

**BYLAWS OF**  
**ARBORS AT MALLARD CREEK PROPERTY OWNERS ASSOCIATION, INC.**

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**ARTICLE I - NAME, OFFICES AND PURPOSE**

Section 1.     Name.     The name of the corporation shall be Arbors at Mallard Creek Property Owners Association, Inc., hereinafter referred to as the "Association."

Section 2.     Principal Office.     The address of the initial principal office of the Association is 4500 Cameron Valley Parkway, Suite 350, Charlotte, Mecklenburg County, North Carolina 28211, which shall also be the registered office of the Association.

Section 3.     Other Offices.     The Association may have offices at such other places, either within or without the State of North Carolina, as the Board of Directors may from time to time determine.

Section 4.     Purposes.     The purpose of the Association is:

(A)     To serve as the "Association" of property owners contemplated by the Declaration of Covenants, Conditions, Restrictions and Easements for Arbors at Mallard Creek recorded in Book 17594 at Page 893 in the Office of the Register of Deeds of Mecklenburg County, North Carolina (as the same may be modified or amended from time to time, the "Declaration"); to provide for the maintenance, management and preservation of the Common Facilities as defined in the Declaration; and to exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration, for the benefit of the Members of the Association as defined in the Declaration and to promote the welfare of the Members of the Association; and

(B)     To engage in any lawful activity for which corporations may be organized under Chapter 55A of the General Statutes of North Carolina.

Section 5.     Definitions.     The definitions of certain capitalized terms used throughout these Bylaws shall be those definitions stated under the Declaration, which is specifically incorporated herein by reference.

**ARTICLE II - MEMBERS**

Section 1.     Qualification.     Every person or entity who is an Owner as defined (and limited) in the Declaration shall be a Member of the Association. For purposes of this Article, the term "Owner" expressly excludes any tenant or lessee that occupies any portion of the Property. Membership shall be apurtenant to and may not be separated from ownership of any Lot. Membership shall not be assignable or transferable. The Association shall have the following two classes of membership:

(1) Class A Membership. Class A Members shall be all Owners. Notwithstanding anything contained in the Declaration to the contrary, and except for matters concerning annual assessments, special assessments and amendments to the Declaration, Class A Members shall not be entitled to vote until termination of the Class B membership (as set forth below and in Section 3.2(b) of the Declaration).

(2) Class B Membership. The Class B Member shall be Declarant and its successors or assigns (as Declarant, and not merely as Owner of any Lot) hereunder. The Class B membership shall terminate and cease upon the first to occur of the following: (i) twenty (20) years from the date of filing the Declaration in the Mecklenburg County Public Registry, (ii) voluntary termination of the Class B membership by Declarant as evidenced by the recording of a certificate by Declarant in the Mecklenburg County Public Registry terminating such class, or (iii) the date that neither Arbors Land Partners, LLC, a North Carolina limited liability company, nor Mallard Land Partners, LLC, a North Carolina limited liability company, any longer owns any ownership interest in any entity which is Owner of any Lot.

Section 2. Corporate Records. A Member is entitled to inspect and copy the records of the Association to the maximum extent required by Chapter 55A of the General Statutes of North Carolina, upon making a written request five days in advance of the date of inspection.

### ARTICLE III - MEETINGS OF MEMBERS

Section 1. Annual Meeting. The annual meeting of Members shall be held in the month of November, for the purpose of electing Directors of the Association and for the transaction of such other business as may be properly brought before the meeting. If the annual meeting shall not be held as designated by these Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 4 of this Article III. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 2. Special Meeting. A special meeting of the Members may be called at any time by the President, a majority of the Board of Directors, or by the Secretary upon the written request of persons representing at least ten percent (10%) of the votes of the Members entitled to be cast on any issue to be considered at the special meeting.

Section 3. Place of Meeting. All meetings of Members shall be held at the principal office of the Association, or at such other place, either within or without the State of North Carolina, as shall be designated in the notice of the meeting or agreed upon by a majority of the Directors at the time in office or a majority of the Members entitled to vote at the meeting.

Section 4. Notice of Meetings. Written notice, stating the time and place of the meeting, and in the case of a special meeting, briefly describing the purpose or purposes thereof, shall be mailed not less than ten days (or, if notice is mailed by other than first class, registered or certified mail, no fewer than 30 days) and not more than sixty days before the date of the meeting to each Member addressed to the Member's address as it appears on the records of the Association. It shall be the primary responsibility of the Secretary to give such notice, but

it may be given by or at the direction of the President or other persons calling the meeting. Attendance by a Member at a meeting shall constitute a waiver of notice, except where a Member attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

Section 5. Quorum. A majority of the Members, represented in person or by proxy, shall constitute a quorum for the transaction of business at any meeting of the Members. 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 Declaration or these Bylaws, the quorum requirement at the next meeting shall be one-half 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. Thereafter, the quorum requirement shall increase to its original amount.

