



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Govington
DURHAM COUNTY, NC
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INSTRUMENT # 2006030122

**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE
EVERWOOD PROPERTY OWNERS ASSOCIATION, INC.**

*Return to: Walker + Lamb
P.O. Box 51549 Durham NC 27717*

THIS DECLARATION is made on the date hereinafter set forth by **OLD CHAPEL PROPERTIES, LLC**, a North Carolina limited liability company (hereinafter referred to as "Declarant");

WITNESSETH:

WHEREAS, Declarant is the owner of that certain 23.131-acre tract of land located in, Durham County, North Carolina, more fully described in the deed recorded in Book 4885, Page 255, Durham County Registry and Plat Book 100, Page 194, Durham County Registry, to which reference is made for a more particular description;

WHEREAS, Declarant desires to create on such property a residential community of single-family homes to be known as Everwood Subdivision (hereinafter sometimes referred to as "Everwood" or the "Subdivision");

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area and to provide a vehicle for ensuring that the storm water drainage system and facilities for the Subdivision are properly maintained, and, to that end, desires to subject all of the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the **EVERWOOD PROPERTY OWNERS ASSOCIATION, INC.**, for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the Property described hereinafter shall be owned, held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I – DEFINITIONS

Section 1. "Architectural Review Board" or "ARB" shall mean and refer to that permanent committee of the Association, created for the purpose of establishing and enforcing criteria for the construction of Improvements within the Property.

Section 2. "Association" shall mean and refer to the EVERWOOD PROPERTY OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 3. "Bylaws" shall mean and refer to all Bylaws adopted by the Association which are set forth in Exhibit C.

Section 4. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee, by easement or otherwise, for the common use and enjoyment by the Owners of Lots within the Property. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use as set forth herein. The Common Area shall also mean those stormwater facilities on the Sites designated in the agreements recorded in Book 5211, Page 552, Book 5211, Page 561, and Book, 5211, Page 570, Durham County Registry, when such Sites are transferred to the Association.

Section 5. "Declarant" shall mean and refer to OLD CHAPEL PROPERTIES, LLC, a North Carolina limited liability company. It shall also mean and refer to any person, firm or corporation to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Durham County Registry.

Section 6. "Declarant Control" shall mean and refer to that period of time during which Declarant is entitled to three (3) votes for each Lot shown on the Master Plan. The period of Declarant Control shall begin as of the date hereof and shall continue until the happening of any of the following events, whichever occurs later:

- (1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots, or
- (2) December 31, 2009, or

(3) When, in its discretion, Declarant so determines.

Section 7. "Improvements" mean and refer to all structures of any kind, including, without limitation, any building, fence, wall, sign, mailbox, paving, grading, parking area, building addition, pool, alteration, screen enclosure, sewer, drain, disposal system, satellite dish, antenna, electronic and other signaling device, decorative building, landscaping or landscape device (including existing and planted trees and shrubbery) or object.

Section 8. "Lot" shall mean and refer to any parcel of land within the Property intended to be conveyed to an Owner and thereafter owned, held and conveyed as a fee simple property and upon which there is to be constructed a single residential dwelling unit and appurtenant structures such as garages and gazebos.

Section 9. "Master Plan" shall mean and refer to the Final Plat Subdivision and Right of Way Declaration for Phase One of Everwood Subdivision, prepared by Holland Land Surveying dated January 5, 2006, recorded at Plat Book 172, Page 311, and Plat Book 172, Page 314, Durham County Registry, a copy of which is attached hereto as Exhibit B, as the same may be amended from time to time in accordance with the provisions of Article IX, Section 7.

Section 10. "Member" shall mean and refer to all members of the Association.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 12. "Person" shall mean an individual, a trust, an estate, or a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or another entity.

Section 13. "Property" shall mean and refer to that certain real property which has been submitted pursuant to this Declaration, and is more particularly described on Exhibit A attached hereto and incorporated herein. In the event Declarant withdraws any portion of the property described on Exhibit A in accordance with Article IX Section 8, "Property" shall thereafter refer to the portion of the property described on Exhibit A which has not been withdrawn and continues to be subject to this Declaration.

ARTICLE II -- ARCHITECTURAL REVIEW BOARD AND APPEARANCE CONTROL

Section 1. Architectural Review Board. It is the intent of the Declarant to create a general plan and uniform scheme of development the Property and to create within the Property a residential community of high quality. Accordingly, the Architectural Review Board (the "ARB") shall have the right to approve or disapprove all architectural, landscaping and locating of any proposed Improvements, as well as the general plan for development of all Lots within the

Property. The ARB may in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other governmental codes. The procedures of the ARB shall be as set forth below:

(a) Members. The ARB shall initially consist of three (3) or more Persons designated by Declarant. Upon the termination of Class B membership in accordance with Article IV, Section 2, or at such earlier date as Declarant may decide, the Declarant shall assign to the Association the rights, powers, duties and obligations of the ARB. Upon this assignment, the Board of Directors shall appoint three (3) or more persons as the members of the ARB and will determine who will serve as the chairman of the ARB.

(b) Permanent Committee. The ARB shall be a permanent committee of the Association and shall administer and perform the architectural and landscape review and control functions of the Association and the Associations. No Improvements shall be constructed, erected, removed, or planted, nor shall any addition to or any change, replacement or alteration be made, unless and until the approval thereof shall be obtained in writing from the ARB.

