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WAKE COUNTY, NC 570
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
12/12/2003 AT 15:31:51

BOOK:010586 PAGE:02459 - 02480

PREPARED BY + HOLD FOR BORLEY, BOLTON + GIBBER Box 27

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

ROSALYNN PLACE HOMEOWNERS' ASSOCIATION

Habitat for Humanity of Wake County, Inc., called "Declarant", is the owner in fee simple of real property located in Wake County, North Carolina, and known as the Rosalynn Place Subdivision, as depicted on a plat recorded in Book of Maps 2003, Pages 1862 and 1863, Wake County Registry.

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the lots or tracts constituting the subdivision, Declarant declares that all the described real property and each part of the property shall be held, sold, used, occupied and conveyed only subject to the following easements, covenants, conditions, and restrictions, which constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the described property or any part of that property, their heirs, successors, and assigns, and shall inure to the benefit of each owner of the property.

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ARTICLE 1

DEFINITIONS

Section 1. "Association" shall mean and refer to Rosalynn Place Homeowners' Association, Inc., its successors and assigns.

Section 2. "Stormwater Control Measures" shall mean the nitrogen reduction vegetated swales encumbering Lots 5-12 on the plat recorded in Book of Maps 2003, Pages 1862 and 1863; said swales being shown on said plat as private drainage easements running along the rear lot lines of Lots 5-11 and the 20-foot private drainage easement which encumbers Lot 12 as shown on said plat.

Section 3. "SHOD" shall mean the Special Highway Overlay District-1 which encumbers the rear fifty feet of Lots 18 - 28 as shown on the plat recorded in Book of Maps 2003, Page3 1862 and 1863, Wake County Registry.

Section 4. "Open Areas" shall mean the two tracts shown on the plat of Rosalynn Place Subdivision recorded in Book 2003, Pages 1862 and 1863, Wake County Registry, which are to the north and south of Jimmy Carter Way and along the western line of Rose Lane. The northern tract being that which consists of 0.362 acres and is shown as 2406 Jimmy Carter Way; and the southern tract being that which consists of 0.097 acres and is shown as 2403 Jimmy Carter Way.

Section 5. "Common Expenses" shall mean the financial obligation of the Class A Members for the maintenance of the Stormwater Control Measures, SHOD and Open Areas, and funds

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required to be contributed in accordance with the Operation and Maintenance Manual, which is attached hereto and incorporated herein as Exhibit A.

Section 6. "Declarant" shall mean Habitat for Humanity of Wake County, Inc., and Declarant's successors and assigns.

Section 7. "Lot" shall mean any plot of land shown on the recorded subdivision map referred to above.

Section 8. "Maintenance" shall mean the exercise of reasonable care to maintain the Stormwater Control Measures in accordance with the Operation and Maintenance Manual and to keep the landscape, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted landscape management practices necessary to promote a healthy, weed free environment for optimum plant growth.

Section 9. "Member" shall mean every person or entity who holds membership in the Association.

Section 10. "Mortgage" shall mean a conventional mortgage or a deed of trust.

Section 11. "Mortgagee" shall mean a holder of a conventional mortgage or beneficiary under or holder of a deed of trust.

Section 12. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot that is part of the property, and shall include those who have

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contracted to sell their Lot, but shall not include those holding title merely as security for performance of an obligation, except as provided herein.

ARTICLE 2

MEMBERSHIP IN ASSOCIATION - VOTING RIGHTS

The Association shall have two classes of voting members. The Class A members of the Association shall be the individual Owners of each Lot; and the Class B member shall be the developer, Habitat for Humanity of Wake County, Inc. Class A membership shall be appurtenant to and may not be separated from the ownership of said lot. The Members' respective voting rights shall be set forth in the Association's Bylaws.

The Class B membership shall terminate at such time as all the Class B member's ownership and beneficial interest in each Lot shall cease; or at such earlier time as the Class B member shall choose.

