs as herein provided, as

well as attorney fees and court costs. Upon full payment of all sums secured by such claims of lien, the same shall be satisfied of record.

Notwithstanding any allocation of costs to the Lots, each Owner is jointly and severally responsible for all monies owed to the City that remain unpaid for more than eighteen months after the date on which notice was sent to the Lot Owners. Any Person who pays more than his or her share as initially allocated by the City to his Lot is hereby granted a right of contribution against the defaulting Lot Owners.

15. Membership in the Association. The Declarant and each and every Owner with the Property is a Member of the Association and, by execution of this City Code Covenant or by acceptance of a deed conveying to such Owner title to any Lot, consents to be a Member of the Association, subject to the terms of the Act, the Code and the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. The foregoing is not intended to include any Person that holds an interest solely as security for the performance of an obligation. Upon termination of ownership, an Owner's membership with respect to the transferred Lot shall terminate and be automatically transferred to the new Owner of the Lot.

16. Common Expenses. The Association is responsible for payment of all Common Expenses, including the Common Expenses described in Code Section 10-3073(b)(3) and 10-2082.14(e)(3) (or their successor provisions).

17. Association Budget. Each budget of an Association subject to the Act shall be adopted in accordance with Governing Documents not inconsistent with the Act, and shall be ratified by the Members as required by the Act.

18. Assessments. The Association is empowered to levy assessments against the Owners of Lots in the Property to pay for the Common Expenses. Any assessment not paid shall constitute a lien on the Lot of the non-paying Owner upon filing of a claim of lien as provided in the Act. Assessments shall be assessed and collected in accordance with the applicable provisions of the Code, the Governing Documents, and the Act, for Developments subject to the Act.

19. Declarant's Obligation to Fund Operating Deficits. Any Operating Deficit resulting from reductions in and/or exemptions of assessments allowed by the Declarant or provided in the Declaration shall be paid by the Declarant without recoupment of any interest. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association or Sub-Association, or (ii) payment directly to a Person providing services or materials related to Common Expenses of the Association or Sub-Association, or (iii) providing directly or indirectly to or for the Association or Sub-Association, services or materials related to Common Expenses (the value of which shall be determined by the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant.)

ARTICLE III

ARTICLE III CONTAINS CODE-REQUIRED PROVISIONS THAT, UNLESS OTHERWISE SPECIFICALLY INDICATED IN THIS ARTICLE, ARE APPLICABLE TO ALL PORTIONS OF THE PROPERTY THAT ARE PART OF ANY ONE OR MORE OF THE FOLLOWING: (I) A CLUSTER UNIT DEVELOPMENT; (II) A TOWNHOUSE DEVELOPMENT; OR (III) A PLANNED UNIT DEVELOPMENT CONDITIONAL USE OVERLAY DISTRICT. FOR CLUSTER UNIT DEVELOPMENTS, SEE CODE SECTIONS 10-2101, 10-3071 AND 10-3073, FOR TOWNHOUSE DEVELOPMENTS, SEE CODE SECTIONS 10-2109, 10-3072 AND 10-3073 AND FOR PLANNED UNIT DEVELOPMENT CONDITIONAL USE OVERLAY DISTRICTS, SEE CODE SECTION 10-2057 (OR THEIR SUCCESSOR PROVISIONS).

1. Open Space. In addition to other provisions of this City Code Covenant, all Open Space is subject to the following:

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

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

(i) Written notice of the exchange is given to each Member of the Association.

(ii) After the notice is given, those Members having the minimum percentage of votes in the Association required by the Act, or any greater percentage required by the Governing Documents, give their written approval of the exchange.

(iii) The exchanged properties and other considerations are of like value and utility.

(iv) The acreage and configuration of the remaining Open Space (including real property to be received by the Association in such exchange) equals or exceeds the requirements of the Code.

(v) The exchange is approved by the Planning Director of the City.