(c) Approval of ARB Required for all Improvements. Each Owner or builder (subsequently referred to as an applicant) shall submit a preliminary application to the ARB with respect to any proposed Improvements or Improvements that he may contemplate. The preliminary application shall include such information as may be required by the application form promulgated by the ARB. Prior to the commencement of any work on such Improvements, the plans and specifications therefore, including the identity of each contractor and subcontractor which is intended to be engaged for the construction of same, shall be subject to a final review and approval by the ARB. The ARB may also require, without limitation, submission of samples of building materials and colors proposed to be used, as well as requiring the location of the proposed Improvements to be staked out on the ground.

(d) Response of the ARB. No later than thirty (30) days after receipt of all information required by the ARB for final review (unless the applicant waives this time requirement), the ARB shall respond to the applicant in writing. The ARB shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in the ARB's sole discretion, for aesthetic or any other reasons. In approving or disapproving such plans and applications, the ARB shall consider the suitability of the proposed Improvements, and the materials of which the same are to be built, the site upon which such Improvements are proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ARB fails to respond within said thirty (30) day period (or such additional time as may be allowed by the applicant), the plans and specifications shall be deemed approved by the ARB.

(e) Expiration of Approval. In the event commencement of construction of a proposed Improvement does not occur within five (5) months of approval, the approval will terminate and the Improvement will be treated as if originally disapproved. Unless specific waiver is approved by the ARB, the construction of any Improvement shall be completed within eighteen (18) months after commencement of construction. For purposes of this Section,

"commencement of construction" shall mean and refer to the first to occur of any of the following events in connection with the proposed Improvement: the clearing of the site, the commencement of significant excavation; the assembling of significant construction material at the site, the demolition or removal of an existing structure at the site, the preparation of the foundation; or the erection of part or all of the structure.

(f) Qualifications, Conditions of Approval. Upon approval by the ARB of any plans and specifications submitted to the ARB, the ARB shall notify the applicant in writing, which notification shall set forth any qualifications or conditions of approval. In the event that the ARB disapproves any plans and specifications submitted to the ARB, the ARB shall so notify the applicant in writing, stating the grounds upon which such disapproval is based. Any applicant may request a formal meeting with the ARB to review the plans and specifications disapproved, the meeting to take place no later than thirty (30) days after written request for such meeting is received by the ARB (unless applicant waives this time requirement in writing). The ARB shall make a final written decision no later than thirty (30) days, the plans and specifications shall be deemed approved. Upon continued disapproval, the applicant may appeal the decision of the ARB to the Board of Directors of the Association within thirty (30) days of the ARB's written review and disapproval. Review by the Board of Directors shall make a final decision no later than thirty (30) days after such meeting. In the event the Board of Directors fails to provide such written decision within said thirty (30) days of the ARB's decision, such plans and specifications shall be deemed approved. The decision of the Board of Directors shall be final and binding upon the applicant, his heirs, legal representatives, successors and assigns; provided, however, that no Improvements shall be erected or shall be allowed to remain which violates any of the covenants, conditions or restrictions contained in this Declaration, the Declaration of Covenants or which violates any zoning or building ordinance or regulation.

(g) Architectural Elements Subject to Review. The ARB is empowered to publish or modify from time to time, design and development standards for the entire Everwood property or for one or more of the lots including but not limited to the following:

- (i) Roof and roof design;
- (ii) Fences, walls and similar structures;
- (iii) Exterior building materials and colors;
- (iv) Exterior landscaping;
- (v) Mail boxes, address numbers and exterior lighting;
- (vi) Building set back, side yards, sidewalks, pathways and trails;
- (vii) Plumbing and wastewater fixtures and systems.

The design and development standards may also include specific site, landscaping and building plans and specifications. The nature and type of Improvements that may be made by an Owner may be limited to those included in the plans and specifications designated by the ARB.

(h) Liability of ARB and Declarant. Neither the Declarant, the directors or officers of the Association, the members of the ARB, nor any person acting on behalf of any of them, shall be liable for any costs or damages incurred by and Owner or permanent committee within Everwood or any other party whatsoever, due to any mistakes in judgment, negligence or

any action of the ARB in connection with the approval or disapproval of plans and specifications. Each Owner and occupant of any property within Everwood agrees, as do their successors and assigns by acquiring title thereto or an interest therein, or by assuming possession thereof, that they shall not bring any action or suit against the Declarant, the directors or officers of the Association, the members of the ARB, or their respective agents, in order to recover any damages caused by the actions of the ARB. The Association shall indemnify, defend and hold the ARB and each of its members harmless from all cost, expenses and liabilities, including attorneys' fees, of all nature resulting by virtue of the acts of the ARB or its members. Neither any person acting on behalf of any of them, shall be responsible for any defects in any plans or specifications, nor for any defects in any Improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

Section 2. Residential Use. Each Lot shall be used solely and exclusively for residential purposes and no dwelling shall be erected or allowed to remain upon any Lot except one detached, single-family private residence. No mobile homes shall be placed or allowed to remain on any Lot.

Section 3. Required Land Area. No Lot may be subdivided by sale or otherwise so as to reduce the total area of the Lot as shown on any subdivision map of the Property recorded by Declarant, including, but not limited to that certain plat of survey recorded in Plat Book 172, Pages 311 and 314, Durham County Registry, provided, however, that Lot lines may be adjusted among Lots by Declarant or Owner subject to governmental approval provided that the total number of Lots shall not be increased.

