

Prepared by and return to:  
Ragsdale Liggett PLLC (Box 161 – Bolton)

**DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**SCHAUB DRIVE SUBDIVISION**  
**(A PLANNED COMMUNITY)**

THIS DECLARATION is made this 20<sup>th</sup> day of February, 2018, by Raleigh Custom Homes Inc., a North Carolina corporation, with its principal office located at 6736 Falls of Neuse Road, Suite 300, Raleigh, Wake County, NC 27615 (“RCH”) and Jacobs Building Co., Inc., a North Carolina corporation with its principal office located at 4909 Old Millcrest Road, Raleigh, NC 27609 (“Jacobs”), with RCH and Jacobs being hereinafter collectively referred to as “Declarant”;

**WITNESSETH:**

WHEREAS, Declarant is the owner of certain real property in the City of Raleigh, Wake County, North Carolina which is more particularly described on Exhibit “A” attached hereto (the “Property”); and

WHEREAS, it is the desire and intention of Declarant (as defined herein) to impose on the Property restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of the Property herein described and the future owners thereof;

NOW, THEREFORE, Declarant hereby declares that all of the Property described on Exhibit “A” attached hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the Property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

Submitted electronically by "Ragsdale Liggett PLLC"  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Wake County Register of Deeds.

**ARTICLE I**  
**DEFINITIONS**

**Section 1. Definitions.** As used in this Article, the following words and terms have the following definitions, unless the context in which they are used clearly indicates otherwise when any of these and other defined words or terms in this Article have an initial capital letter, however, it is not required that their use have initial capital letters in order to have the defined meaning. Some or all of the following words and terms may have the same definitions in other portions of this Declaration; if so, they are being repeated here for convenience; if not, as used in this Article, they have the definitions contained in this Article. Words and terms defined in other portions of this Declaration and not defined in this Article but used in this Article have the definition defined for them in such other portions of this Declaration, unless those definitions are superseded or modified as a result of the conflict rules set forth in Section 3 of this Part A (for example, words and terms defined by the Code and used in this Declaration have the definitions contained in the Code, notwithstanding that they may be defined differently in this Article or other portions of this Declaration; however, to the extent that a word or term is defined in this Article or other portions of this Declaration differently from how it is defined in the Code, and the definitions do not conflict, then both definitions are applicable). With respect to words and terms used herein, the singular shall include the plural, the plural shall include the singular, and one gender shall include all.

(a) “Act” is defined as the North Carolina Planned Community Act, as contained in Chapter 47F of the North Carolina General Statutes (or as contained in any successor portion of the North Carolina General Statutes), as the same exists from time to time. The Act is referred to herein from time to time as G.S.47F, with the particular section number following the G.S.47F reference (for example, G.S.47F-1-101). Words and terms used in this Article that are defined in the Act but not defined in the Code (for example, the term special declarant rights), have the definition contained in the Act.

(b) “Area of Common Maintenance” is defined as real property, together with any improvements situated thereon, intended for the common use and benefit of Owners and occupants of the Property however such real property is described on a plat or document recorded in the Registry. Area of Common Maintenance may be owned or leased by the Association or it may be owned by another Person with the Association having a right or easement therein. Area of Common Maintenance includes all of the following:

- (1) Back Yard Fences;
- (2) Yard Improvements;
- (3) any water or sewer utility line that serves more than one Lot and which is either located outside public street rights-of-way or outside any City utility easement;
- (4) any site or facility designated an Area of Common Maintenance, recreation area or other similar designation on any recorded plat or map of the Property, or in this Declaration;

(5) any Code-required shared facility for the Property; and

(6) any object or improvement located on, under, in or over public property or public right-of-way which object or improvement is subject to an encroachment agreement with a Governmental Entity that is recorded in the Registry, and may include: signs, landscaping, irrigation facilities, drain pipes, decorative surfaces and brick pavers.

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

(c) "Association" is defined as Schaub Drive Homeowners' Association, Inc. which is organized and operated under the laws of the State of North Carolina as the property Owners association for the Property.

(d) "Back Yard Fences" is defined as those certain 6 foot wooden fences installed along the rear of each Lot and 4 foot aluminum fences installed along the side lines of the back yards of the Lots. Each Lot shall have the benefit of a Back Yard Fence, but not each Back Yard Fence will be contained solely on one Lot. The 4 foot aluminum fence running along the side of each Lot's backyard will be shared with such Lot's neighbor and the actual location of such fence shall be as placed by the Declarant or any builder who constructed the initial improvements on a Lot.

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

(f) "City" is the City of Raleigh, North Carolina.

(g) "Code" is defined as the City of Raleigh Unified Development Ordinance as it exists from time to time, and includes all duly adopted regulations, rules, directives, and policies of the City pursuant to or in furtherance of the Code.

(h) "Common Expense" is defined as all of the expenses incurred by the Association in furtherance of its rights and responsibilities under the Act, the Code, and the Governing Documents and including specifically, but without limitation, all of the following:

(1) All sums lawfully assessed by the Association against its Members;

(2) Expenses of the Area of Common Maintenance and administration, inspection and Maintenance of the Area of Common Maintenance;

(3) Expenses classified as Common Expenses under the Act, the Code, or under the provisions of this Declaration or other Governing Documents;

(4) Expenses for acquisition, Maintenance, repair, restoration, replacement, use and operation of personal property owned or leased by the Association for the benefit of the Members;

(5) Premiums for property, liability or such other insurance premiums as this Declaration or other Governing Documents may require the Association to purchase;

(6) Any unpaid Association assessment following the foreclosure of a first mortgage or first deed of trust or an assessment lien;

(7) Allocations to reserve funds;

(8) Fees for services engaged by the Association;

(9) Costs and expenses for which the Association is obligated under any encroachment agreement or other agreement with any Governmental Entity;

(10) Financial obligations of the Association or financial obligations of Members with respect to which the Association has responsibility for collection and payment;

(11) Expenses incurred by the Association in performing its functions and providing services, including operating, management, enforcement and administrative expenses;

(12) Expenses agreed by the Members to be Common Expenses of the Association (for example, periodic washing of public streets within the Property); and

(13) Expenses declared to be Common Expenses by the provisions of this Declaration.

(i) "County" or "Wake County" is defined as Wake County, North Carolina, a North Carolina county.

(j) "Declarant" is defined in the opening paragraph.

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

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

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

(n) “Governing Documents” is defined as all of the following: this Declaration; the Articles of Incorporation and Bylaws of the Association; architectural guidelines and bulletins and rules and regulations of the Association, if any, as the same may be amended, restated or supplemented from time to time. True copies of the said Articles of Incorporation and Bylaws of the Association are attached hereto as Exhibit “B” and Exhibit “C”, respectively.

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

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

(q) “Living Unit” is defined as any Lot on which a dwelling unit has been fully constructed and made ready for occupancy as a residence, including without limitation, completion of the final floor covering, interior paint and wallpaper and all appliances, for which a Certificate of Occupancy or Compliance has been issued, and owned by anyone other than the original builder thereof, unless occupied as a residence by the original builder thereof or his tenant.

(r) “Lot” is defined as any numbered or lettered portion of the Property, together with any improvements thereon, which is shown upon any recorded plat of any part or all of the Property, and which is not any of the following: dedicated street rights-of-way; greenway or park lands owned in fee simple by the City or County.

(s) “Maintain”, “Maintenance”, “Maintaining”, or any similar term used herein is defined to include any one or more of the following, as the context requires: acquisition, purchase, construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, mowing, cutting, trimming, pruning, fertilizing, watering and preservation.

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

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

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

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

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

(y) “Property” is defined as all of the real property subject to any part or all of the terms of this Declaration. The Property is shown on the Subdivision Plat.

(z) “Registry” is defined as the office of the Register of Deeds of Wake County (or any successor office under applicable law).

(aa) “Subdivision Plat” means that certain survey recorded in Book of Maps 1942 Page 3, Wake County Registry.

(ab) “Yard Improvements” is defined as the grass, plants, shrubs, trees, landscaping, walks and parking areas installed in the front or side yard of any Living Unit by the Declarant or any builder who constructed the initial improvements on a Lot, and any similar improvements installed by an Owner with the prior written consent of the Association. Each Yard Improvement will be for the benefit of the Owner of that particular Living Unit and other Owners shall have no rights in such Yard Improvements, notwithstanding their inclusion in “Area of Common Maintenance”. For purposes, hereof the side yard of any Living Unit shall be that portion of the yard between the front and rear corners of the dwelling unit constructed on the Living Unit.

## **ARTICLE II** **ASSESSMENTS**

**Section 1. Obligation for Assessments.** Each Owner, by execution of this Declaration or by acceptance of a deed or other instrument conveying title to a Lot, whether or not it shall be so expressed therein, is deemed to consent and agree to pay to the Association (or to any Person who may be designated by the Association to collect such monies) all assessments and other charges required by this Declaration, including the following: (1) annual assessments; (2) working capital assessments; (3) special assessments; (4) fines for violations of the provisions of this Declaration or other Governing Documents or assessments levied against Owners for misuse and damage to the Areas of Common Maintenance by the Owners or their family members,

tenants, agents, contractors and guests; (5) individual assessments for any expense under the Code or this Declaration which the Association becomes obligated to pay and pays on behalf of an Owner; (6) late payment charges, interest on unpaid assessments, costs of collection, including without limitation, court costs, service charges, and attorney's fees as provided in the Act, and charges for dishonored checks; all as established by the Board from time to time; and (7) all other assessments and charges imposed or allowed to be imposed by this Declaration.