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

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

(e) Suspension of Rights. Notwithstanding any violation of the Association's rules and regulations, the right of access and support, the right to drain stormwater, and the right to use Stormwater Control Facilities, private utility services, private streets and any assigned parking

areas provided to or for the Lot shall not be suspended for violation of the Association's rules and regulations. For the Property subject to the Act, no suspension of use rights shall occur without first providing notice of the charge, opportunity to be heard and to present evidence, and notice of the decisions as required by G.S. 47C-3-107.1 or G.S. 47F-3-107.1 (or their successor provisions).

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

(g) **The following is applicable only to Open Space in Townhouse Developments.** Townhouse Open Space and private streets used for the exclusive benefit of townhouse residents are Limited Common Elements or Sub-Association Common Area when the townhouse development is part of a cluster unit development containing other housing types.

2. Common Party Walls. All common party walls between individual buildings shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between buildings located on separate Lots:

(a) Each wall of a building which is shared by and placed on the dividing line between the Lots shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The cost of reasonable Maintenance of a common party wall shall be shared by the Owners that share the common party wall, in proportion to such use, provided, however, that each Owner is responsible for usual and routine Maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's unit.

(c) If a common party wall is destroyed or damaged by fire or other casualty, any Owner who shares such common party wall may restore or repair it, and the Owners of the other Lot which share the restored or repaired common party wall shall, within twenty-one (21) days after receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their respective use of the common party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Notwithstanding any other provision of this Section, an Owner who shares a common party wall and who, by such Owner's negligent or willful act or omission, damages or

causes the common party wall to be exposed to the elements, shall bear the entire cost of the necessary repair or restoration.

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

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

(g) Each Owner of a Lot with a shared common party wall with one or more other Lot Owners, and such Owner's contractors and subcontractors, shall have an easement and right of entry upon such other Lot to the extent reasonably necessary to repair, restore, Maintain or reconstruct the common party wall. Such repair, restoration, Maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining Lot damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced. The Owner performing the work shall timely pay all costs thereof and, subject to any right of contribution, shall keep such Lots and units free of any claim of lien which may be filed pursuant to Chapter 44A of the North Carolina General Statutes.

(h) **Additional Application for Planned Development Conditional Use Overlay Districts.** In portions of the Property that are part of a Planned Development Conditional Use Overlay District, these provisions with respect to Common Party Walls are applicable to businesses as well as to residences.

ARTICLE IV CLUSTER UNIT DEVELOPMENT (CODE SECTIONS 10-2101, 10-3071 and 10-3073)

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

1. Residential Density Transfers. Residential density transfers are permitted in a cluster unit development as allowed in the Code. Accordingly, even though some Lots may appear to contain enough land area to construct additional dwelling units or create additional Lots, prior density transfers approved within the cluster unit development may, in fact, preclude approval by the City of additional dwellings or further subdividing of Lots.

2. Development Rights. Development rights retained by the Declarant, including the right to add real estate to the cluster unit development, to add dwelling units, to add Common Elements, to change dwelling unit types within the cluster, or to reallocate units within the cluster, as well as all conditions and limitations applied to the exercise of any such development rights, may be described in other Sections of this City Code Covenant and in other Governing Documents. Exercise of any of the development rights described in this Article is subject to the prior approval of the City.

3. Addition of Land. The maximum amount of land that can be added to the cluster unit development is as follows: N/A acres.

4. Number of Dwelling Units. The maximum number of dwelling units and the maximum number of dwelling units per acre that can be contained in the cluster unit development, or transferred to portions of the cluster unit development without rezoning the real property to another zoning classification for additional dwelling units, are as follows (for purposes of this Section, the cluster unit development includes all portions of the Property initially subjected to this City Code Covenant that are part of the cluster unit development, together with all Annexed Property that becomes subject to this City Code Covenant and is part of the cluster unit development):

(a) the maximum number of dwelling units allowed in the cluster unit development is N/A.