Section 4. Utilities Easement. In addition to such easements as may be reserved on Master Plan, Declarant reserves an easement for and the right at any time in the future to grant a right-of-way and easement not more than ten (10) feet in width from any rear or side lot line and not more than five (5) feet in width from any front lot line for the purpose of drainage, underground or above ground installation, repair and maintenance of poles, street lights, lines, conduits, pipes and other equipment necessary to or useful in furnishing electric power, gas, sewer, cable and telephone service and any other utilities for or to the Lots. Such easement and right herein reserved along the front Lot line of any Lot shall be subject to the right of the Owner to locate and construct a driveway on his Lot across such easement area. This right shall be prior and superior to the front Lot line easement herein reserved and therefore, any holder of such easement shall have no right or easement to locate lines under such driveway or cause any disturbance thereto, unless such location or disturbance by the holder of such easement is a necessity. Accordingly, the holder of such easement is hereby charged with the affirmative duty to repair any damage to such driveway caused by any disturbance to at least as good a condition as existed prior to such disturbance. Sight easements, if any, as shown on the plat recorded in Plat Book 164, Page 370, Durham County Registry are hereby reserved by Declarant.

Section 5. Sanitary Sewer. No residential building structure shall be erected or allowed to remain on any Lot that is not connected to a public sanitary sewer system.

Section 6. Completion of Construction. When the construction of any building or other structure is once begun, work thereon must be prosecuted diligently and must be completed within a reasonable time not exceeding twelve (12) months from the date of commencement of construction; provided, however, the Declarant may modify such requirement in cases of hardship.

Section 7. Erosion Control. During the period of Lot grading and construction of the residential building structure and thereafter, each Owner shall exercise and maintain such erosion control measures, including the erection of silt fences, as may be required by the Declarant in order to minimize erosion and runoff. Compliance with the applicable erosion control ordinance shall not constitute automatic approval by Declarant, and Declarant reserves the right to impose requirements and standards in excess of those required by law.

ARTICLE III -- USE RESTRICTIONS

Section 1. Use of Property. No portion of the Property shall be used except for residential purposes incidental or accessory thereto. This provision shall not be construed so as to prohibit domestic or health care personnel who work and provide on-premises services to or for the Owner, members of his family, his lawful tenants or contract purchasers from being provided with a place of residence within any residence situated on a Lot.

Section 2. Clearing and Removal of Trees. In reviewing building plans, the ARB shall take into account the natural vegetation, such as trees and shrubs, located on or near a lot, and shall encourage the Owner to incorporate them in his landscaping plan. No Lot may be cleared for any reason without the prior written approval of the ARB. No trees of four (4) or more inches in diameter at two (2) feet above the natural grade shall be cut or removed without the prior written approval of the ARB. When such a tree is removed the Owner will replace it with a similar tree of equal value on another portion of the lot, if so directed by the ARB.

Section 3. Landscaping. Landscaping for all Property, including lots, shall be subject to ARB approval.

Section 4. Accessory Buildings. No accessory buildings or out-buildings of any kind will be permitted on any Everwood Lot.

Section 5. Temporary Structures. No structure or object of a temporary character, such as, but not limited to, trailers, construction trailers, shacks, sheds and garages, barns, or other temporary or other outbuildings shall be erected, kept or maintained on any Lot for any use whatsoever, either temporarily or permanently, except that a temporary construction office may be used on a building site when approved, in advance, by the ARB. The architectural site plan shall indicate the location of such temporary structure and shall include drawings reflecting the appearance of same.

Section 6. Maintenance of Lots. All Lots shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard

allowed to exist. All Lots and all areas between Lot lines and pavements shall be maintained by the Owners in the manner required by the Association or the ARB. In the event an Owner fails to maintain his lot as aforesaid, the Association shall have the right, exercisable in its sole discretion, to mow, burn or clear any weeds, grass, underbrush or unsightly debris and/or growths from a Lot deemed by the Association or the ARB to be a health menace, fire hazard or a detraction from the aesthetic appearance of Everwood provided, however, that at least seven (7) days prior notice shall be given by the Association to the Owner of such Lot before such work is done by the Association. Such entry by the Association shall not be deemed a trespass. The Association may also, at the request of any Lot Owner, including the Declarant, and for any agreed charge to the Lot Owner, maintain any undeveloped Lot, so as to prevent such undeveloped Lots from becoming unsightly as defined hereinabove. In the event the Association, after such notice or request, caused the subject work to be done, then, in that event, the cost of such work, together with interest thereon at the maximum rate permitted by the civil usury laws of the State of North Carolina shall be charged to the Owners and shall become a lien on the subject Lot, which lien shall be effective, have priority and be enforceable pursuant to the procedures set forth in Article 6 of this Declaration.

Section 7. Fences, Walls and Hedges. The composition, location and height of any fence, wall or hedge to be constructed on any Lot shall be approved in advance by the ARB. Fences of a standard design for Everwood shall be used. The ARB shall require the composition of any fence, wall or hedge to be consistent with the material used in the surrounding Residences and other fences, if any. Chain link fencing may not be used under any circumstances except for Everwood outer boundary fencing erected by the Declarant or the Association. No fencing of any kind will be permitted in the front yard of any Lot.; fences on side yards will be considered on a Lot by Lot basis by the ARB

Section 8. Swimming Pools. Any swimming pool or hot tub to be constructed in the ground and subject to the requirements of the ARB, which shall include, but not limited to, the following:

- (a) Composition to be of material thoroughly tested and accepted by the industry for such construction;
- (b) Full compliance with the North Carolina Residential Building Code and the Durham County building and zoning ordinances;
- (c) Swimming pool, pool decks, fencing, screen enclosures, patio and terrace slabs may not extend into the minimum yard setback areas, except by special permit from ARB;
- (d) Pools may be heated only through methods approved by ARB;
- (e) The Owners of swimming pools may be required to maintain liability insurance, agree to indemnify the Association, provide for draining the pool, and comply with other rules and standards established by the ARB.