The Association at all times has the right to include as part of the assessments or other charges applicable to the Property and the Owners thereof such amounts as are required to pay all Common Expenses and all financial obligations of the Association imposed by the Code either (i) directly on the Association, or (ii) indirectly on the Association by imposition of the financial obligation on some or all of the Owners, with the Association having responsibility for collection and payment to the City.

**Section 2. Purpose of Assessments.** The annual assessment primarily is for the purpose of funding the Common Expenses of the Association, including monies allocated for reserve funds, for the Fiscal Year to which it applies and in accordance with the budget for that Fiscal Year adopted by the Association, although such assessments may be used for payment of any Common Expenses as determined by the Board. All budgets of the Association shall be proposed in good faith and with the intent to cover all reasonably necessary Common Expenses for the applicable Fiscal Year of the Association, including monies allocated for reserve funds.

**Section 3. Budgets; Amount of Assessments.** The Association is at all times empowered to levy assessments against the Lots and Living Units and the Owners of Lots and Living Units within the Property for the payment of Common Expenses.

For calendar year 2018, the annual assessment per Lot is Six Hundred Twenty-Five Dollars (\$625.00). The "Maximum Annual Assessment" for each subsequent Fiscal Year for purposes of voting percentages to ratify the budget is 110% of the amount of the annual assessment for the immediately preceding Fiscal Year. Both annual and special assessments must be fixed at a uniform rate for all Lots and Living Units, on a per Lot and per Living Unit basis, and may be collected on a monthly basis or other periodic basis.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after the adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget to the Members and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. There shall be no requirement that a quorum be present to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget; provided, however, if the budget provides for an annual assessment per Lot not in excess of the Maximum Annual Assessment in effect for that Fiscal Year of the Association, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If any proposed budget is

rejected by the Members, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

The provisions of this subsection shall not apply to, nor shall they be a limitation upon, any change in the annual assessment or the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

**Section 4. Effect of Non-Payment; Remedies.** No Owner shall be exempt from liability for any assessment provided for herein for reason of non-use of the Area of Common Maintenance or such Owner's Lot or Living Unit, or abandonment or leasing of such Owner's Lot or Living Unit, or the use or enjoyment of the Area of Common Maintenance.

All assessments and other charges shall be established and collected as provided in this Declaration. All assessments and other charges remaining unpaid for thirty days (30) days or longer, together with late charges, interest, and the costs of collection thereof, including attorney's fees, shall be a charge on the Owner's Lot as provided in G.S.47F-3-116 of the Act and, upon filing of a claim of lien in the office of the clerk of superior court of the county in which the Lot is located in the manner provided in G.S.47F-3-116(g), shall be a continuing lien upon the Lot against which such assessment is made until paid in full. The lien may be foreclosed by the Association in any manner permitted under the Act or by law. When the holder of a first mortgage or first deed of trust of record or other purchaser of a Lot who obtains title to the Lot as a result of a foreclosure of a first mortgage or first deed of trust, such purchaser and its heirs, successors, and assigns shall not be liable for the assessments and other charges against such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Each assessment and other charges due hereunder, together with late charges, interest, the costs of collection thereof, including attorney's fees, shall also be the personal obligation or corporate obligation of each Person who was Owner of the Lot at the time when the assessment or other charge first became due and payable and may be collected by appropriate action at law. If more than one Person held an ownership interest in the Lot at the time the assessment or other charge first became due, then each Person shall be both jointly and severally liable. An Owner's personal obligation for payment of such assessments and other charges shall not become the personal obligation of a subsequent Owner unless expressly assumed by the subsequent Owner, although the lien shall continue against the Lot until the amounts due are paid.

**Section 5. Classes of Membership.** This Declaration may allow different classes of membership in the Association and may allow different levels of annual assessments and other assessments to be imposed for different classes of membership.

**Section 6. Declarant's Obligation to Fund Deficits; Assessment Credit.** During the Declarant Control Period, Declarant shall be obligated to fund any Operating Deficit. Declarant, at its option, may fund the Operating Deficit by any one or more of the following means: (i) payment to the Association; (ii) payment directly to a person or entity providing the services or materials to the Association, or (iii) providing, directly or indirectly, to or for the Association, services or materials related to Common Expenses (the value of which shall be determined by



the Board in its reasonable discretion, giving due consideration to what the fair market value of such services or materials would be if they had been furnished by a Person other than Declarant).

Declarant's obligation to fund Operating Deficits may be enforced against the Declarant and collected by the Association in the same manner as enforcement and collection of assessments applicable to other Owners.

After the end of the Declarant Control Period, the Declarant, at its sole option, may receive an assessment credit toward payment of annual assessments due and payable by Declarant thereafter for Lots owned by Declarant, in an amount equal to aggregate of the Operating Deficits paid by Declarant as provided herein. Declarant may not charge or collect interest or any other charge or fee on any monies paid by the Declarant, for Operating Deficits. As determined by Declarant, the assessment credit may be applied to payment of all annual assessments due from Declarant after the end of the Declarant Control Period until it has been credited in full.

**Section 7. Working Capital Fund.** At the time of closing of the initial sale of each Living Unit from the builder to an Owner, a sum equal to at least Seven Hundred Fifty Dollars (\$750.00) for each Living Unit shall be collected from the Owner and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Board of Directors of the Association will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

**Section 8. Date of Commencement of Annual Assessment; Due Dates.** The annual assessments provided for herein shall commence on the first day of the first month following the recording by Declarant of this Declaration. Provided, however, that Lots owned by any Owner (except the Declarant) or builder (other than the Declarant) shall be assessed at the rate of twenty-five percent (25%) of the amount of the assessments due for a Living Unit. Provided, furthermore, that the annual assessments on Lots owned by a builder shall be allowed to accrue for each month that the builder owns the Lot and shall not be required to be paid by the builder until the date of closing of the sale of a Living Unit or the date of rental of a Living Unit to the tenant of an Owner or builder. The annual assessments for any Living Unit shall commence on the day of the conveyance of the Lot from the Declarant or builder to any Owner other than the Declarant, and the Owner (purchaser) of such Living Unit shall pay at closing the prorated portion of that year's total annual assessment. The annual assessments provided for herein shall be paid annually and shall be due on January 1 of each year. Any assessment (annual or special) not paid within thirty (30) days of the date on which it is due shall incur a late payment fee equal to the greater of (i) twenty dollars (\$20.00) or (ii) ten percent (10%) of the unpaid assessment. Notwithstanding any other provision herein to the contrary, in no event shall the Declarant be obligated to pay any annual assessment during such time as the Declarant remains obligated under Section 6 above.

**Section 9. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost

of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Areas of Common Maintenance, any extraordinary maintenance, including fixtures and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. Provided, however, that the Board of Directors, in its sole discretion, may declare that a special assessment be levied against all Lots or Living Units, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. Any such special assessment declared by the Board of Directors shall be in an amount not to exceed an amount equal to that year's annual assessment per Lot or Living Unit and may be levied no more than once every five (5) years from the date of recording by Declarant of this Declaration.

**Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes.** The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 11. Exempt Property.** Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the 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. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

**Section 12. Certificate of Payment.** The Association shall, within ten (10) business days after receipt of a written request from an Owner or the Owner's authorized agent, and for such reasonable charge as the Board may determine, furnish a certificate signed by an officer of the Association, or by a Person or employee of any Person employed by the Association and to whom the Association has delegated the authority to issue such certificates, setting forth whether the assessments and other charges against a specified Lot or Living Unit have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment and is binding on the Association, the Board, and every Owner.

### **ARTICLE III** **MEMBERSHIP AND GOVERNANCE**

**Section 1. Membership.** The Declarant and every Owner within the Property shall be a Member of the Association, and by execution of this Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Member's Lot. The foregoing is not intended to include any Person that holds an interest merely as security for the performance of an obligation. Upon termination of ownership, an Owner's membership with respect to the

transferred Lot shall automatically terminate and be automatically transferred to the new Owner of the Lot.

**Section 2. Members' Rights of Use.** Each of the Areas of Common Maintenance throughout the Property are on a Lot, and except in accordance with the Associations maintenance, repair and upkeep of the Areas of Common Maintenance, no Member other than the Owner of the Lot on which the Area of Common Maintenance exist shall have the right of use and enjoyment and easement in the Areas of Common Maintenance. Any use of the Areas of Common Maintenance shall be subject to such rules and regulations as are allowed under the Governing Documents to be imposed by the Association.

**Section 3. Voting Rights.** Each Member shall have those voting rights established in this Declaration, which may be different for different classes of membership. If a Lot is owned by multiple Owners, the votes allocated to that Lot shall be cast only in accordance with the agreement of a majority in interest of the multiple Owners unless otherwise provided in the Governing Documents. A majority agreement is conclusively presumed if only one of the multiple Owners casts the votes allocated to that Lot. If the agreement of a majority in interest of the multiple Owners cannot be obtained, and any Owner promptly protests to the Person presiding at the meeting, the votes allocated to that Lot shall not be cast.

**Section 4. Proxies.** Votes may be cast in person or by proxy. All proxies must be dated, duly executed by the Owner, and delivered to the Secretary of the Association or to the property management company authorized by the Board to receive proxies prior to the opening of the meeting for which it is first intended to be used. No proxy shall exceed a term of eleven (11) months from its date except as otherwise provided in the Act. Revocation of a proxy shall be made by actual notice to the Person presiding over the Association meeting.