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

5. Minimum Acreage. If the Property described on **Exhibit A** contain less acreage than the minimum amount of acreage required for the cluster unit development pursuant to the Code [Twenty acres in Rural Residential Districts, R-2 Districts, and R-4 Districts, or ten acres in all other zoning districts], then the remaining portions of the Development that are part of the cluster unit development and are not described on Exhibit A are described on Exhibit B attached hereto and incorporated by reference, are referred to herein as the "Development Land", and are subject to the following:

(a) The Declarant and any other owner of any of the Development Land shall build in general conformity with the preliminary cluster unit development plan approved by the City of Raleigh in the City of Raleigh Case or File Number shown on the first page of this City Code Covenant. The Declarant, and any other Owner of the Development Land, on behalf of itself, its grantees, heirs, successors, and assigns, hereby further agrees that the Development Land shall be annexed and made subject to this City Code Covenant, such that the aggregate acreage of the real property subject to this City Code Covenant shall be either twenty or more acres for lands zoned Rural Residential, R-2 or R-4 or ten acres or more for lands otherwise zoned. If such annexation of the Development Land to this City Code Covenant has not occurred by the date

immediately preceding the sunset date specified in City of Raleigh Case or File Number shown on the first page of this City Code Covenant, or the date immediately preceding any extended sunset date granted by the City, then all of the Development Land that has not been annexed to this City Code Covenant and the Declaration, without further act or deed, shall automatically be subject to this City Code Covenant and the Declaration and shall be deemed a part of the Property.

(b) If the Declarant does not own all of the real property described on Exhibit B, all owners of such real property hereby consent to the provisions of this Article IV by executing this City Code Covenant.

ARTICLE V
PLANNED DEVELOPMENT CONDITIONAL USE DISTRICTS
(CODE SECTION 10-2057)

Any portion of the Property that is part of a “Planned Development Conditional Use Overlay District,” as that term is defined in the Code, is subject to all of the following:

1. Residential Density Transfers. Residential density transfers are permitted in a Planned Development Conditional Use Overlay District as allowed in the Code. Accordingly, even though some Lots may appear to contain enough land area to construct additional dwelling units or create additional Lots, prior density transfers approved within the Planned Development Conditional Use Overlay District may, in fact, preclude approval by the City of additional dwellings or further subdividing of Lots.
2. Right of Use. All Persons lawfully using the Property, including Owners; their family members; tenants; guests; employees and customers, are hereby granted a perpetual non-exclusive right of access and right of use and enjoyment and easement in the Open Space subject to such non-discriminatory rules and regulations as are allowed under the Governing Documents. Accordingly, all Lots within the Planned Development Conditional Use Overlay District will be assessed for the Maintenance of the Open Space required by the Planned Development Conditional Use Overlay District and for the Maintenance of any other Common Elements it shares.

ARTICLE VI
CITY GREENWAYS
(CODE SECTIONS 10-3003 AND 10-3022)

Notwithstanding any other provision of this City Code Covenant, without the prior written consent of the City, none of the following is allowed in any City-owned greenway or greenway easement situated on the Property: grading; excavation; dredging; the addition or removal of soil or other materials; the erection of buildings, signs, fences, drainage devices or structures; or any tree disturbing activity (as defined in Part 10, Chapter 2 of the Code). The City, in its sole discretion, at any time and from time to time, may erect paved or unpaved trails, trail markers, and place litter receptacles and other convenience facilities, within the greenway boundaries. The City, in its sole discretion, may adopt and amend regulations concerning the use

of greenway (including, by way of example, limiting hours of operation), which shall be equally applicable to the general public and to the Owners and their occupants and guests.

**ARTICLE VII
PRIVATE STREETS
(CODE SECTION 10-3074)**

Pursuant to Code Section 10-3074 (b), (c) and (e)(4) (or their successor provisions), all of the following are applicable to private streets in the Property:

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

2. Association Maintenance of Private Streets. In no case shall the City or the State of North Carolina be responsible for Maintaining any private street. Such responsibility shall rest with the Association and Owners of Lot within the Property, in that, such private streets may not be constructed to the minimum standards sufficient to allow their inclusion for public Maintenance.

2. Traffic Flow. It shall be the responsibility of the Association to establish speed limits and to Maintain uninterrupted traffic flow along all private streets within the Property. If it is necessary for “no parking” signs to be erected, for street lights to be installed, for repairs to be made to private streets or towing of vehicles to be undertaken, all expenses of same shall be Common Expense, provided, however, that nothing herein shall prohibit the Association from establishing fines or towing charges in its Governing Documents.