Section 9. Lighting. Landscape, recreation, security and any other exterior lighting shall be designed so as to not be an annoyance to the surrounding residents. All outdoor lighting shall be designed, installed, and maintained so that the source of the light (the bulb) cannot be seen off premises.

Section 10. Antennae. No radio, television or other electronic antenna, aerial or satellite receiving dish, or other reception or transmission device may be erected or maintained anywhere on the Property or on the exterior of any residence (unless installed by the Declarant or the Association), without the prior written approval of the ARB.

Section 11. Boats, Trailers and Motor Vehicles. The Association may adopt rules and regulations regarding parking of vehicles. The Association may also regulate the parking and storage of commercial vehicles, boats, boat trailers, buses, motor homes, trucks, camping trailers, vans or other similar vehicles, whether of a recreational nature or otherwise. Only private passenger vehicles that are properly licensed may be parked at curbside. Vehicles of repairmen, deliver men and moving vans may be parked at curbside or on the driveways and private parking areas of a Lot for no longer than twenty four (24) hour period. The Association shall have the right to authorize the towing of any vehicles which are in violation of these provisions, or any traffic regulations promulgated by the Association, and to collect the cost thereof from Owners, as an individual Assessment, pursuant to Article VI below.

Section 12. Animals and Pets. No stable, poultry house or yard, rabbit hutch or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature of classification whatsoever be kept or maintained on any Lot without the express written permission of the Declarant or ARB. However, a reasonable number of household pets shall be permitted, provided they are not raised for commercial purposes.

Section 13. Prohibited Activities. Noxious, offensive or loud activities shall not be carried on upon any Lot. Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood.

Section 14. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Property shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

ARTICLE IV -- MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Ownership of a Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their

Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant and by any builder(s) who or which acquired such Lot(s) from the Declarant for the purpose of constructing a residence thereon and which have not been converted to Class A Lots as provided in subparagraphs (1), (2) or (3) below. Declarant and such builder(s) shall be entitled to three (3) for each Class B Lot owned by them.

The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the earlier of the following to occur:

- (1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots, or
- (2) December 31, 2009, or
- (3) When, in its discretion, Declarant so determines.

Section 3. Suspension of Voting Rights. The Association shall have the right to suspend the voting rights of an Owner who is a Class A Member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations. The Association shall have the right to suspend the voting rights of the Class B Member with respect to any Lot for any period during which any assessment against his Lot remains unpaid. Such suspension shall not affect the voting rights of the Class B Member with respect to any Lots as to which assessments are current or the voting rights with respect to prospective Lots (as to which no assessments are due).

ARTICLE V -- PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article V and by the Rules and Regulations adopted by the Members and/or the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use of and access to, from and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot, subject to:

(a) the right of the Association to charge reasonable admission and other fees for the use of any facilities hereafter situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Property and to their families, tenants and guests, as provided in Section 2 of this Article V.

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

(c) the right of the Association to 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 the Members entitled to at least three-fourths (3/4) of the votes appurtenant to each Class of Lots agree to such dedication, sale of transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Association, without the consent of the Members, from granting easements upon, over, under and across the Common Area for the purpose of installing and maintaining sewage, utility (including CATV) and/or drainage facilities, when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Property. Subject to the provisions of subparagraph (e) below, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Durham or to another non-profit corporation organized for similar purposes.

(d) the right of the Association, with the assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association, with the consent of the City of Durham, and, if required, of the Federal Housing Administration and/or Veterans Administration, to exchange all or part of the Common Area for other property and consideration of like value and utility, which exchange may be approved by the Board of Directors without the consent of the Members.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in Durham County, North Carolina.

(b) Tenants. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy a residence within the Property, or a portion of said residence, as their principal residence in Durham County, North Carolina.

(c) Guests. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that it will convey title to the Common Area to the Association prior to the conveyance of the first Lot within such phase or section to an Owner. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Property

for the purpose of constructing such improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens, except utility and drainage easements of record or shown on the recorded plats of the Subdivision. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Common Area Easements. Declarant will, prior to the conveyance of the first Lot to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot on which a Common Area easement lies. It is the intent of the Declarant that, unless otherwise approved by the Declarant or the Association as provided in Article VII of this Declaration, the easement area shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or easements as is attributable to a Common Area easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within the Common Area; (2) erect gates, fences, or other structures on the Common Area; (3) place any garbage receptacles on or in the Common Area; (4) fill or excavate the Common Area or any part thereof; or (5) plant vegetation or otherwise restrict or interfere with the use, maintenance, and preservation of the Common Area.

(b) Rights and Responsibilities of the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners within the Subdivision and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners within the Subdivision; (ii) upon an affirmative vote of the Board of Directors, procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Common Area easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

ARTICLE VI -- COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot that it owns within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments which are unpaid when due, together interest and late charges set forth in Section 8 of this Article V and all costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or

charge, together with interest and costs of collection, including reasonable attorney's fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or the Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property and, in particular, for : (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) repair and reconstruction of improvements on the Common Area, including storm water infiltration devices and other storm water drainage facilities constructed on or serving the Property, including but not limited to, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance in accordance with the Section 4(b) of this Article IV and Section 9 of Article IX of this Declaration; (v) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; and (vii) such other needs as may arise.