ARTICLE 3

ASSESSMENTS

Section 1. Lien and Personal Obligation of Assessments.

Declarant covenants for each Lot, and each Owner is deemed to covenant by acceptance of the Owner's deed for the lot, whether or not it shall be so expressed in the deed, to pay the Association (i) annual assessments, and (ii) special assessments for capital improvements and Maintenance. These assessments will be established and collected as provided below in this instrument. The annual and special assessments, together with interest, costs,

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and reasonable attorney's fees shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of the Lot at the time the assessment is due, but such personal obligation shall not pass to successors in title of that person or persons unless expressly assumed; but shall remain a lien upon the Lot.

Section 2. Purpose of Annual Assessments. The annual assessments shall include Common Expenses and shall be levied by the Association to maintain the Stormwater Control Measures and the SHOD as well as to oversee and maintain the landscaping of the Open Areas and any lighting, signs, or other fixtures located thereon. Annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from annual assessments, the following:

(a) Maintenance of the Stormwater Control Measures in accordance with the Operations and Maintenance Manual approved by the Conservation Engineer in the Inspections Department of the City of Raleigh, which is attached hereto and incorporated herein as Exhibit A.

(b) Maintenance of the SHOD in accordance with the Operations and Maintenance Manual approved by the Conservation Engineer

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in the Inspections Department of the City of Raleigh, which is attached hereto and incorporated herein as Exhibit A.

(c) Landscaping Maintenance of the Open Areas and any lighting, signs, or other fixtures located thereon, including, but not limited to, contracting with various landscapers for the performance of weeding, mowing, planting, trimming, irrigating, raking, controlling erosion, and any other means necessary to maintain such area in a visually appealing and uniform manner.

(d) Acquisition of equipment, materials, plants, soil, or any other item necessary to maintain the Stormwater Control Measures, SHOD and the Open Areas as provided for above.

(e) Worker's compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the Board of Directors of the Association.

(f) Any other materials, supplies, labor, services, maintenance, repairs, insurance, taxes, or assessments the Association is required to secure or pay pursuant to the terms of this Declaration or by law, where it shall be necessary or proper

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in the opinion of the Board of Directors of the Association and approved by the Members for the maintenance and operation of the Stormwater Control Measures, SHOD and the Open Areas for the use and benefit of the lot Owners or for the enforcement of these restrictions.

Section 3. Initial Annual Dues.

(a) Until January 1 of the year immediately following the conveyance of the first lot by Declarant to an Owner or Owners the annual dues shall be \$120.

(b) From and after January 1 of the year immediately following the conveyance of the first lot by Declarant to an Owner or Owners the annual dues may be established each year as determined by the Members in accordance with the Bylaws.

The Board of Directors shall be responsible for the proposal and drafting of each year's annual budget, and they shall provide each Owner a summary of the proposed budget and a notice of meeting for the ratification of the budget within 30 days of the Board's completion of such proposal. The notice to the Owners shall state that the

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budget may be ratified without the presence of a quorum and shall set a date for such meeting not less than ten (10) nor more than sixty (60) days past the date the notice was mailed to the Owners. The budget shall be ratified at the meeting unless a majority of the total membership votes shall vote in opposition to its ratification. In the event the proposed budget is rejected, the previous year's budget shall be continued until such time as a subsequent budget is ratified by the Owners.

Section 4. Special Assessments. In addition to the annual dues authorized above, the Association may levy in any year a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, maintenance, repair, or replacement concerning the Stormwater Control Measures, SHOD and the Open Areas.

Section 5. Notice, Quorum, and Approval for Action Authorized Under Sections 3 and 4. All requirements for notices, quorum, and approval for any action authorized under Sections 3 and 4 above shall be as specified in the Bylaws of Rosalynn Place Homeowners' Association, Inc.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate per lot.

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Section 7. Commencement and Collection of Annual Assessments.