**ARTICLE VIII
GATED COMMUNITY
[CODE SECTION 10-3074(d)]**

The following provisions are applicable to any portion of the Property that contains a gated community as defined in Code Section 10-3074(d) (or its successor provision):

The Property contain one or more security gate(s) located at the entrance (s) on N/A (each a “Security Gate”). As a condition for installing and Maintaining the Security Gates, the Association and the Declarant agree to comply with applicable provisions of the Code and hereby grant to the City and other applicable Governmental Authorities and their respective emergency personnel the right, without liability, the right to break any Security Gate if such emergency personnel reasonably believe that doing so is necessary to save life, prevent serious bodily harm, put out a fire, prevent a crime or apprehend an apparent law breaker, or avert or control a public catastrophe. The Association, Members and the Declarant each agree to hold the City and its officers, governing board members, and emergency personnel harmless from and

against all damages and losses, costs and liabilities incurred by it or them as a result of the breaking of any Security Gate as provided herein.

**ARTICLE IX
TREE CONSERVATION AREAS
[CODE SECTION 10-2082.14(e)]**

If any tree conservation area shown on any recorded plat of the Property has been conveyed to an Association, the provisions of Article I and Article II of this City Code Covenant shall apply to the Property. In all other instances, a tree conservation easement for the protection, preservation, Maintenance, care and planting of trees situated within any tree conversation areas shown on any recorded plat of the Property is hereby established over the tree conservation areas in favor of each Lot and its Owners. No tree disturbing activity, as defined in Part 10, Chapter 2 of the Code, shall be permitted in tree conservation areas in violation of the Code. Any tree disturbing activity undertaken in any tree conservation area shown on any recorded plat of the Property without a permit from the City or otherwise in violation of the Code is a violation of the Code and may result in significant financial consequences to the Owner and to the Person responsible for such tree disturbing activity. Owners and their agents may, however, with the consent of the City enter tree conservation areas to perform active tree protection measures (as defined in the Code), to plant trees, to remove dead or diseased trees, or to plant replacement trees.

**ARTICLE X
OTHER REQUIREMENTS ASSOCIATED WITH APPROVAL OF THE
DEVELOPMENT BY THE CITY OF RALEIGH**

**ARTICLE XI
RIGHTS GRANTED TO CITY OF RALEIGH**

Recognizing the irreparable consequences to the City of Raleigh of non-compliance with the obligations of this City Code Covenant, Declarant hereby grants the City of Raleigh the right to seek, in any court of appropriate jurisdiction, judicial action for injunctive relief and specific performance of any of the obligations established within this City Code Covenant. This right of the City shall not limit any other remedies or enforcement options available to the City under the Code, any other applicable law, or the Declaration of Maintenance Covenant and Protection Easements for Stormwater Control Facilities.

**ARTICLE XII
SUBORDINATION**

[] DECLARANT REPRESENTS AND WARRANTS THAT NO SUPERIOR DEEDS OF TRUST, MORTGAGES OR LIENS ENCUMBER OR AFFECT THE **EXHIBIT A** PROPERTY AT THE TIME OF THE EXECUTION AND RECORDING OF THIS CITY CODE COVENANT, EXCEPT FOR THE FOLLOWING, AND DECLARANT WILL DEFEND TITLE AGAINST SUCH CLAIMS EXCEPT AS OTHERWISE EXLCUED AS FOLLOWS:

- (1) PROPERTY TAX LIENS FOR THE CURRENT TAX YEAR (unless the same has, in fact, been paid as of the date of Declarant's execution of this City Code Covenant).
- (2) GOVERNMENTAL IMPROVEMENT ASSESSMENT LIENS (if any).