**Section 5. Quorum.** Except as otherwise provided in the Governing Documents, a quorum is present throughout any meeting of the Association whenever Persons entitled to cast twenty percent (20%) of the votes are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Governing Documents, the quorum requirements at the next meeting shall be one-half (1/2) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

**Section 6. Enforcement.** The Board, or any committee established by the Board, may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in the By-Laws and the Act. Such sanctions may include, without limitation:

(a) imposing monetary fines which shall constitute a lien upon the Lot or Living Unit of the violator;

- (b) filing liens in the public records for nonpayment of assessments or fees;
- (c) filing notices of violations in the public records providing notice of any violation of the Governing Documents;
- (d) suspending an Owner's right to vote;
- (e) suspending any services provided by the Association to an Owner or the Owner's Lot or Living Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association.

**ARTICLE IV**  
**PROPERTY DEVELOPMENT REQUIREMENTS AND PROPERTY RIGHTS**

**Section 1. Property Development Requirements.** The property shall be developed in accordance with a plan that complies with the applicable governmental zoning regulations and the Code in effect at the time of initial development of the property and further subject to the architectural controls, objective standards and guidelines all as provided for in Article VI below.

**Section 2. Owners' Easements of Enjoyment.** No Owner shall have a right and easement of use and enjoyment in and to the Areas of Common Maintenance located on any other Owner's Lot. Each Owner of a Lot shall have the right of use and enjoyment in the Areas of Common Maintenance on such Owner's Lot, subject to the following provisions:

- (a) the right of the Association to suspend the voting rights by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (b) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Areas of Common Maintenance and facilities;
- (c) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Areas of Common Maintenance and improvements thereon, which rules and regulations may further restrict the use of the Area of Common Maintenance;

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

**ARTICLE V**  
**MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Every record Owner of a Lot which is subject to assessment 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.** The Association shall have two classes of voting membership:

**Class A.** Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

**Class B.** The Class B member shall be the Declarant and shall be entitled to six (6) votes for each Lot owned by the Declarant. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot owned on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in Class A membership exceed the total votes outstanding in Class B membership;, or
- (b) ten (10) years from the date of conveyance of the first Lot by Declarant.

**ARTICLE VI**  
**ARCHITECTURAL CONTROL**

**Section 1. Purpose.** The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of certain objective standards relating to design, size and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of Property and of technological advances and environmental values. In order to implement the purposes of these covenants, the Declarant may establish and amend from time to time objective standards and guidelines, including, but not limited to, Architectural Standards and Construction Specifications, Uniform Mailbox Regulations, Landscape Guidelines, and Environmental Rules and Regulations as defined hereinafter, and which shall be binding on all Owners within the Property.

These standards and guidelines shall be administered by the Declarant or its designee(s) until such time as dwellings have been constructed upon all of the Lots and conveyed to Owners other than builders, or until such time as the Declarant shall delegate such responsibility to an architectural standards committee (hereinafter referred to as the "Architectural Review Board") composed of not less than three (3) Members of the Association.

## **Section 2. Controls.**

(a) No building, fence other than the Backyard Fences, or other structure shall be erected, placed, or altered, nor shall a building permit application for such improvement be made on any Lot until the proposed building location, specifications, exterior materials and color or finish, plot plan (showing the proposed location of such building or structure, drives, and parking areas, exterior shape, size and height) shall have been approved in writing by the Declarant, or by the Architectural Review Board of the Association if such review responsibility has been delegated to the Association by the Declarant. In addition, the Declarant may require prior written approval of a landscape plan. Refusal or approval of plans, location, exterior color or finish, or specifications may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant shall seem sufficient. No alteration in the exterior appearance of any building or structure, including exterior color or finish, shall be made without like prior written approval by the Declarant or Architectural Review Board. One (1) copy of all plans and related data shall be furnished to the Declarant or Architectural Review Board for its records. In the event approval of such plans is neither granted nor denied within sixty (60) days following receipt by the Declarant or Architectural Review Board of written demand for approval, the provisions of this paragraph shall be thereby waived.

(b) In order to assure that buildings and other structures will be located and staggered so that the maximum view, privacy, sunlight, and breeze will be available to each building or structure within the confines of the Lot, and to assure that structures will be located with regard to the topography of the Property, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Declarant reserves the right to control absolutely and solely to decide (subject to the provisions of the City of Raleigh zoning ordinances) the precise site and location of any building or structure on any Lot in the Property for reasons which may in the sole and uncontrolled discretion and judgment of the Declarant seem sufficient. The provisions of this paragraph shall in no way be construed as a guarantee that the view, privacy, sunlight, or breeze available to a building or structure on a given Lot shall not be affected by the location of a building or structure on any adjacent Lot.

(c) Each Owner shall provide space for the parking of automobiles on his Lot prior to the occupancy of any building or structure constructed on said Lot in accordance with reasonable standards established by the Declarant.

(d) Except as may be required by legal proceedings, no sign shall be erected or maintained on any Lot that anyone including, but not limited to, an Owner, a tenant, a realtor, a contractor, or a subcontractor, until the proposed sign size, color, content, number of signs, and location of sign(s) shall have been approved in writing by the Declarant or the Architectural Review Board, as applicable. Refusal or approval of size, color, content, number of signs, or location of sign(s) may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant seems sufficient. The Declarant further reserves the right to promulgate and amend from time to time uniform sign regulations (the "Uniform Sign Regulations") which shall establish standard design criteria for all signs, including, but not limited to, real estate sales signs, erected upon any Lot in the Property.

The Declarant and its agent shall have the right, whenever there shall have been placed or constructed on any Lot in the Property any sign which is in violation of these restrictions, to enter immediately upon such Property where such violation exists and summarily remove the same at the expense of the Owner.

(e) It shall be the responsibility of each Owner, tenant, contractor, or subcontractor to prevent the development of any unclear, unsightly, unkempt, unhealthy, or unsafe conditions of buildings or grounds on any Lot which shall tend to substantially decrease the beauty or safety of the Property, the neighborhood as a whole, or the specific area. The Declarant and its agents shall have the right to enter upon any Lot for the purpose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the Lot, and the cost of such corrective action shall be paid by the Owner. Such entry shall not be made until ten (10) days after the Owner of the Lot has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said ten (10) day period; provided, however, that should such conditions pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Declarant to take any such corrective action.

(f) No mailbox (which term shall be deemed to include the post) shall be erected or maintained on any Lot until the proposed mailbox design, color, and location have been approved in writing by the Declarant or the Architectural Review Board. Refusal or approval of design, color, or location may be based by the Declarant or the Architectural Review Board upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant or Architectural Review Board seems sufficient. No alteration in the exterior appearance of any mailbox shall be made without like prior written approval by the Declarant or the Architectural Review Board. The Declarant further reserves the right to establish uniform mailbox regulations (the "Uniform Mailbox Regulations") which shall define standard design criteria for all mailboxes erected upon any Lot in the Property. Once approved, a mail box must be erected on the Lot prior to obtaining a certificate of occupancy for any building or structure on any Lot.

(g) Notwithstanding any of the foregoing to the contrary, the Association shall perform all Maintenance on the Back Yard Fences and the Yard Improvements. Any addition to or replacement of any of the Yard Improvements by any Owner shall have been approved in writing by the Declarant, or by the Architectural Review Board as applicable. In addition, the Declarant may require prior written approval of a landscape plan. Refusal or approval of plans, location, or specifications may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant shall seem sufficient. One (1) copy of all plans or requests and related data shall be furnished to the Declarant or Architectural Review Board for its records. In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt by the Declarant or Architectural Review Board of written demand for approval, the provisions of this paragraph shall be thereby waived. The Association's obligation to Maintain the Yard Improvements shall be limited to extent such consent from the Declarant or Architectural Review Board specifically

provides that the Association will Maintain such added landscaping improvements. Additionally (i) other than the Back Yard Fences, the Association shall not be responsible for Maintaining any fence installed on any Lot; (ii) the Association's obligation to Maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity. No Owner or Occupant shall plant any vegetation in the front yard or along the front facade of a Living Unit except with the prior written approval of the Association.

**Section 3. Review Board.** The Declarant shall be the sole member of the Architectural Review Board until Living Units have been constructed upon all of the Lots and conveyed to Owners other than builders, or until such time as the Declarant shall resign, whichever shall first occur.

## **ARTICLE VII** **USE RESTRICTIONS**

**Section 1. Land Use and Building Type.** No Lot shall be used except for single-family residential purposes; provided, however, Declarant may use any Lot owned by Declarant as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of property in the Property. The temporary sales office may be a trailer and shall not be required to have a foundation.

**Section 2. Dwelling Specifications.** Except with prior written approval of the Declarant or the Architectural Review Board, as the case may be, no dwelling shall be erected or allowed to remain on a Lot having an area of the main structure, exclusive of open or screened porches, carports, garages and decks, of less than 2,300 square feet.

**Section 3. Nuisance.** No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood including, without limitation, the storing or parking of inoperative motor vehicles or the maintenance of or repair to motor vehicles except within completely enclosed garages constructed in conformity with these covenants and applicable laws and ordinances.

**Section 4. Outside Antennas.** No outside radio or television antennas or satellite dishes exceeding eighteen (18) inches in diameter and no free standing transmission or receiving towers or satellite dishes or discs shall be erected on any Lot or dwelling within the Property.