(a) Payment of Dues. The annual dues shall be payable in twelve (12) equal monthly installments, the first such installment to be paid on the first day of the month after which the lot Owner becomes a member, and all subsequent installments to be paid on the first day of each month thereafter during the period of membership. Any Owner who acquires a lot after the assessment date shall only be responsible for his or her pro rata portion of the annual assessment.

Section 8. Effect of Nonpayment of Dues and Assessments; Remedies of the Association.

(a) When any Member shall be in default in the payment of dues or assessments for a period of sixty (60) days from the date on which such dues or assessments become payable, he or she shall for purposes of voting not be considered as a Member in good standing. In addition, such Member shall be dropped from active membership and placed on the inactive list. Such Member shall not be reinstated until he or she has paid dues and assessments in full, and until such time as such member is reinstated he/she shall have no rights of any

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kind arising out of a membership in the Association.

(b) In addition to the foregoing, if any Member fails to pay his or her assessments as they become due, on the failure of payment of the assessments after thirty (30) days' written notice of such delinquency given by the Association to such Member, the Association may declare the Owner in default and accelerate the remaining assessments so that the outstanding balance of the annual and any special assessments are then due and payable; the amount of the assessment shall then bear interest at the rate of fifteen percent (15%) per annum from the date of notice and shall become a lien on such Member's Lot in favor of the Association, and the Association shall have the right to record a notice of claim of lien, and proceed on such claim in accordance with North Carolina General Statutes Section 47F-3-116; or, in the event the Association shall not record a lien, it shall have the right to commence an in personam action against such Member for the collection of the assessments in any court of competent jurisdiction. No owner or owners may waive or otherwise escape liability for such

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assessments by nonuse of the Open Areas, having a lot unencumbered by either the nitrogen reduction vegetated swales or the SHOD, or by abandonment of his or her lot.

(c) In the event a member fails to pay any such assessment the Association may employ an attorney to enforce these covenants. In such event the Member shall be responsible for the payment of all costs and expenses incurred by the Association in regard to such enforcement, including, but not limited to, reasonable attorney's fees; whether suit is actually filed or not.

Section 9. Subordination of Assessment Lien to Mortgages.

The assessment lien provided for in this Declaration shall be subordinate to the lien of any first Mortgage. A sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to a first Mortgage foreclosure or any proceeding in lieu of such foreclosure shall extinguish the assessment lien as to payments that become due prior to the sale or transfer; but in such situation, the Member whose Lot was foreclosed upon shall remain personally liable to the Association for all unpaid assessments existing at the time such lien is extinguished. No sale or transfer shall relieve the Lot from liability for any assessments thereafter becoming due or from the lien of assessments.

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ARTICLE 4

EASEMENTS

Section 1. Access Easements. The Association shall have a five-foot access easement along each side lot line of Lots 5-11 and Lots 18-28 of Rosalynn Place Subdivision as depicted in Book of Maps 2003, Pages 1862 and 1863, Wake County Registry. It is understood that certain lots have building envelopes that encroach into this easement, and in such cases, the easement shall be width equal to the distance between the side of the house encroaching into the easement and the nearest side lot line of the Lot. The purpose of the easements is to allow the Association access to the Nitrogen Reduction Vegetated Swales existing along the rear lines of Lots 5-11 and shown as drainage easements of various widths on the above-referenced plat, and to the SHOD as depicted on the recorded plat along the rear line of Lots 18-28. Any impediment placed in these access easements may be removed by the Association and the Association may assess the cost of such removal against the homeowner who had placed the impediment within the easement. Any such assessment may be collected and enforced in accordance with the terms of Article 3, Section 8, hereof.