CHECK ANY OF THE FOLLOWING THAT ARE APPLICABLE:

____(3) LIENS THAT ARE NOT BEING SUBORDINATED TO THIS CITY CODE COVENANT BY THE BENEFICIARY AND TRUSTEE OF THE DEED OF TRUST, THE MORTGAGEE, OR THE LIEN HOLDER BY EXECUTION OF THIS CITY CODE COVENANT, AND WITH RESPECT TO SUCH LIENS DECLARANT HAS AN OWNER'S POLICY OF TITLE INSURANCE THAT EITHER INSURES THE **EXHIBIT A** PROPERTY WITHOUT EXCEPTION FOR SUCH ENCUMBRANCE OR THAT PROVIDES AFFIRMATIVE COVERAGE WITH RESPECT TO SUCH ENCUMBRANCE AND, IN SUCH EVENT, A COPY OF SUCH TITLE INSURANCE POLICY HAS BEEN GIVEN TO THE CITY.

X (4) LIENS THAT ARE BEING SUBORDINATED TO THIS CITY CODE COVENANT BY THE BENEFICIARY AND TRUSTEE OF THE DEED OF TRUST, THE MORTGAGEE, OR THE LIEN HOLDER BY THE EXECUTION OF THIS CITY CODE COVENANT, WHICH LIENS ARE RECORDED IN THE REGISTRY AS FOLLOWS:

BOOK 15680, PAGE 328, Wake COUNTY

BOOK 15879, PAGE 1208, Wake COUNTY

CHECK IF APPLICABLE:

N/A DECLARANT REPRESENTS AND WARRANTS THAT, AS TO ANY PORTION OF THE DEVELOPMENT LAND DESCRIBED ON **EXHIBIT B** WHICH IS NOT OWNED BY DECLARANT, NO SUPERIOR DEEDS OF TRUST, MORTGAGES, OR LIENS ENCUMBER OR AFFECT SUCH DEVELOPMENT AT THE TIME OF THE EXECUTION AND RECORDING OF THIS CITY CODE COVENANT, EXCEPT FOR THE FOLLOWING, AND DECLARANT WILL DEFEND TITLE AGAINST SUCH CLAIMS EXCEPT AS OTHERWISE EXCLUDED AS FOLLOWS:

- (a) PROPERTY TAX LIENS FOR THE CURRENT TAX YEAR (unless the same has, in fact, been paid as of the date of Declarant's execution of this City Code Covenant).
- (b) GOVERNMENTAL IMPROVEMENT ASSESSMENT LIENS (if any).

CHECK ANY OF THE FOLLOWING THAT ARE APPLICABLE:

____(c) LIENS THAT ARE NOT BEING SUBORDINATED TO THIS CITY CODE COVENANT BY THE BENEFICIARY AND TRUSTEE OF THE DEED OF TRUST, THE

MORTGAGEE, OR THE LIEN HOLDER BY EXECUTION OF THIS CITY CODE COVENANT, AND WITH RESPECT TO SUCH LIENS DECLARANT HAS AN OWNER'S POLICY OF TITLE INSURANCE THAT EITHER INSURES THE **EXHIBIT B** PROPERTY WITHOUT EXCEPTION FOR SUCH ENCUMBRANCE OR THAT PROVIDES AFFIRMATIVE COVERAGE WITH RESPECT TO SUCH ENCUMBRANCE AND, IN SUCH EVENT, A COPY OF SUCH TITLE INSURANCE POLICY HAS BEEN GIVEN TO THE CITY.

_____(d) LIENS THAT ARE BEING SUBORDINATED TO THIS CITY CODE COVENANT BY THE BENEFICIARY AND TRUSTEE OF THE DEED OF TRUST, THE MORTGAGEE, OR THE LIEN HOLDER BY THE EXECUTION OF THIS CITY CODE COVENANT, WHICH LIENS ARE RECORDED IN THE REGISTRY AS FOLLOWS:

BOOK _____, PAGE _____, _____ COUNTY

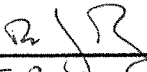
BOOK _____, PAGE _____, _____ COUNTY

[Signature pages follow this page.]

IN WITNESS WHEREOF, the Declarant and the Association have caused this City Code Covenant to be executed in its respective name by its duly authorized official, on the date indicated in the acknowledgment of such execution.