**Section 5. Building Setback.** Any house, garage or other approved building constructed on any Lot in said subdivision shall be constructed with the setback requirements set forth in the City of Raleigh zoning ordinances and setback requirements in effect at the time that said house, garage or other approved building is constructed on a Lot

**Section 6. Mobile Homes, Manufactured Homes, etc.** No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or installed on



any Lot. As used in this Section 6, mobile home, manufactured home or modular home shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. Notwithstanding the preceding, a temporary sales trailer without foundation may be used on any Lot during the development and marketing of the Property.

**Section 7. Waiver of Minor Violations.** Both the Declarant and the Board of Directors of the Association shall have the right to waive a minor violation of, and allow a minor variance from, the restrictions contained in Sections 2 and 5 of this Article, where the same resulted unintentionally or without gross carelessness on the part of any Owner (including, without limitation, Declarant) and/or is not materially harmful to the Property. For the purpose of this Section 7, a minor variance shall be deemed to be any variance of ten percent (10%) or less. If such waiver is granted in writing, then thereafter any matter so waived shall no longer be deemed a violation of these covenants.

**Section 8. Parking.** No automobile, truck or vehicle of any kind shall be parked on any public street within the subdivision. Neither shall any vehicle of any kind be parked in the portion of the Owner's driveway where it crosses the sidewalk, if applicable, so as to block the sidewalk to pedestrian traffic. No recreational vehicles, trucks, trailers, junked, dismantled, wrecked, unregistered or abandoned vehicles may be parked on any Lot without the prior approval of the Declarant or the Architectural Review Board. Any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

**Section 9. Use of Streets.** No athletic equipment such as goals, ramps, boards or jumps are permitted to be placed in the public street right of way.

**Section 10. Approved Building Materials.** Materials approved for the exterior of any building are brick, stone, hardi-plank, or any other material as may be approved in writing by the Declarant or the Architectural Review Board, as the case may be. Vinyl siding and trim accessories are not allowed.

**Section 11. Swimming Pools.** All swimming pools must be located in the rear yards of any Living Unit. No above-ground pools shall be erected, constructed or installed on any Lot.

**Section 12. Fences.** All fences other than the Back Yard Fences must have the written approval of the Declarant or the Architectural Review Board and must be installed and maintained at all times in a structurally sound and attractive manner. Materials approved for fences are decorative aluminum or any other material as may be approved in writing by the Declarant or the Architectural Review Board, as the case may be. Except of the rear of the Back Yard Fences, fences shall not exceed five feet in height. No fence of any kind shall be located closer to the front Lot line than the rear of the dwelling. Except for the rear of the Back Yard

Fences, wood, wire, chain link or concrete fences are not permitted. In addition, any fencing erected for use as a dog or animal pen shall be located behind the dwelling located on the Lot.

**Section 13. Accessory Buildings.** No accessory building of any nature whatsoever (including, but not limited to, detached garages, storage buildings, dog houses, and green houses) shall be placed on any Lot without the prior written approval of the Declarant or the Architectural Review Board, either of which shall have sole discretion relating to the location and type of accessory building which shall be permitted on any Lot. Accessory buildings shall match the Living Unit and must be approved in writing by the Declarant or the Architectural Review Board, as the case may be. Vinyl siding and trim accessories are not allowed.

**Section 14. Animals.** No animal, livestock or poultry of any kind shall be raised, bred, kept or allowed to remain on any Lot other than the usual and common household pets with the following exceptions: (1) no more than two (2) dogs may be kept on any Lot; (2) no pets shall be kept, bred, or maintained for any commercial purposes; (3) household pets must be kept and contained on an Owner's property within an approved fence enclosure; (4) no animals shall be kept, chained or tied to a stake of any kind; (5) no "runs" shall be erected or permitted on the Property; (6) no person shall keep, permit and/or cause the keeping of any animal otherwise allowed which habitually or frequently makes such sounds, cries or other utterances as may disturb the quiet, comfort or repose of any person with the Property; (7) any pet that is not on the Owner's premises shall be on a leash and accompanied by a responsible person who is required to clean up pet droppings; and (8) no pit bulls, Rottweilers, or other breeds commonly known to have vicious propensities shall be allowed. The determination as to whether a pet constitutes a nuisance or danger to Owners or the Association shall be in the sole discretion of the Board.

**Section 15. Drives and Walks.** All walks must be paved with concrete, stone and concrete mixture, brick pavers or such other material as may be approved in writing by the Declarant or the Architectural Review Board, as the case may be.

**Section 16. Impervious Surface Area.** The total impervious surface area for the Property shall not exceed the limits set forth by the applicable Governmental Entity. The stormwater runoff from any Lot with a total impervious surface area exceeding this maximum must be captured/treated with a stormwater infiltrator system, for which the Owner of the Lot shall be responsible to Maintain.

**Section 17. Maintenance.** Subject to any other applicable terms of this Declaration, the Owner of any Lot or Living Unit, at such Owner's sole cost and expense, shall Maintain its Lot, including improvements thereon, in a safe, clean and attractive condition at all times, including but not limited to the following:

- (a) Prompt removal of all litter, trash, refuse and wastes;
- (b) Lawn maintenance for the rear yards and any landscaping not considered a Yard Improvement on a regular basis;

(c) Maintenance of exterior lighting and mechanical facilities; Maintenance of parking areas and driveways;

(d) Maintenance of all dwelling units thereon, including gutters and downspouts, which shall be kept clean and free of debris;

(e) Except for Yard Improvements, Maintaining adequate soil erosion controls;

(f) Maintenance of the sidewalk, driveway, driveway apron and utility laterals serving each Owner's Lot, even if located in the Area of Common Maintenance, including providing snow and ice removal for any sidewalks located adjacent to the Owner's Lot.

Each Owner shall perform the foregoing responsibilities in a manner that does not reasonably disturb or interfere with the reasonable enjoyment by the other Owners of their property.

If any Owner fails to perform any of the foregoing Maintenance responsibilities, then the Association may give such Owner written notice of the failure and such Owner must, within ten (10) days after such notice is given by the Association, perform the required Maintenance. If any such Owner fails to perform the required Maintenance within the allotted time period, then the Association, acting through its authorized agent or agents, shall have the right and power, but not the obligation, to enter such Owner's Lot and perform such Maintenance without any liability to any Person for damages for wrongful entry or trespass. Such Owner shall be liable to the Association for the expenses incurred by the Association in performing the required Maintenance, and shall reimburse the Association for such expenses within thirty (30) days after the Association mails or delivers to such Owner an invoice therefore. If the Owner fails to reimburse the Association as required, the Association shall have the same rights and remedies for collection of the amount as provided in Article II, Section 4 hereinabove.

## **ARTICLE VIII** **EASEMENTS**

**Section 1. Utility Easements.** All of the Property, including Lots and the Areas of Common Maintenance, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration.

**Section 2. Easement for the Benefit of Governmental Entities.** An easement is hereby established for the benefit of any Governmental Entity having jurisdiction over the Property, or other governmental agency, over all Lots and Areas of Common Maintenance for the setting, removing and reading of water meters (which shall be separate for each Lot), maintaining and replacing water, sewage and drainage facilities, for police protection, fire fighting and garbage collection, postal services, and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the Governmental Entity or other responsible agency, be responsible for failing to provide any

emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the Governmental Entity's responsibilities.

**Section 3. Drainage Rights and Easements.** The Declarant so long as it controls the Association, and thereafter the Association, may cut and create drains and drainways both above ground and underground for the purpose of facilitating the removal of surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and appearance along, over or across any Lot.

These reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, the grading, cutting or ditching of the soil any other action necessary to complete installation.

**Section 4. Easement for Benefit of Utility Company.** The Declarant reserves the right to subject the Property, including the Areas of Common Maintenance, to a contract with Duke Power for the installation of underground electric lines, cables and connector posts or for the installation of street lighting, either or both of which, may require an initial payment or a continuing monthly payment to the utility by the owner of each Lot.

**Section 5. Easements for Repairs.** Each Lot owner shall have a perpetual access easement over an adjoining Lot to the extent reasonably necessary to perform repair, maintenance, or reconstruction of his dwelling. No fence, wall, outbuilding, storage shed or similar structure, or any other kind of obstruction shall be installed or maintained within the easement area which will obstruct access to the residential unit. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

**Section 6. Priority of Easements.** Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Areas of Common Maintenance, as the case may be, superior to all other encumbrances which may hereafter be applied against or in favor of the Property or any portion thereof.

**Section 7. Declarant Easement.** If any encroachment shall occur subsequent to subjecting the Property to this Declaration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding utilities, grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

**Section 8. Emergencies.** Every Lot shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and endangers any building or portion of the Areas of Common Maintenance.

**Section 9. Maintenance Easements.** The Association shall have access easement over each Lot for the purpose of and to the fullest extent necessary to perform its Maintenance responsibilities under Article VI Section 2(g) above. The Association shall use commercially reasonable efforts to give advance notice to each Owner and tenants of which the Association has knowledge of Maintenance to be performed in accordance with Article VI Section 2(g) above, but shall in no event be liable to any Owner or tenant due to the Association's failure to provide any advance notice prior to performing any responsibility or exercising any rights granted in this Declaration.