Section 2. Landscape and Maintenance Easement. It shall be the responsibility of the Association to maintain the swales and the SHOD in accordance with the Operations and Maintenance Manual. Therefore the Association shall have an easement for landscaping and maintenance of the SHOD, as well as the swales over and along the drainage easements of various widths running along the rear

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lines of Lots 5-11 and the drainage easement encumbering Lot 12, all as shown on the plat recorded in Book of Maps 2003, Pages 1862 and 1863, Wake County Registry. It shall be a violation of these covenants for any homeowner to plant, build, or otherwise place any object within said easement; and the Association may assess any owner who has placed an object within the easements the cost of removing such object. Any such assessment may be collected and enforced in accordance with the terms of Article 3, Section 8, hereof.

Section 3. Owners' Responsibility. The Association shall also maintain all pipes and stormwater devises located within any other private drainage easement encumbering any lot in the Rosalynn Place Subdivision as shown on the plat recorded in Book of Maps 2003, Pages 1862 and 1863, Wake County Registry as well as maintaining all devises set out on the attached Operations and Maintenance Manual. The association shall not, however, be responsible for maintaining the landscaping of any such easement. Each Owner owning a lot encumbered by such an easement shall be responsible for the easement's landscape maintenance. In the event the Owner fails to maintain such an easement, the Association shall give notice to the homeowner of the maintenance needed in connection with the easement. The lot owner shall have 15 days from the date of such notice to properly maintain the easement. In the event the easement remains unmaintained after the 15 days, the Association may maintain the easement and assess the lot owner the cost of such maintenance. Any such assessment

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may be collected and enforced in accordance with the terms of Article 3, Section 8, hereof. This Section 3 shall apply to all drainage easements not covered by Section 2 above including, but not limited to, the drainage easement along the side lot lines of Lots 5, 6, 10, and 11.

ARTICLE 5

GENERAL PROVISIONS

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

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

Section 3. Amendments. The covenants and restrictions of this Declaration may be amended by duly recording an instrument executed and acknowledged by not less than two-thirds (2/3) of the Association's membership votes.

Section 4. Subordination. No breach of any of the conditions contained in this Declaration or re-entry by reason of the breach shall defeat or render invalid the lien of any mortgage

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made in good faith and for value as to the subdivision or any Lot in the subdivision; provided, however, that such condition shall be binding on any Owner whose title is acquired by foreclosure, trustee sale, or otherwise.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or any Member for a period of 30 years from the date of this Declaration, and thereafter shall continue automatically in effect for additional periods of ten (10) years, unless otherwise agreed to in writing by the owners of at least eighty percent (80%) of the subdivision lots.

Section 6. Governing Law. This Declaration shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.

Section 7. Insurance. The Association shall maintain reasonable amounts of property and liability insurance on the Open Areas in accordance with North Carolina General Statutes Section 47F-3-113.

Section 8. Termination of Prior Contracts. Any contract or agreement relating to Rosalynn Place Subdivision which was entered into by the Declarant or the Association prior to the election of the Board of Directors by a full vote of all the Owners may be terminated by the Association without penalty upon not less than ninety (90) days notice to the other party if it is found that the contract or agreement is not bona fide or is unconscionable to the

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Owners at the time entered into under the circumstances then prevailing.

Section 9. Open Areas. Declarant shall convey the Open Areas to the Association prior to the sale of any Lot. The Open Areas will be conveyed free and clear of all encumbrances and liens except for drainage and utility easements.

Section 10. Special Highway Overlay District. No Owner shall be permitted to conduct in grading or removing of vegetation in the SHOD without being issued a permit by the City of Raleigh as any such action would be a violation of the Raleigh City Code and subject to significant consequences.

Section 11. Neuse River Riparian Buffer. The Open Area located to the north of Jimmy Carter Way as shown on the plat recorded in Book of Maps 2003, Pages 1862 and 1863, is located in a Neuse River riparian buffer and the Association may not conduct any grading or removal of vegetation in such area unless such conduct is in compliance with the North Carolina Division of Water Quality rules and regulations.