Declarant:

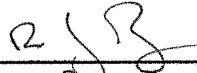
~~EV~~
~~ELD~~-5401 NORTH, L.L.C., a North Carolina limited liability company

By: 
Name: Ric J. ROJAS

Title: Manager

Association:

5401 North Residential Owners Association, Inc., a North Carolina non-profit corporation

By: 
Name: Ric J. ROJAS
Title: President

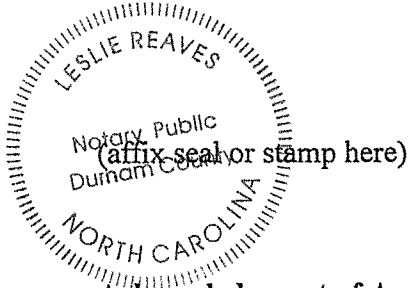
Acknowledgment of Declarant

WAKE County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Ric Rojas

Date: July 1, 2015



Leslie Reaves
Notary Public
Printed/Typed Name: LESIE REAVES
My Commission Expires: OCTOBER 5, 2018

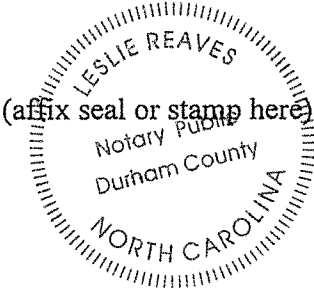
Acknowledgment of Association

WAKE County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

Ric Rojas

Date: July 1, 2015

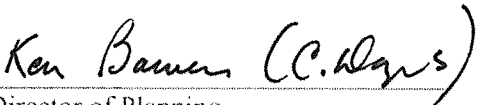


Leslie Reaves
Notary Public
Printed/Typed Name: LESIE REAVES
My Commission Expires: OCTOBER 5, 2018

Approval of the City of Raleigh

The signature below indicates that the City of Raleigh Planning Department has been presented with this City Code Covenant form associated with the case file number referenced above and that the Planning Department has verified that the property description and project details shown in this instrument match the application submitted to the City Planning Department for review and approval. The signature below is not and shall not be interpreted as a representation that the instrument complies with the applicable provisions of the City of Raleigh Code of Ordinances (the "Code") or the North Carolina General Statutes or that the content of the instrument has been reviewed other than for consistency with the application under consideration within the City of Raleigh's development review process.

The signature below shall not be construed as a waiver, variance, or indication of compliance with any applicable provision of the Code and any violation of the Code within this instrument shall remain subject to the full enforcement remedies available to the City. It is the responsibility of any owner of the property encumbered by the annexation instrument and their counsel (if applicable) to ensure that the annexation instrument complies with all applicable requirements of law, including, but not limited to, the Code and the North Carolina General Statutes, and any other requirements of annexation expressed in the Declaration of Covenants.

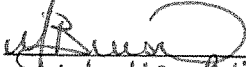

Director of Planning

SUBORDINATION OF PRIOR DEED OF TRUST

The Property described on **Exhibit A** is subject to a Deed of Trust recorded in the Wake County, North Carolina Registry in Book 15680, Page 328, as modified in Book 15879, page 1208, and the Trustee (or Substitute Trustee) and Beneficiary (or the current holder of the indebtedness secured said Deed of Trust if different from the Beneficiary named therein) under said Deed of Trust, have joined in the execution of this City Code Covenant for the sole purpose of expressing their consent hereto and of binding, subjecting and subordinating said Deed of Trust and their interest in the Property described on **Exhibit A** to the terms of this City Code Covenant.