## **ARTICLE IX** **INSURANCE**

**Section 1. Insurance.** Commencing not later than the time of the first conveyance of a Lot to a Person other than the Declarant, the Association shall procure and Maintain liability insurance, in an amount of not less than one million dollars (\$1,000,000.00), covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the Maintenance of Area of Common Maintenance. The Association shall obtain and Maintain such other insurance as required in this Declaration or such other forms of insurance, and in such coverage amounts, as determined by the Board to be required or beneficial or otherwise is in the best interests of the Association. The premiums for such insurance shall be a Common Expense paid from the annual assessments as established pursuant to this Declaration.

**Section 2. Insurance to be Maintained by the Owners.** Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his Living Unit except that the amount shall not be required to exceed the replacement cost of the Living Unit. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid as a result of enforcement by the Association or otherwise.

## **ARTICLE X** **RIGHTS OF INSTITUTIONAL LENDERS**

**Section 1. Rights Reserved to Institutional Lenders.** "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association and other reputable mortgage lenders and guarantors and insurers of first mortgages. So long as any Institutional Lender or

Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

(a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

(c) To be given notice of default in the payment of assessments by any Owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place for which it or they may designate in writing to the Association.

(d) To inspect the books and records of the Association and the Declaration, Bylaws and any rules and regulations, if any, during normal business hours, and to obtain copies thereof.

(e) To be given notice by the Association of any substantial damage to any part of the Areas of Common Maintenance, secured by such Institutional Lender's deed of trust.

(f) To be given notice by the Association if any portion of the Areas of Common Maintenance secured by such Institutional Lender's deed of trust, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender, guarantor or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

## **ARTICLE XI** **GENERAL PROVISIONS**

**Section 1. Applicability.** The Property, this Declaration and the other Governing Documents are subject to the ordinances, regulations, and rules of the City, and shall be

construed in accordance with all of the applicable provisions of the Code, whether or not such Code provisions are specifically referenced in this Declaration. There may be certain provisions of the Code that apply to all of the Property and certain provisions of the Code that apply only to certain portions of the Property (for example, provisions of the Code relating to private streets apply only to those portions of the Property that contain private streets). It shall be the responsibility of the Association and each Owner of each portion of the Property to comply with all provisions of the Code applicable to such portion of the Property, whether or not any approval, disapproval, waiver or variance of the terms of this Declaration with respect to such portion of the Property has been given by the Declarant or its authorized agent, the Board, any committee of the Board, or any other Person who has the authority to give such approval, disapproval, waiver or variance.

### **Section 2. Conflicts.**

(a) Some or all of the Property may be subject to the provisions of the Act. To the extent that the Property is subject to the Act, the provisions of the Act control over any inconsistent provisions of this Declaration, or any other Governing Documents.

(b) The provisions of the Code control over any inconsistent provisions of this Declaration, or any other Governing Documents. As applicable provisions of the Code are amended, modified, revised, deleted, or moved to different sections, this Declaration is deemed to be revised so as to conform to the provisions of the Code as they exist from time to time and are applicable to the Property or any part thereof. Provided, however, any provision of this Declaration that is more restrictive than an applicable provision of the Code (for example, a building setback distance required by this Declaration that is greater than that required by the Code) is not an inconsistent provision of this Declaration unless the Code specifically provides otherwise, and is not deemed revised to conform to the Code.

(c) The provisions of this Article control over any inconsistent provisions of any other portion of this Declaration, or any other Governing Documents.

(d) The provisions of this Declaration control over any inconsistent provisions of any other Governing Documents, except as to matters of compliance with the North Carolina Nonprofit Corporation Act, in which event the Articles shall control.

**Section 3. Dispute Resolution.** It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Property and avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures.

**Section 4. Litigation.** Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of

the Members representing 75% of the total Class "A" votes in the Association. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article II; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it, or (e) actions by the Association against any contractor, vendor, or supplier of goods and services arising out of a contract for services or supplies. This section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**Section 5. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 6. Duration of Declaration.** The covenants and restrictions of this Declaration shall run with 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.

**Section 7. Amendment of Declaration.** This Declaration may be amended by Declarant, with no other consent, until such time as Declarant no longer owns at least one Lot within the subdivision. After Declarant has sold his last Lot, this Declaration may only be amended by a sixty-seven percent (67%) vote of the Lot owners. Amendments to this Declaration are valid from the later of the time of recording in the Registry or such later date specified in the amendment. When City approval of an amendment is required by the Code or by a provision of this Declaration (including this Article), City approval shall be evidenced by the signature of the City Attorney or his/her Deputy on the recorded original or copy of the amendment. Any amendment of this Article or any other provision of this Declaration that requires City approval is void *ab initio* if recorded without the required City signature.

**Section 8. Amendments Permitted Without Membership Approval.** The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the members:

(a) Amendments, if necessary for the exercise of any development right, including, but not limited to, amendments to qualify the Association or the property, or any portion thereof, for tax exempt status, or to reflect any plat change to the property as permitted herein.

(b) Amendments to correct any obvious error or inconsistency in drafting, typing or reproduction.

(c) Amendments to conform to the requirements of any law or Governmental Entity having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United



States Government or the State of North Carolina, regarding purchase or sale in such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

**Section 9. Indemnification.** No immunity, exculpation or indemnification provision of this Declaration shall relieve one or more Owners from its liabilities as an Owner under this Declaration and other Governing Documents.

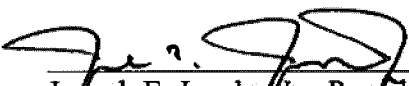
**Section 10. Recordation.** No amendment shall be effective until recorded in the County in which the Property is situated.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as of the day and year stated on the first page.

Raleigh Custom Homes Inc.  
A North Carolina corporation

By:   
Timothy W. Thompson, President

Jacobs Building Co., Inc.  
A North Carolina corporation

By:   
Joseph E. Jacobs, Jr., President

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

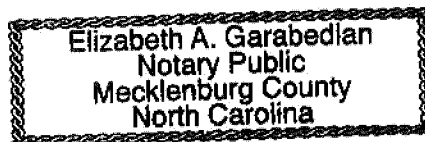
I, the undersigned Notary Public of the County and State aforesaid, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purposes stated therein and in the capacity indicated: TIMOTHY W. THOMPSON, President of Raleigh Custom Homes Inc., a North Carolina corporation.

*Elizabeth A. Garabedian*

Notary Public

My Commission Expires:

12-2-20



STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, the undersigned Notary Public of the County and State aforesaid, certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purposes stated therein and in the capacity indicated: JOSEPH E. JACOBS, JR., President of Jacobs Building Co. Inc., a North Carolina corporation.

*Elizabeth A. Garabedian*

Notary Public

My Commission Expires:

12-2-20

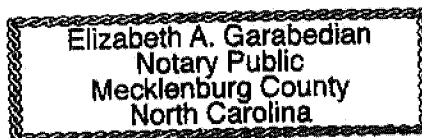


EXHIBIT A  
Property

Being all of Lots 4, 5, 6 and 7 of Western Heights, according to a map of Western Boulevard made by Wooten Engineer, recorded in Book of Maps 1928, Page 98 and also shown on Book of Maps 1942, Page 3, Wake County Registry

Being all of Lots 8, 9, 10, 11, 12, 13 and 14 as shown on map of Section No. 1 Crow-Kilgore Property recorded in Book of Maps 1942, Page 3 Wake County Registry.

EXHIBIT B  
Articles of Incorporation

SOSID: 1644212  
Date Filed: 12/12/2017 11:28:00 AM  
Elaine F. Marshall  
North Carolina Secretary of State  
C2017 345 00746

**ARTICLES OF INCORPORATION**  
**OF**

**SCHAUB DRIVE HOMEOWNERS' ASSOCIATION, INC.**

Pursuant to Chapter 55A of the General Statutes of North Carolina, the undersigned (being eighteen years of age or older) does hereby submit these articles of incorporation ("Articles") for the purpose of forming a nonprofit corporation and in connection therewith does set forth the following:

**ARTICLE I**

The name of the corporation is **Schaub Drive Homeowners' Association, Inc.** (hereinafter the "Association").

**ARTICLE II**

The Association shall have a perpetual existence.

**ARTICLE III**

The purposes for which the Association is organized are:

- A. To operate and provide for the acquisition, construction, management, maintenance and care of the Association's property.
- B. To be and constitute the Association to which reference is made in the Declaration of Restrictive Covenants for Schaub Drive Subdivision, as the same may now exist or as it may hereinafter be amended, from time to time (hereinafter the "Declaration"), which will be recorded in the Office of the Register of Deeds of Wake County, North Carolina.
- C. To provide an entity for the furtherance of the interests of the property owners in Schaub Drive Subdivision.
- D. To exercise all the powers necessary or desirable to perform the obligations and duties set out in these Articles of Incorporation, the Bylaws, the Declaration or otherwise conferred by law, including, without limitation, the following:
  1. To fix and collect assessments as provided in the Declaration;
  2. To own, manage, operate, maintain, repair and improve the Common Area, as the term is defined in the Declaration;
  3. To enforce covenants, conditions or restrictions affecting any property to the extent the Association may be authorized to do so under the

Declaration or as provided in any restrictive covenants affecting such property;

4. To enter into, make, perform and enforce contracts of every kind and description in carrying out any purpose of the Association; and
5. To adopt, alter, amend or repeal such Bylaws as may be necessary or desirable for the proper management and operation of the Association; provided however, such Bylaws may not be inconsistent with or contrary to any provisions of the Declaration.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of powers which may now or hereafter be permitted by Chapter 55A of the General Statutes of North Carolina, as amended from time to time.