Section 12. Nitrogen Reduction Vegetated Swales. Any vote of the Association affecting the nitrogen reduction vegetated swales in any manner must have the prior written consent of the Raleigh City Attorney as all such Stormwater Control Measures are required to comply with the Raleigh City Code and a failure to maintain the

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Stormwater Control Measures is a violation which potentially subjects each Class A Member to significant daily civil penalties and other enforcement actions.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first set forth above.

HABITAT FOR HUMANITY OF WAKE COUNTY, INC., Declarant

By: R Gordon Grubb
President

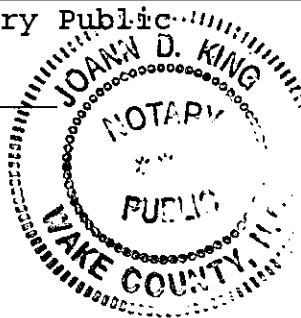
NORTH CAROLINA - WAKE COUNTY

I, the undersigned Notary Public, certify that R. Gordon Grubb personally came before me this day and acknowledged that he is President of HABITAT FOR HUMANITY OF WAKE COUNTY, INC., and that by authority duly given, the foregoing instrument was signed in its name by him/her.

WITNESS my hand and notarial stamp or seal, this 12th day of December, 2003.

Jo Ann D. King
Notary Public

My commission expires: 9/1/05



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EXHIBIT A



BASS, NIXON & KENNEDY, INC., CONSULTING ENGINEERS
6310 CHAPEL HILL ROAD, SUITE 250, RALEIGH, NC 27607
919/851-4422 ■ FAX 919/851-8968

OPERATIONS AND MAINTENANCE MANUAL
FOR
STORMWATER DRAINAGE SYSTEM
ROSALYNN PLACE
(FORMERLY ROSE LANE SUBDIVISION)
RALEIGH, NORTH CAROLINA

Responsible Party: Habitat for Humanity of Wake County
2400 Alwin Court
Raleigh, N.C. 27604
Phone: (919) 833-1999

The Stormwater Drainage System serving the above referenced property consists of an underground collection system, with associated inlets, junction boxes, etc. designed to accommodate site drainage for a ten-year storm. A portion of the underground collection system discharges into Vegetated Swales for Nitrogen Export Reduction, to meet the City of Raleigh Stormwater Quality requirements. The swales are located on lots 5-12 on Book of Maps 2003, Pages 1862 and 1863, and the Stormwater Drainage Systems are situated within private drainage easements shown on said recorded map. The balance of the collection system discharges into an existing drainageway. The Stormwater Drainage System is shown in detail on grading, drainage and erosion control plan for Habitat for Humanity Rose Lane tract prepared by Bass, Nixon & Kennedy, dated 1-11-02 and approved by the Raleigh City Engineer on 8-14-03.

Rip rap dissipater pads will be required at the pipe discharge on the upstream end of each grass swale. One rip rap pad will be located between lots 10 and 11 and a second rip rap pad will be located at the northwest corner of lot 6 at the upstream end of the grass swale that extends between lots 6-8. Both rip rap pads will be NCDOT Class B rip rap pads, 12.0 feet long, 6.0 feet wide and 18" deep. A third rip rap pad will be located on the east side of lot 12 and will be a NCDOT Class B rip rap pad, 7.5 feet long, 4.0 feet wide and 18" deep.

MAINTENANCE AND INSPECTION SCHEDULE

1. General

- A. During each inspection of the Stormwater Drainage System, the attached checklist shall be completed and filed with the maintenance records for the stormwater drainage system.
- B. The Vegetated Swales require continual maintenance of the vegetative (fescue grass) cover. Grass mowing, weeding, brush cutting and removal of woody

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vegetation (including trees) within the swales are necessary for the proper maintenance of the swale system. The Vegetated Swales shall be maintained to keep a dense and vigorous grass cover. Fertilization of the grass cover should only be done when needed to maintain the health of the grass, with care taken to prevent over-fertilization. The grass cover should be maintained at a minimum height of 4 inches and a maximum height of 6 inches.