Section 3. Computation of Assessment. It shall be the duty of the Board of Directors of the Association, at least thirty (30) days prior to the meeting at which the budget shall be presented to the Members, to prepare a budget covering the estimated costs of operating the Association during the coming year, including projected costs for all of the matters set forth in Section 2 above. The budget and assessments shall become effective unless disapproved at the meeting by a vote of the Members representing at least a majority of the votes of each class of Members.

(a) Initial Assessment. Assessments per Lot for the initial year of operation of the Association shall not exceed One Hundred Dollars (\$100.00) per year, payable in advance on July 1 of each year. Thereafter, for the lesser of two (2) years or the period during which the Class B membership exists, assessments per Lot shall not increase by more than ten (10%) per cent per year over the previous year's assessments. During the period when assessments are subject to the maximums provided herein, Declarant shall pay actual costs of operation of the Association in excess of the assessments provided for herein.

(b) Subsequent Assessments. The Board of Directors may fix the annual assessment at any amount not in excess of the maximum (including zero).

(c) Assessments for Class B Lots. A Class B Lot (i.e., a Lot owned by the Declarant or a builder who purchased such Lot from the Declarant) shall be assessed at the Class B rate until a dwelling constructed thereon is occupied as a residence pursuant to a certificate of occupancy issued by the appropriate governmental agency; thereafter it shall be assessed at the Class A rate. Such Lot shall remain a Class B Lot for all other purposes as long as it is owned by the Declarant or such builder. It is the intent of the foregoing that a Lot containing a dwelling owned by the Declarant or a builder and used as a model or sales center, and not as a residence, shall be assessed at the Class B rate, but that such Lot shall be assessed at the Class A rate even though owned by the Declarant or a builder if it is occupied as a residence.

(d) Change of Lot Status. In the event that Class B Lots are converted to Class A Lots, or Class A Lots are reconverted to a Class B Lots, the assessment with respect to such Lots shall be prorated and charged according to their class as of the date of each conversion and reconversion.

(e) Continuation of Assessment. Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by the Board.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the assent of the Class B Member and not less than two-thirds (2/3) of the votes cast by the Class A Members, in person or by proxy, at a meeting duly called for this purpose, and shall be in the ratios provided in Section 3(c) of this Article.

Section 5. Assessment Rate; Collection Period. Annual and special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, quarterly or monthly basis, as determined by the Board of Directors.

Section 6. Notice of 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 of this Article VII shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of members or of proxies entitled to cast fifty percent (50%) of the votes appurtenant to each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Amount of Initial and Subsequent Annual Assessments; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence

as to all Lots in any phase on the first day of the month following the recording of the plat of that phase. Unless a lower amount is set by the Board of Directors, the first annual assessment shall be due in full upon the sale of a Lot to an Owner and shall not be prorated according to the number of months remaining in the assessment year.

At least twenty-five (25) days before July 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least fifteen (15) days before July 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 8. Effect of Nonpayment of Assessments; Remedies. Any assessment not paid within ten (10) days after the due date shall incur such late charges as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of a Lot pursuant to such a foreclosure or a mortgage or deed of trust shall extinguish the lien of such assessments as to the payment thereof which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VII – RIGHTS OF LENDERS

Section 1. Books and Records. Any owner or holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this

Declaration, the Articles of Incorporation, By-laws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the owner or holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan;

(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and/or

(c) Any proposed action that requires the consent of a specified percentage or owners or holders of first mortgages on the Lots.

Section 3. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the Owners and holders of the first deeds of trust on Lots located within the Property have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, sub-divide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Durham or to another non-profit corporation for the aforementioned purposes. Nothing herein shall be deemed to prohibit the Association, with the consent of the City of Durham, from exchanging Common Area for other property as provided in Section 1(e) of Article V of this Declaration, or to require the approval of such exchange by the holders of first deeds of trust on the Lots.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

Section 4. Payment of Taxes and Insurance Premiums. The owners or holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay

overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

ARTICLE VIII -- EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities, and other public utility installations are reserved as shown on the recorded plats of the Property. The Association may reserve or grant easements over the Common Area as provided in Article V, Section 1, of this Declaration. Within any such easement herein provided, no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right of ingress, egress and regress on, over and under the Property to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right, expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and otherwise restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot within the Property for the benefit of applicable governmental agencies for: installing, removing and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

Section 3. Easement and Right of Entry for Repair Maintenance and Reconstruction. If any 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 work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

ARTICLE IX -- GENERAL PROVISIONS

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

Section 2. Severability. Invalidity of any one of these 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 3. Term; Amendment. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots, and thereafter by an instrument signed by the Owners of not less than fifty percent (50%) of the Lots. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article VII, by the Federal Housing Administration or Veterans Administration, and is recorded in the office of the Register of Deeds of Durham County.

Section 4. FHA/VA Approval. In the event that Declarant has arranged for and provided purchasers of Lots with FHA-insured or VA-guaranteed mortgage loans, then, as long as any Class B Lot exists, as provided in Article II hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional property, mortgaging of Common Area, dedication or otherwise deeding of Common Area to persons other than the Association, and amendment of this Declaration.

Section 5. Non-Liability of the City. The City of Durham shall not be responsible for failing to provide any emergency or regular fire, police or other public service to the Property, any Lot, or any Owner or occupant when such failure is due to the lack of access to the Property or any Lot therein due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

Section 6. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total lot area shown on the recorded plats of the Subdivision, except by and with the consent of the Declarant and, if required, by the City of Durham.