#### **ARTICLE IV**

The Association shall have members which may be divided into such classes as shall be provided in the Declaration and Bylaws. All members shall be accepted, appointed or designated in the manner provided in the Declaration, as amended from time to time.

#### **ARTICLE V**

The directors of the Association shall be elected by the members in the manner provided in the Bylaws.

#### **ARTICLE VI**

Except as may be permitted by law, no part of the net earnings of the Association shall inure to the benefit of any officer, director or member of the Association. Upon dissolution of the Association, the assets thereof shall, after all of its liabilities and obligations have been discharged or adequate provision made therefor, be distributed to any other property owner association or associations organized for the purposes similar to those set forth on Article III hereinabove all as may be more set forth in the Bylaws.

#### **ARTICLE VII**

To the fullest extent permitted by applicable law, no director of the Association shall have any personal liability arising out of any act or omission whether by or in the right of the Association or otherwise for money damages for breach of any duty as a director. This Article shall not impair any right to indemnity from the Association that any director may now or hereafter have. Any repeal or modification of this Article shall be prospective only and shall not adversely affect any limitation hereunder on the personal liability of a director with respect to acts or omissions occurring prior to such repeal or modifications.

## ARTICLE VIII

The Corporation shall have all the powers granted non-profit corporations under the laws of the State of North Carolina. Notwithstanding any other provision of these Articles, this Corporation hereby elects tax-exempt status under Section 528 of the Internal Revenue Code of 1986. This Corporation shall not carry on any activities prohibited by a Corporation electing tax-exempt status under Section 528, or any corresponding sections or provisions of any future United States Internal Revenue Law. It is further provided that no distributions of income of the Corporation are to be made to members, directors or officers of the corporation provided, however, that members of the Corporation may receive a rebate of any excess dues and assessments previously paid. Upon the dissolution or liquidation of the Corporation, the assets thereof shall, after all of its liabilities and obligations have been discharged or adequate provision made therefor, be distributed to any association or associations organized for purposes similar to those set forth in Article III herein above, as may be more particularly provided in the bylaws of the Corporation.

## ARTICLE IX

The street address and county of the initial registered office of the Association is 4441 Six Forks Road, Suite 106, PMB #119, Wake County, Raleigh, North Carolina 27609, and the name of the initial registered agent at such address is Joseph E. Jacobs, Jr.

## ARTICLE X

The mailing address of the initial registered office of the Association is 4441 Six Forks Road, Suite 106, PMB #119, Wake County, Raleigh, North Carolina 27609.

## ARTICLE XI

The number of directors constituting the initial board of directors shall be two (2). The names and addresses of the persons who are to serve as the initial directors are:

<u>NAME</u>	<u>ADDRESS</u>
Joseph E. Jacobs, Jr.	4441 Six Forks Road, Suite 106 PMB #119 Raleigh, North Carolina 27609
Timothy Thompson	6736 Falls of Neuse Road, Suite 300 Raleigh, North Carolina 27615

## ARTICLE XII

The street address and county of the principal office of the Association 6736 Falls of Neuse Road, Suite 300, Wake County, Raleigh, North Carolina 27615.

**ARTICLE XIII**

The street address and county of the principal office of the Association 6736 Falls of Neuse Road, Suite 300, Wake County, Raleigh, North Carolina 27615.

**ARTICLE XIV**

The name and address of the person executing these articles of incorporation in his capacity as Incorporator is Richard O. Bolton, c/o Ragsdale Liggett PLLC, Post Office Box 31507, Raleigh, North Carolina 27622.

IN WITNESS WHEREOF, I, the undersigned incorporator, have hereunto set my hand, this 11 day of December, 2017.



\_\_\_\_\_(SEAL)  
Richard O. Bolton, Incorporator



EXHIBIT C  
Bylaws

# **SCHAUB DRIVE**

## **BYLAWS**

**SCHAUB DRIVE HOMEOWNERS' ASSOCIATION, INC.**

**BYLAWS OF**  
**SCHAUB DRIVE HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE 1**  
**PRINCIPAL OFFICE AND REGISTERED AGENT**

**Section 1.1.** **Name:** The name of the corporation is **SCHAUB DRIVE HOMEOWNERS' ASSOCIATION, INC.** ("Association").

**Section 1.2.** **Principal and Registered Office:** The Association shall have and maintain in the State of North Carolina a principal and registered office, and a registered agent whose business address is identical with such registered office. The registered office may be, but need not be, identical with the principal office in the State of North Carolina, and the address of the registered office may be changed from time to time by the Board of Directors.

**Section 1.3.** **Other Offices:** The Association may have offices at such other places, as the Board of Directors may from time to time determine, or as the affairs of the Association so require.

**Section 1.4.** **Meetings of Members and Directors:** Meetings of Members and Directors may be held at such places within the State of North Carolina as may be designated from time to time by the Board of Directors.

**ARTICLE 2**  
**DEFINITIONS**

For the purposes of these Bylaws, capitalized terms not specifically defined herein shall have the meanings ascribed to them in the *Declaration of Covenants, Conditions and Restrictions for Schaub Drive*, which will be recorded in the Office of the Register of Deeds of Wake County, North Carolina, as the same is or may be supplemented or amended from time to time (collectively, the "Declaration"). The term "Board of Directors" or "Board" shall have the same meaning as "Executive Board" as defined in the Act (as hereinafter defined) and the Declaration. Specific statutory citations referenced herein are for convenience only and as such exist in the North Carolina General Statutes on the date hereof.

**ARTICLE 3**  
**APPLICABILITY OF BYLAWS**

**Section 3.1. Applicability of Bylaws:** All present and future Owners, mortgagees, devisees, legatees and occupants of Lots within the Community, and their agents, servants, and employees, and any other persons who may make use of the facilities of the Community in any manner, are subject to the Declaration, these Bylaws, the Rules and Regulations, and any other rules duly passed.

The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Lot by any party shall conclusively establish the acceptance and ratification by such party of these Bylaws (and the Rules and Regulations adopted pursuant hereto), as they may be amended from time to time, and shall constitute an agreement by such parties to comply with these Bylaws.

**ARTICLE 4**  
**MEMBERSHIP AND MEETINGS OF MEMBERS**

**Section 4.1. Members:** Each Lot Owner shall be a Member of the Association and shall remain a Member until ceasing to be a record owner of a Lot.

**Section 4.2. Annual Meetings:** The first annual meeting of the Association Members shall be held at a place to be designated by the Board within one (1) year from the date of incorporation of the Association, and any subsequent, regular, annual meeting of the Members shall be held on the same day of the same month of each year thereafter. If the day of the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day of the following week which is not a legal holiday. The Members shall elect the Board of Directors at each annual meeting.

**Section 4.3. Special Meetings:** Special meetings of the Members may be called at any time: (a) by the president; (b) by a majority of the Board of Directors; or (c) within thirty (30) days after the Members holding at least twenty-five percent (25%) of all votes entitled to be cast on any issue proposed to be considered at the proposed special meeting have signed, dated and delivered to the Association's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. No business shall be transacted except that which is stated in the notice to the Members of the special meeting.

**Section 4.4. Notice of Meetings:** Written notice of each meeting of the Members shall be given by, or at the direction of the Declarant of the Association, or the person authorized to call the meeting, by hand delivery or by mailing a copy of such notice, postage prepaid, at least ten (10) days before, but not more than sixty (60) days before, to each Member entitled to vote thereat, addressed to the Members' address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, date and hour of the meeting, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer. Notice by other method shall be deemed given when said notice is deposited in the United States mail, addressed to the Member at his address as it appears on the records of the Association, the postage thereon prepaid, or delivered by hand to such address. Attendance by a Member at any meeting of Members shall be a waiver of notice to him as to the time and place and purpose thereof, except as provided in Section 4.5 hereof. Attendance at a meeting or a waiver of notice signed by one Owner in the event of multiple ownership of a Lot shall be considered a waiver of notice as to all co-Owners of that Lot, except as provided in Section 4.5 hereof. Notice to one of two or more co-Owners of a Lot shall constitute notice to all co-Owners. It shall be the obligation of every Member to immediately notify the Association in writing of any change in address and it shall be the responsibility of any new Member to immediately notify the Association of the fact of a transfer of ownership.

**Section 4.5. Waiver of Notice:** Any Lot Owner or lessee (if given the right to vote pursuant to the Articles of Incorporation of the Association [the "Articles"]), at any time, may waive notice of any meeting of the Association in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Lot Owner at any meeting of the Association shall constitute a waiver of notice by him of the time and place thereof except where a Lot Owner attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all of the voting Members are present at any meeting of the Association, no notice shall be required, and any business may be transacted at such meeting.

**Section 4.6. Quorum:** The presence at the meeting of Members entitled to cast, or proxies entitled to cast twenty-five percent (25%) of the total votes in the Association (as set forth in the Declaration) shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. Pursuant to Article 3 of the Act in the event any business cannot be conducted at any Association meeting because a quorum is

not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or the Bylaws, the quorum requirement at the next meeting shall be fifty-one percent (51%) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty-one percent (51%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

**Section 4.7. Proxies:** At all meetings of Members, each Member or lessee (if given the right to vote) may vote in person or by proxy. All proxies shall be in writing, dated as to the date of execution, and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon (i) conveyance by the Member of his Lot, (ii) upon the giving of actual notice to the person presiding over the meeting of the Association, or (iii) upon the lapse of eleven (11) months from the date of execution unless the proxy provides a shorter term. If a Lot is owned by more than one person, each owner of the Lot may vote or register protest to the casting of votes by the other owners of the Lot through a duly executed proxy.