Section 6. Voting in General. Each Member may vote in person or by proxy. A proxy shall be in writing signed by the member or a duly authorized attorney-in-fact and filed with the Secretary prior to the commencement of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. If a proxy confers authority upon two or more persons and does not otherwise provide, a majority of them present at the meeting, or if only one is present then that one, may exercise all the powers conferred by the proxy. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in the proxyholder's place.

Section 7. Voting of Class B Member. Except for annual assessments, special assessments and amendments to the Declaration, the Class B Member shall be the only Member entitled to vote until termination of the Class B Membership. For matters concerning annual assessments, special assessments and amendments to the Declaration, the Class B Member shall be entitled to vote based on its Prorata Share (subject, however, to special voting rights for annual assessments as set forth in Section 5.3 of the Declaration). Notwithstanding anything contained herein or in the Declaration to the contrary, no changes shall be made in the designation or appointment of the Property Manager nor shall the Declaration be amended without the consent of the Class B Member so long as there remains a Class B Member, notwithstanding that the Class B Member may own no interest in the Property at the time and notwithstanding the Prorata Share of the Class B Member. So long as there remains a Class B Member, no vote of the Association shall be deemed approved without the consent of the Class B Member.

Section 8. Voting When More Than One Owner. Except as provided in the Declaration, in any case where any Lot within the Property has more than one Owner, any one such Owner may exercise the vote(s) applicable to such Lot, and such exercise shall be conclusive and binding with respect to all other persons having any interest in the Lot in question. In no event shall the vote or votes with respect to any jointly-owned Lot be cast separately. Any action taken in accordance with the provisions of the Declaration shall be binding upon all Owners and Mortgagees of the Property or Lots therein, and their respective heirs, successors and assigns. Every purchaser, grantee or assignee of any interest in the

Property or Lots therein subject to the Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of the Declaration shall run with and bind title to the Property and Lots therein as provided hereby.

Section 9. Manner of Acting. Except as otherwise provided by law or in the Bylaws, the act of the majority of the Members present at a meeting at which a quorum is present shall be the act of the Members.

Section 10. Action Without Meeting. Any action which the Members could take at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the persons who would be entitled to vote upon such action at a meeting, which consent shall be filed with the Secretary of the Association as part of the corporate records.

Section 11. Fixing Record Date. For the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or in order to make a determination of Members for any other purpose, the Board of Directors may fix in advance a date as the record date for the determination of Members. The record date shall be not more than 70 days before the meeting or action requiring a determination of Members. A determination of Members entitled to notice of or to vote at a Members' meeting shall be effective for any adjournment of the meeting unless the Board of Directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting. If no record date is fixed, Members at the close of business on the business date preceding the day on which notice is given shall be entitled to notice of the meeting and Members on the date of the meeting who are otherwise eligible to vote shall be entitled to vote at the meeting. If no record date is fixed for an action requiring a determination of Members, Members at the close of business on the day on which the board adopts the resolution relating to such action, or the sixtieth day prior to the date of such action, whichever is later, are entitled to such rights. If no record date is fixed for action without a meeting, the record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a consent to the action taken. An alphabetical list of the names and addresses of the Members entitled to notice shall be prepared and made available for inspection by any Member.

#### **ARTICLE IV - BOARD OF DIRECTORS**

Section 1. General Powers. The affairs of the Association shall be managed by the Board of Directors in accordance with the provisions of applicable law, the Articles of Incorporation and these Bylaws. The Board of Directors shall have all of the powers of a board of directors under the North Carolina Nonprofit Corporation Act.

Section 2. Number, Term and Qualification. The number of Directors of the Association shall be not less than three nor more than five. The Members at any annual meeting may by resolution fix the number of Directors to be elected at the meeting; but in the absence of such resolution, the number of Directors elected at the meeting plus the number of Directors continuing in office shall constitute the number of Directors of the Association until the next annual meeting of Members unless the number is changed by action of the Members.

The Directors shall be divided into three classes, as nearly equal in number as may be, to serve in the first instance for terms of one, two and three years, respectively, and until their successors shall be elected and shall qualify, and thereafter the successors in each class of Directors shall be elected to serve for terms of three years and until their successors shall be elected and shall qualify. In the event of any increase or decrease in the number of Directors, the additional or eliminated directorships shall be so classified or chosen that all classes of Directors shall remain or become equal in number, as nearly as may be. In the event of the death, resignation, retirement, removal or disqualification of a Director during the Director's elected term of office, the Director's successor shall be elected to serve only until the expiration of the term of the Director's predecessor. Directors need not be residents of the State of North Carolina.

Section 3. Election of Directors. So long as there remains a Class B Member, all members of the Board of Directors shall be appointed by the Class B Member and all vacancies shall be filled by the Class B Member. In the event there is no Class B Member, a majority of the Class A Members may designate three or more individuals or representatives of entities, a majority of whom shall be Class A Members, to constitute the Board of Directors which shall manage the business and affairs of the Association during intervals between meetings. Vacancies in the membership of the Board of Directors shall be filled by a majority of the whole Board of Directors at a regular meeting or at a special meeting called for that purpose. The Board of Directors shall prepare minutes of its proceedings which shall be kept with the records of the Association. The Board of Directors shall report to the Members on action taken.