Beneficiary:

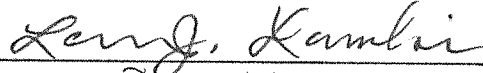
First NBC Bank

By: 
Name: Michelle Boisson
Title: Vice President


Haley A. Tamburello


DIODENES REYES
Trustee:

Fidelity National Title Insurance Company

By: 
Name: Laura J. Hamkin
Title: Title Counsel

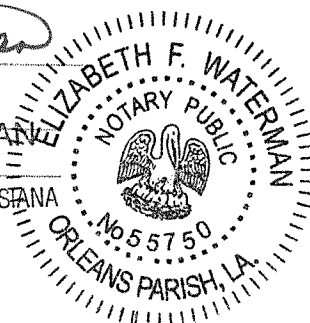
Acknowledgment of Deed of Trust Beneficiary (if applicable):

Orleans Parish, Louisiana EJW
~~County, North Carolina~~

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Michelle Buisson

Date: 6/24/15
(Stamp or Seal)

Elizabeth F. Waterman
Notary Public
Printed/Typed Name: ELIZABETH F. WATERMAN
My Commission Expires: NOTARY PUBLIC
PARISH OF ORLEANS, STATE OF LOUISIANA
MY COMMISSION IS FOR LIFE
NOTARY ID 55750



Acknowledgment of Deed of Trust Trustee (if applicable):

Wake County, North Carolina

Wake County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Laura J. Lenkin

Date: 6/30/15
(Stamp or Seal)

[Signature]
Notary Public
Printed/Typed Name: D. Donovan Merritt
My Commission Expires: 11/9/2019

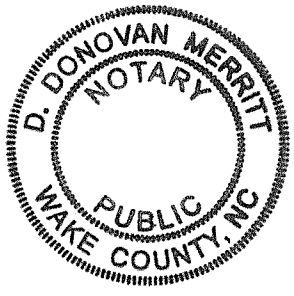


Exhibit B Property (If Any)

We the undersigned owners of **Exhibit B** (other than the Declarant) with the execution of the foregoing hereby consent to the application of Article IV of this City Code Covenant to all of the Exhibit B land.

By: _____
Name: _____
Title: _____

Acknowledgment of Exhibit B Owners

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

_____.

Date: _____

(affix seal or stamp here)

Notary Public
Printed/Typed Name: _____
My Commission Expires: _____

SUBORDINATION OF PRIOR DEED OF TRUST

The Property described on **Exhibit B** is subject to a Deed of Trust recorded in the _____ County, North Carolina Registry in Book _____, Page _____, and the Trustee (or Substitute Trustee) and Beneficiary (or the current holder of the indebtedness secured said Deed of Trust if different from the Beneficiary named therein) under said Deed of Trust, have joined in the execution of this City Code Covenant for the sole purpose of expressing their consent hereto and of binding, subjecting and subordinating said Deed of Trust and their interest in the Property described on **Exhibit B** to the terms of this City Code Covenant.

Beneficiary:

By: _____
Name: _____
Title: _____

Trustee:

By: _____
Name: _____
Title: _____

Acknowledgment of Exhibit B Deed of Trust Beneficiary (if applicable):

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____.

Date: _____

(Stamp or Seal)

Notary Public
Printed/Typed Name: _____
My Commission Expires: _____

Acknowledgment of Exhibit B Deed of Trust Trustee (if applicable):

_____ County, North Carolina

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: _____.

Date: _____

(Stamp or Seal)

Notary Public
Printed/Typed Name: _____
My Commission Expires: _____

Attorney Certification

I, Alison R. Cayton, an attorney licensed to practice law in the State of North Carolina, certify to the City of Raleigh that this City Code Covenant has been prepared in accordance with the instructions provided by the City of Raleigh, that I am familiar with the requirements of Part 10 of the Raleigh City Code of Ordinances, and have prepared this instrument in accordance with the requirements of Part 10 of the Raleigh City Code of Ordinances.

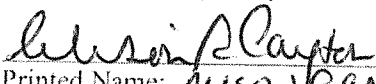
 NC Bar #: 18398
Printed Name: ALISON R. CAYTON
Attorney at Law

EXHIBIT A

All Lots as shown on the subdivision plat recorded in Book of Maps 2015, pages 1055 - 1060
Wake County Registry

EXHIBIT B
DESCRIPTION OF DEVELOPMENT LAND

Pursuant to that deed recorded in Book _____ Page _____, _____ County Registry
_____ is the owner of the Exhibit B real property. Said property is described as
follows:

N/A