**Section 4.8. Voting:** At every meeting of Members, the Lot Owners shall have the right collectively to cast on each question one vote for each Lot owned. Fifty-One percent (51%) of the eligible votes entitled to be cast by Members present at the meeting, in person or by proxy, shall be a majority unless the question is one upon which, by express provision of statute or the Articles, the Declaration, or of these Bylaws, a different vote is required, in which case such express provision shall govern. If only one of the multiple Owners of any Lot is present at an Association meeting, the Owner present is entitled to cast all the votes allocated to his Lot. If more than one of the multiple owners is present, the votes allocated to such Lot may be cast only in accordance with the agreement of the majority of such multiple owners; such majority agreement shall be conclusively presumed if any one of the multiple owners casts the allocated votes without protest being made promptly to the person presiding over the meeting by any of the other multiple owners.

**Section 4.9. Suspension of Right to Vote:** Pursuant to the provisions and procedures of section 13.2 the Board of Directors (or an adjudicatory panel appointed thereby) may suspend any Member's voting rights (i) for any period during which any assessment levied against such Member's Lot remains unpaid, and (ii) for a reasonable period of time in the case of an infraction of the Declaration, Bylaws, or the Rules and Regulations. Such suspension, however, shall not constitute a waiver or discharge of the Member's continuing obligation to pay any assessments.

**Section 4.10. Action Without Meeting:** Any action required to be taken at a meeting of Members may be taken without meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof and filed with the secretary of the Association as part of the corporate records, whether done before or after the action so taken.

## ARTICLE 5 BOARD OF DIRECTORS - ELECTIONS - TERM OF OFFICE

**Section 5.1. Number:** The affairs of the Association shall be managed by a board (hereinafter referred to as the "Board" or the "Board of Directors" or "Executive Board") of three (3) directors ("Directors") beginning with the date of the first annual meeting of the Members. The initial Board of Directors existing prior to the first annual meeting of the Members shall consist of two (2) Directors. The initial Directors are those named in the Articles, or, if none are named in the Articles, those named at the organizational meeting of the Association. At each annual meeting of the Association, the Members shall determine by resolution the number of and persons who shall serve as Directors on the Board of Directors until the next annual meeting. Vacancies on the Board not filled by Members shall be treated as vacancies to be filled by and at the discretion of the Board.

**Section 5.2.** **Term of Office:** Each Director will serve for a term of one year but may be re-elected to serve additional one year terms.

**Section 5.3.** **Removal/Resignation:** The Lot Owners, by a majority vote of all votes entitled to be cast in accordance with the declaration and entitled to vote at any meeting of the Association at which a quorum is present, may remove any member of the Board of Directors with or without cause. In the event of death, resignation or removal of a Director, his successors shall be selected by the remaining Directors and shall serve for the unexpired term of his predecessor. A Director may resign at any time by communicating his resignation in writing to the Board of Directors of the Association. The resignation is effective when communicated unless it specifies a later effective date.

**Section 5.4.** **Compensation:** No Director shall receive compensation for any services he may render to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his duties.

**Section 5.5.** **Action Taken Without A Meeting:** The Directors or a committee thereof shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors or members of the committee. Any action so approved shall have the same effect as though taken at a meeting of the Directors or the committee.

**Section 5.6.** **Vacancies:** Any vacancies occurring on the Board of Directors and any directorship to be filled by reason of any increase in the number of Directors shall be filled by the Board of Directors, and any Director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of its predecessor in office.

**Section 5.7.** **Elected Board Members:** A majority of elected Directors shall be a Lot Owner or co-Owner, or the spouse or immediate family member of a Lot Owner or co-Owner, unless the Lot Owner is a corporation, partnership, trust, limited liability company, or other legal entity or other than a natural person(s), in which event any officer, director, agent or employee or such corporation, partner of such partnership, beneficiary of such trust, or member or manager of such other legal entity, shall be eligible to serve as a member of the Board.

## ARTICLE 6 MEETINGS OF DIRECTORS

**Section 6.1.** **Regular Meetings:** Regular meetings of the Board shall be held at least annually without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 6.2.** **Special Meetings:** Special meetings of the Board shall be held when called by the Declarant of the Association, or by any two (2) Directors, after not less than ten (10) days notice to each Director.

**Section 6.3.** **Quorum:** A majority of the number of Directors fixed by the Articles shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board, unless a greater number is required by law, the Articles or these Bylaws. If at any meeting of the Board of Directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such

meeting any resumption of business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 6.4.** **Notice:** Neither the business to be transacted at, nor the purpose of, any regular or special meetings of the Board need be specified in the notice or written notice or waiver of such meeting.

**ARTICLE 7**  
**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**  
**PROHIBITED POWERS**

**Section 7.1.** **Powers:** The Board of Directors shall have the power to:

- a. adopt, amend, enforce and publish rules and regulations governing the use of the Common Elements and facilities, and the personal conduct of the Members and their visitors, invitees, employees and guests thereon, and to establish penalties for the infraction thereof;
- b. suspend the voting rights of a Member pursuant to section 4.9 hereof;
- c. exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Membership by other provisions, these Bylaws, the Articles, the Rules and Regulations, the Declaration, or the Act;
- d. 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;
- e. enter a Lot when necessary in connection with any emergency, maintenance, replacement or improvements for which the Association is responsible; provided, except as permitted by North Carolina law, such entry shall be made during reasonable hours with as little inconvenience to the Lot Owner as practicable, and any damage caused thereby (except such damage as results from any emergency beyond the Association's control) shall be repaired by the Association and such expense shall be treated as a Common Expense;
- f. employ or engage a manager, an independent contractor, attorney or accountant or such other employees and agents as they deem necessary, and to prescribe to them their duties; and
- g. annually adopt a proposed budget for the Association

**Section 7.2.** **Duties:** It shall be the duty of the Board of Directors to:

- a. cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by ten percent (10%) of the Members who are entitled to vote;
- b. supervise all officers, agents and employees of the Association, and ensure that their duties are properly performed;
- c. within thirty (30) days after adoption of any proposed budget for the Community, provide to all Lot Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum.

d. issue, or cause an appropriate officer to issue, upon demand by any person and for a reasonable charge established by the Board, a certificate setting forth whether or not any assessment has been paid;

e. procure and maintain adequate liability and hazard insurance, if available, on property owned or managed by the Association;

f. cause the Common Elements to be maintained in a manner consistent with the provisions of these Bylaws and the Declaration;

g. prepare and have available to each Member an annual report which shall include the annual financial statement which shall summarize the operation and actions of the Association and its income, expenditures and reserves; and

h. pay any licenses or governmental charges levied or imposed against the property of the Association.

**Section 7.3. Prohibited Powers:** The Board of Directors may not act unilaterally on behalf of the Association to amend the Declaration, to terminate the planned community or to elect members of the Board of Directors or determine the qualifications, powers and duties, or terms of office of the Board of Directors; provided, however, the Board may unilaterally fill vacancies in its membership for the unexpired portion of any term.

## ARTICLE 8 ADOPTION AND RATIFICATION OF ANNUAL BUDGET

The Board of Directors shall be responsible for adopting a proposed annual Association budget in an amount sufficient to cover all obligations set forth in the Declaration and these Bylaws. Within thirty (30) days after said adoption, the Board shall provide to all Members a summary of the proposed budget and a notice of the meeting to consider its ratification, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Members to consider ratification of the Budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget shall be ratified at the meeting unless a majority of all the Members in the Association rejects the proposed budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

## ARTICLE 9 OFFICERS AND THEIR DUTIES

**Section 9.1. Enumeration of Officers:** The officers of this Association shall be a President, Vice President, Secretary and a Treasurer who shall at all times be members of the Board, and such other officers, as the Board may from time to time by resolution create.

**Section 9.2. Election of Officers:** The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

**Section 9.3. Term:** The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise be disqualified to serve.



**Section 9.4. Qualifications:** All officers must be at least twenty-one (21) years of age.

**Section 9.5 Special Appointment:** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

**Section 9.6 Resignation and Removal:** Any officer may be removed from office, with or without cause, by the Board, provided that such action shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 9.7 Vacancies:** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 9.8 Multiple Offices:** Except for the members of the Declarant of the Declaration, no person shall simultaneously hold more than one of the offices except in the case of special offices created pursuant to section 8.5 hereof.

**Section 9.9 Compensation:** No officer shall receive any compensation from the Association for acting as such, but the Board may reimburse any officer for any direct expense incurred by him in the performance of his duties as such officer, and such reimbursement shall be a Common Expense.

**Section 9.10 Duties:** The duties of the officers are as follows:

a. **President:** The President shall when present, preside at all meetings of the Board of Directors; see that orders and resolutions of the Board are carried out; sign all leases, mortgages, deeds and other written instruments and agreements and co-sign all checks and promissory notes, and, in general, perform all duties incident to the office of the President and such other duties as may be prescribed from time to time by the Board.

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 by the President and/or the Board.

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 all notices required by law and these Bylaws; keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as required by the Board.

d. **Treasurer:** The Treasurer shall have custody of all funds and securities and receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Directors; sign all checks and promissory notes of the Association; keep proper books of accounts; and prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members. The Treasurer shall also prepare and file or cause to be prepared and filed all reports and returns required by Federal, State or local laws, and generally perform all other duties as may be assigned to him from time to time by the President or the Board.