- C. All components, devices and structures of the Stormwater Drainage System shall be maintained in proper working condition at all times. Repair and replacement of components shall meet the original design specifications.
2. During each inspection of the stormwater collection system the attached checklist should be filled out and filed with other maintenance records for the basin.
- A. After each 10-year, 24-hour storm event (5.38 inches):
 - 1. Remove all accumulated litter and debris from the stormwater collection system.
 - 2. Inspect grass swales and check dams located therein for any damages due to erosion or vegetative failure. Reseed any denuded areas per attached seeding schedule. Eroded rills and gullies should be filled with topsoil, compacted and then reseeded. Displaced or damaged check dams, including the rip-rap aprons, shall be repaired or replaced. Any areas indicating signs of concentrated stormwater flows shall be repaired such that the surface drainage will be spread out in thin layers as "sheet flow".
 - 3. Inspect velocity dissipators (rip-rap aprons) below storm drain outlets and repair any displaced rip-rap by adding larger diameter stone to the apron or by using a concrete slurry to bind smaller stones together to increase their effective size and weight.
 - B. Quarterly
 - 1. Thoroughly inspect the stormwater collection system for proper functioning.
 - 2. Check pipes for undercutting. Repair if necessary.
 - 3. Repair any broken pipes, grates, curb inlets, etc.
 - 4. Riprap shall be inspected for accumulation of sediment, weeds and other foreign matter.
 - 5. Perform all required maintenance for the Monthly inspection.
 - C. Semi-Annually

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1. Remove accumulated sediment from the upstream end of the Vegetated Swales and upstream of all check dam structures.
2. Perform all required maintenance for the Quarterly inspection.

D. Annually

1. The Stormwater Drainage System shall be thoroughly inspected once a year by a North Carolina Registered Professional Engineer, Registered Landscape Architect or Registered Professional Land Surveyor. This inspection is required by the City of Raleigh, section 10-9028, and is due on the anniversary of the issuance of the Certificate of Occupancy. A copy of the annual inspection and maintenance records shall be submitted to the City of Raleigh Central Engineering Department.
2. Perform all required maintenance for the Semi-Annual inspection.

3. Estimated annual maintenance budget:
(No adjustment for Inflation)

A. Drainage System Inspection	\$ 700.00
B. Maintenance of Grassed Areas	\$ 700.00
C. Sediment Removal from System	\$ 500.00
D. Annual Replacement Cost of Stormwater Drainage System (based on 50 year design life and installation cost of \$10,350)	<u>\$ 210.00</u>
 Total:	 \$ 2,110.00

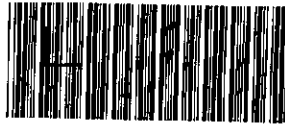
Prepared by: Bass, Nixon & Kennedy, Inc.
6310 Chapel Hill Road, Suite 250
Raleigh, North Carolina 27607

Dated: January 22, 2003
October 20, 2003 (Revised based on City of Raleigh comments)

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ADDENDUM A

The stormwater basin located along the rear lines of Lots 18-28 and shown as the SHOD area on the recorded plat of Rosalynn Place Subdivision site was constructed by the North Carolina Department of Transportation (NCDOT) as part of the 440 Beltline project. The NCDOT will be responsible for maintenance of the stormwater detention basin based on a telephone conversation with the NCDOT District Office and in accordance with the recorded drainage easement for construction and maintenance of the drainage ditch (Book 2373, Page 691).



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Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina - Wake County

The foregoing certificate of Jeanne D. Kenig

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

Laura M. Riddick, Register of Deeds

By: Carolyn J. Hedden
Assistant/Deputy Register of Deeds

This Customer Group
of Time Stamps Needed

This Document
New Time Stamp
22 # of Pages