Section 7. Declarant's Right To Change Development. With the approval of the City of Durham, and subject to such terms and conditions as the City of Durham may impose, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change lot types and reallocate lots within, and withdraw real property

from the Subdivision or otherwise modify the Master Plan. In the event of such modification, Declarant shall record an amendment or supplement to this Declaration showing the changes.

Section 8. Withdrawal of Property. Notwithstanding any other provision of this Declaration, in the event Declarant elects in its sole discretion not to develop a portion of the property described in Exhibit A as part of the Property, Declarant may withdraw portions of the property described in Exhibit A from this Declaration at any time before construction of Lots is commenced upon the portion to be withdrawn (the "Withdrawn Parcel"), by recording an amendment to this Declaration withdrawing the Withdrawn Parcel. Upon Withdrawal, the Withdrawn Parcel shall cease to be part of the Property and shall no longer be subject to this Declaration, provided that the Withdrawn Parcel shall continue to be subject to any easements previously dedicated to Owners or the Association.

Section 9. Insurance. The Association may procure and maintain adequate liability insurance covering the Association, in an amount deemed reasonable by the Board of Directors. The Association may also procure and maintain adequate hazard insurance on real and personal property owned by the Association and may procure and maintain officers' and directors' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article IV of this Declaration.

Section 10. Amendment. Prior to the sale of the first Lot, Declarant may amend this Declaration. During the period of Declarant Control after the sale of the first Lot, the Declarant may amend this Declaration so long as it still owns part of the Property and so long as the amendment has no adverse effect upon any right of any Owner; thereafter and otherwise, this thereof, of Members representing seventy-five percent (75%) of each class of Members and of the total votes of the Association, including seventy-five percent (75%) of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the public records of Durham County, North Carolina.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 11. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rules against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 12. No Partition. Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property shall have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Section 13. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association prior to extinguishment of the Declarant Control, shall contain a termination clause permitting the Association to terminate the contract or lease at any time after extinguishment of Declarant Control, without cause and without penalty, upon not less than thirty (30) days nor more than ninety (90) days written notice.

ARTICLE X – DECLARANT'S RIGHTS

Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Durham County, North Carolina.

Notwithstanding any provisions contained in the Declaration to the contrary, during the period of Declarant Control, the Declarant shall have the right to grant to public agencies, authorities or utility service providers easement necessary or desirable for service to the Property or any portion thereof.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots shall continue, it shall be expressly permissible for Declarant and any builder approved by Declarant to maintain and to carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonable required, convenient or incidental to the construction or sale of such Lot, including, any builder approved by Declarant shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Lots owned by the Declarant and the Common Area owned by the Association as models and sales officers.

So long as Declarant continues to have rights under this section no person or entity shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) ten (10) years from the date of this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

[Signatures on following page.]

IN WITNESS WHEREOF, Declarant has caused this Declaration of Covenants, Conditions, and Restrictions for the Everwood Property Owners Association, Inc. to be executed on this the 22 day of June, 2006.

OLD CHAPEL PROPERTIES, LLC

By: David H. Daniel
DAVID H. DANIEL, MANAGER

By: Walker Harris
WALKER HARRIS, MANAGER

STATE OF NORTH CAROLINA
COUNTY OF Orange

I, Susan E. Many, a Notary Public for said County and State, do hereby certify that DAVID H. DANIEL and WALKER HARRIS, personally came before me this day and acknowledged that they are Managers of OLD CHAPEL PROPERTIES, LLC and acknowledged, on behalf of OLD CHAPEL PROPERTIES, LLC the due execution of the foregoing instrument.

Witness my hand and official seal, this the 22nd day of June, 2006.

Susan E. Many
Notary Public

My commission expires: 11/24/2008





EXHIBIT A

LEGAL DESCRIPTION

BEING all of that property as per plat and survey recorded in Plat Book 172, Page 311 and Plat Book 172, Page 314, Durham County Registry, to which reference is made for a more detailed description.

EXHIBIT B
Master Plan



Exhibit C
BYLAWS OF
EVERWOOD PROPERTY OWNERS ASSOCIATION, INC.

BYLAWS
OF
EVERWOOD
PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE I
NAME, PRINCIPAL OFFICE AND DEFINITIONS

Section 1. Name. The name of the corporation shall be Everwood Property Owners Association, Inc. (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the corporation shall be located in the County of Chatham, North Carolina, but meetings of Members and Directors may be held at such places within the State of North Carolina, County of Durham, as may be designated by the Board.

Section 3. Definitions. Defined terms in these Bylaws shall have the same meaning as set forth in the Declaration of Covenants, Conditions and Restrictions for Everwood (the Declaration, as amended, renewed or extended from time to time, is hereinafter sometimes referred to as the "Declaration") unless otherwise defined herein.

ARTICLE II
MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

Section 1. Membership. The Association shall have two (2) classes of membership, Class "A" and "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Officers as may be designated by the Board either within the Property or as convenient thereto as possible and practical.

Section 3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. The next annual meeting shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting shall be held at a date and time as set by the Board.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board or upon a petition signed by Members representing at least twenty-five percent (25%) of the total votes of the Association. The notice of any special meeting

shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. Written notice stating the place, day and hour of any meeting shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the record of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice. Waiver of notice of any meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting either before or after such meeting. Attendance at a meeting by a Member or his designated alternate shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by alternate, may adjourn a meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for convening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that members or their alternates representing at least twenty-five percent (25%) of the total votes of the Association remain present, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. At all meetings of Members, each Member may vote in person, by

designated alternate or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit. A Member may designate a personal representative, or alternate, to vote for the member at any meeting of the Association. Notice of such designation shall be given in writing to the Secretary of the Association and shall be effective until revoked by the Member in writing or personally. Such designation shall also automatically cease upon conveyance by the Member of his Unit.