## **ARTICLE 10 COMMITTEES**

The Board of Directors, by resolution adopted by majority of the number of Directors then in office, may designate one or more committees, each consisting of two or more Directors, and each of which, to the extent provided in the resolution, shall have and may exercise all of the authority of the Board of Directors in the management of the Association, except no such committee shall have authority as to the following matters:

- a. the dissolution, merger or consolidation of the Association; the amendment of the Articles of the Association; or the sale, lease or exchange of all or substantially all of the Property of the Association;
- b. the designation of any such committee or the filling of vacancies in the Board of Directors or in any such committee;
- c. the amendment or repeal of these Bylaws or adoption of new Bylaws;
- d. the amendment or repeal of any resolution of the Board which by its terms shall not be so amendable or repealable; and
- e. any other act prohibited by the Board.

Any such committee, or any member thereof, may be discharged or removed by action of the majority of the Board. Any resolutions adopted or other action taken by any such committee within the scope of authority delegated to it by the Board shall be deemed for all purposes to be adopted or taken by the Board. These committees shall create their own governing rules subject to approval by the Board.

## **ARTICLE 11 BOOKS AND RECORDS**

The books, records and papers of the Association shall at all times by appointment, during reasonable business hours, be subject to inspection by any Member, or his agent or attorney, for any proper purpose. The Declaration, the Articles and these Bylaws shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a reasonable price. The Board or the manager shall keep detailed records of the actions of the Board and the Association Manager, if any, minutes of the Board, minutes of meetings of the Association, and financial records and books of accounts of the Association, including a chronological listing of receipts and expenditures, charges against each Lot, the date when due, the amount paid thereon and the balance remaining unpaid. The financial records and books of account shall be available for examination by any Lot Owner or their duly authorized agents or attorneys during business hours by prior arrangement with the Board or the manager. A written report summarizing all receipts and expenditures of the Community shall be rendered by the Board to all Lot Owners on or before the 15th day of the third month following the close of each calendar year, covering the preceding year.

**ARTICLE 12  
ASSESSMENTS**

As more fully provided in the Declaration, each Member is obligated to pay to the Association the monthly, annual and/or special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any annual or special assessments levied against a Lot and remaining unpaid for thirty (30) days or longer from the time such sum is due and payable, shall be a lien on that Lot and shall be deemed a continuing lien thereon when a claim of lien is filed of record in the Office of the Wake County Clerk of Superior Court. Each such assessment, together with interest, late charges, and costs, and Reasonable Attorneys' Fees (as defined in the Act) incurred by the Association in collecting delinquent assessments shall also be the personal obligation of the person or person who was the Lot Owner at the time such assessments became due; provided, however, that the personal obligation of an Owner for delinquent assessments shall not pass to his successors in title unless the lien continues to encumber such transferred property interest.

In any action brought by the Board to foreclose on a Lot because of the unpaid assessments and attendant late fees, the Lot Owner shall be required to pay a reasonable rental for the use of his Lot, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all Lot Owners, or on behalf of any one or more individual Lot Owners, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with same, subject, however, to applicable restrictions of record. A suit to recover money judgments for unpaid common charges and attendant late fees may be maintained without foreclosing or waiving the lien securing the same.

**ARTICLE 13  
ASSESSMENTS FOR DAMAGES, OTHER FINES,  
AND SUSPENSIONS**

**Section 13.1. Damage to the Common Elements.** A Lot Owner is legally responsible for damage inflicted on any Common Element, and the Association may direct such owner to repair such damage at his expense, or the Association may itself accomplish the repairs and recover damages from the responsible Owner; liability of such owner established pursuant to this section shall be an assessment secured by a lien upon such owner's Lot or Lots.

When any claim arising under this section 13.1 is less than or equal to the jurisdictional amount established for "small claims" as defined in section 7A-7-120 of the North Carolina General Statutes, the aggrieved party may request a hearing before an adjudicatory panel appointed by the Board of Directors (or in the absence of appointment of such a panel before the Board itself) to determine responsibility for the alleged damage. Such hearing shall accord to the party charged with causing damages notice of such charge, the opportunity to be heard and to present evidence, and notice of the decision; provided, however, that such panel (or the Board as appropriate) may not assess liability for each damage incident against the party charged, be it a Lot Owner or the Association, in excess of the foregoing jurisdictional amount. When such claim exceeds the aforesaid jurisdictional amount, liability of any Lot owner shall be determined as otherwise provided by law.

**Section 13.2 Other Fines and Suspension of Voting Rights:** The adjudicatory panel referenced in section 13.1 shall have the authority to determine if a Lot Owner should be fined for a violation of the Declaration, Bylaws or Rules and Regulations of the Association. Such panel shall give the party charged with the violation notice of the charge, an opportunity to be heard and to present evidence and notice of the decision. If it is determined that a fine should be imposed, a fine may be imposed in accordance with the Declaration. If it is

determined that a suspension of privileges (including the right to vote on Association matters) should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

#### **ARTICLE 14 AMENDMENTS TO THE BYLAWS**

**Section 14.1** **Amendment by Owners:** These Bylaws may be amended by the affirmative vote of the voting Members having at least sixty-seven percent (67%) of the votes allocated in the Association, cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws.

**Section 14.2** **Amendment by the Board:** Notwithstanding section 15.1, the Board of Directors, may amend these Bylaws without the consent of the Lot Owners:

- a. to correct any obvious error or inconsistency in their drafting, typing, or reproduction; and
- b. to conform to the requirements of any law or governmental agency having legal jurisdiction over the Community or to qualify the Community or any Lots therein for mortgage or improvement loans made or insured by a governmental agency.

#### **ARTICLE 15 AMENDMENTS OF THE DECLARATION**

Any instrument amending the Declaration (other than an amendment by the Board of Directors to correct an error or inconsistency in drafting, typing, or reproduction) shall be delivered, following approval by the Owners, to the Executive Board. Thereupon, the Board of Directors shall, within thirty (30) days after delivery of the instrument of amendment: (i) reasonably assure itself that the amendment has been duly approved by the Owners as provided in the Declaration, and for this purpose, the Executive Board may rely on its roster of Members and shall not be required to cause any title to be examined; (ii) attach to the amendment a certification (upon such satisfactory determination) as to its validity, which certification (in form set forth in the Declaration) shall be executed by the President of the Association and attested by the Secretary, and (iii) cause the amendment to be recorded in the Wake County Registry; provided that any delay in recording such amendment within the aforesaid thirty (30) day period shall not invalidate the amendment.

#### **ARTICLE 16 MISCELLANEOUS**

**16.1** **Indemnity:** Each person who is or was a director, officer, employee and agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Association to the maximum extent permitted under North Carolina law against any and all claims and liabilities to which he has or shall become subject to by reason of serving or having served as such director, officer, employee or agent or by reason of any action alleged, and the Association shall reimburse each such person for all expenses, including reasonable attorneys' fees, reasonably incurred by him to the maximum extent permitted under North Carolina law in connection with any such claim or liability. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any such Director, officer, employee or agent may be entitled by law, agreement, vote of the Board of Directors or Members or otherwise with respect to any liability or litigation expenses arising out of his activities in such capacity. The Association shall have the power to purchase and maintain insurance on

behalf of any person who is or was a Director, officer, employee or agent of the Association, or who is or was serving at the request of the Association as a Director, officer employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

**Section 16.2** **Fiscal Year:** The fiscal year of the Association shall the calendar year. The commencement date of the fiscal year herein established may be modified by the Board of Directors should corporate practice subsequently dictate.

**Section 16.3** **Construction and Definitions:** Unless the context requires otherwise, the general provisions, rules of construction, and definitions in Chapter 55A of the North Carolina General Statutes shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person. The rules contained in the current edition of Roberts' Rules of Order shall govern the Association in all cases in which they are applicable, and in which they are not inconsistent with these Bylaws, the Articles, the Declaration or any applicable law.

**Section 16.4** **Waiver of Notice:** Whenever any notice is required to be given under the provisions of Chapter 55A of the North Carolina General Statutes, or under the provisions of the Articles, these Bylaws, or the Declaration, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent of the giving of such notice.

**Section 16.5** **Distribution of Assets Upon Dissolution:** The assets of the Association shall be distributed as provided for in the Articles.

**Section 16.6** **Conflicts:** In the case of any conflict between the Act and these Bylaws, the Act shall control; in case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

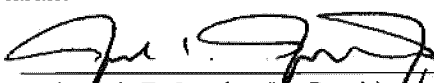
CERTIFICATION

We, Jacobs Building Co., Inc., a North Carolina corporation, and Raleigh Custom Homes, Inc., a North Carolina Corporation, the undersigned, do hereby certify that we are acting Declarants of Schaub Drive Homeowners' Association, Inc., a North Carolina nonprofit corporation, and that the foregoing Bylaws constitute the original Bylaws of the Association, as duly adopted by written consent of all Directors of the Association, effective as of the date hereof.

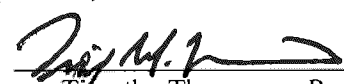
12<sup>th</sup> IN WITNESS WHEREOF, I have hereto subscribed my name and affixed the seal of the Association this day of December, 2017.

SCHAUB DRIVE HOMEOWNERS' ASSOCIATION, INC.

JACOBS BUILDING CO., INC., a North Carolina corporation,  
Declarant

By:   
Joseph E. Jacobs, Jr., President

RALEIGH CUSTOM HOMES, INC., a North Carolina  
corporation, Declarant

By:   
Timothy Thompson, President