Section 10. Majority. As used in these Bylaws, the term "majority" shall mean more than fifty percent (50%) of the total number of persons or things of which a majority is required.

Section 11. Quorum. Except as otherwise provided in the Bylaws or in the Declaration, the presence in person, by proxy or by alternate of Members representing one-third (1/3) of the total vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 13. Action Without a Meeting. Any action required by law to be taken at a meeting of the Association, or any action which may be taken at a meeting of the Association, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all the Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Members.

ARTICLE III NUMBER, SELECTION AND VETO

Section 1. Governing Body; Composition. The affairs of this Association shall be governed by a Board of Directors, each of whom shall have one vote. Except as provided in Section 3 of this Article, the Directors shall be Members of the Association.

Section 2. Number of Directors. The number of Directors in the Association shall be not less than three (3) nor more than seven (7), as the Board of Directors may from time to time determine by resolution. The initial Board shall consist of three (3) members.

Section 3. Directors During Declarant Control. The Directors shall be selected by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant during the period of Declarant Control, unless the Declarant shall earlier surrender this right to select Directors. The Directors selected by the Declarant need not be Owners or residents. After the Declarant's right to select Directors has terminated, all Directors must be Members of the Association.

Section 4. Nomination. After the Declarant's right to select Directors has terminated, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating committee

(c) **Secretary:** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) **Treasurer:** The Treasurer shall receive and deposit in appropriate accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at the regular annual meeting and deliver a copy of each to the Members.

ARTICLE VII COMMITTEES

The Association shall appoint an architectural review committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board.

ARTICLE VIII BOOKS AND RECORDS

Section 1. Inspection by Members and Mortgages. The Declaration, Bylaws, membership register, books of account and minutes of meetings of the Members, the Board and committees shall be made available for inspection and copying by any Member of the Association, or by his or her duly appointed representative, or by the holder, guarantor or insurer of any first mortgage secured by any Unit in the Project at any reasonable time and for any purpose reasonably related to his or her interest as a Member or in the Unit in the Project at any reasonable time and for any purpose reasonably related to his or her interest as a Member or in the Unit at the office of the Association or at such other place within the Property as the Board shall prescribe.

Section 2. Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (a)a notice to be given to the custodian of the records;
- (a)b hours and days of the week when such an inspection may be made; and
- (a)c payment of the cost of reproducing copies of documents requested.

Section 3. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

ARTICLE IX 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 property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Member personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

ARTICLE X MISCELLANEOUS

Section 1. 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.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles, the Declaration or these Bylaws.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of North Carolina law, the Declaration, the Articles and these Bylaws, then the provisions of North Carolina law, the Declaration, the Articles, and the Bylaws (in that order) shall prevail.

Section 4. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

if to the Association, the Board of Directors or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be

designated by the notice in writing to the Members pursuant to this Section.

ARTICLE XI CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words:
EVERWOOD PROPERTY OWNERS ASSOCIATION, INC.

ARTICLE XII

Section 1. These Bylaws may be amended, at a regular or special meeting of the Board of Directors, by a vote of a majority of a quorum of the Directors present in person or by proxy, subject to the provisions of Section 2, provided that such amendment has no adverse effect on the right of any Member. Otherwise, the Bylaws may be amended, at a regular or special meeting of the Members, only by a vote of a majority of a quorum of Members present in person or by proxy.

Section 2. Prior to the sale of the first Unit, Declarant, in its sole discretion, may amend these Bylaws. After such sale, the Declarant may amend these Bylaws so long as it still owns any portion of the property described in Exhibit A to the Declaration for development as part of the Property and so long as the amendment has no material adverse effect upon any right of any Member; thereafter and otherwise, these Bylaws may be amended only by the affirmative vote (in person or by alternate) or written consent of Members representing a majority of the total votes of the Association, including a majority of votes other than votes of the Declarant. However, the percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

Section 3. Any amendment must be recorded in the public records of Durham, County, North Carolina.

CERTIFICATION

I, THE UNDERSIGNED, DO HEREBY CERTIFY:

THAT I am the duly elected and acting Secretary of Everwood Property Owners Association, Inc., a North Carolina nonprofit corporation; and

THAT the foregoing Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the ____ day of _____, 2006.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 28 day of June, 2006.



(SEAL)

_____, SECRETARY



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations from election to the Board of Directors as is shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 5. Election. After the Declarant's right to select Directors has terminated, election to the Board of Directors shall be by secret written ballot. At such election the Members; and their alternates or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 6. Veto. From the termination date of the period of Declarant Control, the Declarant shall have a veto power over all actions of the Board as more fully provided in this Section. This power shall expire when the Declarant no longer owns any land described in Exhibit A to the Declaration or December 31, 2006, whichever occurs first, unless earlier surrendered. This veto power shall be exercisable only by Declarant, its successors, and assigns who specifically take this power in a recorded instrument. The veto shall be as follows:

No action authorized by the Board of Directors or Modifications Committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) Declarant shall have been given written notice of all meetings and proposed actions to be approved at such meetings of the Board by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board meetings with Article IV, Sections 1,2, and 3 of these Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board or the Association. Declarant and its representatives or agents shall make its concerns, thoughts and suggestions known to the Members of the Association and/or the Board. Declarant shall have and is hereby granted a veto power over any such action, policy, or program authorized by the Board and to be taken by the Board or the Association or any individual Member if Board or Association approval is necessary for said action. This veto may be exercised by Declarant, its representatives or agents at any time with ten (10) days following the meeting held pursuant to the terms and provisions hereof. Any veto power shall not extend to the requiring of any action or counteraction on behalf of the Board or Association.

This Section 6 may not be amended without the express, written consent of the Declarant until Declarant no longer owns any land described in Exhibit A to the Declaration or until December

31, 2006, whichever first occurs.

ARTICLE IV MEETINGS OF DIRECTORS

Section 1. Organization Meetings. The first meeting of the members of the Board of Directors following each annual meeting of the Members shall be held within thirty (30) days thereafter at such time and place as shall be fixed by the Board.

Section 2. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting.

Section 3. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President, Vice President, Treasurer or Secretary of the Association, or by at least two Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods; (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given at the Director's telephone number or sent not the Director's address as shown on the record of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal deliver, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 4. Waiver of Notice. The transactions of any meetings of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 5. Quorum of Board of Directors. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority

of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 6. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total vote of the Association at a regular or special meeting of the Association.

Section 7. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Boards, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings.

Section 8. Open Meetings. Subject to the provisions of Section 9 of this Article, all meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

Section 9. Action Without A Formal Meeting. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

ARTICLE V POWERS AND DUTIES OF THE BOARD

Section 1. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, the articles of incorporation of the Association (the "Articles") or these Bylaws directed to be done and exercised exclusively by the Members.

The Board of Directors shall delegate to one of its Members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager of the Project, if any, which might arise between meetings of the Board.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board shall be responsible for and shall have the power to do the following, by way of explanation, but no limitation:

(a) adopt and publish rules and regulation governing the use of the Common Area and the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights of a Member 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 a period not to exceed 60

days, for infraction of published rules and regulations;

(c) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;

(d) prepare and adopt annual budgets in which there shall be established the annual assessments of each Member;

(e) make assessments to defray the common expenses of the Association (the "Common Expenses"), establish the means and methods of collecting such assessments and establish the period of the installment payments of the annual assessment; provided, that unless otherwise determined by the Board, the annual assessment for each Unit's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(f) provide for the operation, care, upkeep, and maintenance of all of the Common Area, exterior and structural components of the Units and other property the Association has responsibility for;

(g) designate, hire, and dismiss the personnel necessary for the maintenance, operation, repair, and replacement of the Common Area, exterior and structural components of the Units and other property the Association has responsibility for, and where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(h) collect the assessments, deposit the proceeds thereof in a depository which it shall approve and use the proceeds to administer the Association;

(i) open bank accounts on behalf of the Association and designate the signatories required;

(j) make or contract for the making of repairs, additions and improvements to or alterations of the Common Area and maintenance and repair of the Units in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(k) enforce by legal means the provisions of the Declaration, these Bylaws and the rules and regulations adopted by it and bring any proceedings which may be instituted on behalf of or against the Members or any Unit occupants concerning the Association;

(l) obtain and carry insurance against casualties and liabilities as provided in the Declaration and pay the premium cost thereof;

(m) keep books with detailed accounts of the receipts and expenditures affecting

the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The books and the vouchers accrediting the entries thereupon shall be available for examination by the Members and the holders, insurers, and guarantors of a Mortgage on any Unit, or their duly authorized agents, accountants or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board for the general knowledge of the Members;

(n) make available to any prospective purchaser of a Unit, any Member and the holders, insurers, and guarantors of a Mortgage on any Unit, current copies of the Declaration, the Articles, the Bylaws, rules governing the Units and the Common Areas and all the other books, records and financial statements of the Association;

(o) permit utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Property;

(p) issue, or to cause an appropriate officer to issue, 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

(q) 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 the Class A Members who are entitled to vote.

Section 2. Management Agent.

(a) The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these Bylaws, other than the powers set forth in subparagraphs (a), (b), (c), (d), (e), (i), and (k) of Section 1 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days or less written notice.

Section 3. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Area, the exterior and structural components of the Units and other property the Association has responsibility for without the approval of the Members of the Association; provided, however, the Board shall obtain approval of a majority of each class of Members for borrowings in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or

would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

Section 4. Rights of the Association. With respect to the Common Areas or other Association responsibilities owed, in accordance with the Articles of Incorporation and Bylaws of the Association, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other agreements with condominiums, cooperatives or neighborhood and other homeowners or residents associations, both within and without the Property. Such agreements shall require the consent of two-thirds (2/3) of all Directors of the Association.

Section 5. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Member, and to suspend a Member's right to vote or to use the Common Areas for violation of any duty imposed under the Declaration, these Bylaws or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. In the event that any occupant of a Unit violates the Declaration, Bylaws or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Member shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) **Notice.** Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Board for a hearing, and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) **Hearing.** If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The decision of the Board after hearing shall be final.

(c) **Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations of the

Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations, as provided below) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Member or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE VI OFFICERS

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The Board of Directors may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Vice President shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office and Vacancies. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by the Board for the unexpired portion of the term.

Section 3. Powers and Duties. The officers of the Association shall each have powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent or both.

Section 4. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time 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.

Section 5. Duties. The duties of the officers are as follows:

(a) **President:** The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) **Vice-President:** The Vice-President shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.