Directors shall be elected by a majority vote at any annual meeting of the Members or at a special meeting of the Members of which notice of the purpose to elect one or more Directors has been duly given. The election of Directors may be a part of the order of business of each annual meeting of the Members.

Section 4. Resignation. A Director may resign at any time by giving notice of the Director's resignation in writing addressed to the President or the Secretary, or by presenting a written resignation in person at an annual or special meeting of the Board of Directors.

Section 5. Removal. Directors may be removed from office at any time with or without cause by the Members by the vote that would be required to elect the Director to the Board of Directors. If a Director is removed, a new Director may be elected to fill the vacancy at the same meeting. So long as there remains a Class B Member, the Class B Member shall have the sole authority to remove a Director.

Section 6. Vacancies. A vacancy occurring in the Board of Directors may be filled by a majority of the remaining Directors (but not less than two) at any regular meeting or special meeting of the Board of Directors for the unexpired portion of any term.

## **ARTICLE V - MEETINGS OF BOARD OF DIRECTORS**

Section 1. Annual Meeting. The annual meeting of the Board of Directors shall be held in the month of November, for the purpose of electing officers of the Association

and the transaction of such other business as may be properly brought before the meeting. If the annual meeting is not held as designated by these Bylaws, a substitute annual meeting may be called by or at the request of the Board of Directors, and such meeting shall be designated and treated for all purposes as the annual meeting.

Section 2. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chair of the Board, the President or any two Directors.

Section 3. Place of Meetings. Meetings of the Board of Directors may be held at the principal office of the Association or at such other place, either within or without the State of North Carolina, as shall either (i) be designated in the notice of the meeting or (ii) be agreed upon at or before the meeting by a majority of the Directors then in office.

Section 4. Notice of Meetings. The Secretary or other person or persons calling a meeting for which notice is required shall give notice by any usual means of communication at least five days before the meeting. Unless otherwise indicated in the notice, any and all business may be transacted at a meeting of the Board of Directors. Attendance by a Director at a meeting shall constitute a waiver of notice, except where a Director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called.

Section 5. Quorum. A majority of the Directors in office immediately before a meeting begins shall constitute a quorum for the transaction of business at a meeting of the Board of Directors. 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. Notwithstanding any provision to the contrary in the Declaration or these Bylaws, the quorum requirement at the next meeting shall be one-third of the number of Directors in office. Thereafter, the quorum requirement shall increase to its original amount.

Section 6. Manner of Acting. Except as otherwise provided by law or in the Bylaws, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 7. Action Without Meeting. Action taken by the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action is taken.

Section 8. Meeting by Conference Telephone. Any one or more Directors may participate in a meeting of the Board by means of a conference telephone or similar communications device which allows all Directors participating in the meeting to simultaneously hear each other during the meeting, and such participation in a meeting shall be deemed presence in person at such meeting.

## ARTICLE VI - COMMITTEES

Section 1. Standing or Other Committees. Standing or other committees having two or more members may be designated by a resolution adopted by a majority of the

number of Directors then in office. Vacancies in the membership of such committees shall be filled by appointment made in the same manner as provided in the case of the original appointment.

Section 2. Committee Authority. Neither the Board of Directors nor any committees of the Board shall be authorized to take the following actions:

- (A) Authorize distributions to or for the benefit of the Members, Directors or officers,
- (B) Recommend to Members or approve dissolution, merger or the sale, pledge, or transfer of all or substantially all of the Association's assets,
- (C) Elect, appoint or remove directors, or fill vacancies on the Board of Directors or on any of its committees,
- (D) Adopt, amend, or repeal the Articles of Incorporation or Bylaws,
- (E) Approve the Annual Budget (including Annual Assessments) as set forth in the Declaration,
- (F) Terminate the Declaration,
- (G) Determine the qualifications, power and duties, or terms of office of the Board of Directors, or
- (H) Amend the Declaration.

Section 3. Action Without Meeting. Action taken by the members of a committee without a meeting is nevertheless committee action if written consent to the action in question is signed by all of the members of the committee and filed with the minutes of the proceedings of the committee, whether done before or after the action is taken.

Section 4. Meeting by Conference Telephone. Any one or more members of a committee may participate in a meeting of the committee by means of a conference telephone or similar communications device which allows all committee members participating in the meeting to simultaneously hear each other during the meeting, and such participation in a meeting shall be deemed presence in person at such meeting.

## ARTICLE VII - OFFICERS

Section 1. Titles. The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also elect a Chair of the Board of Directors, an Executive Vice President, one or more additional Vice Presidents, one or more Assistant Secretaries and one or more Assistant Treasurers, and such other officers as it shall deem necessary. Except as otherwise provided in these Bylaws, the additional officers shall have the authority and perform the duties as from time to time may be prescribed by the Board of Directors. Any two or more offices may be held by the same individual, but no officer may act in more than one capacity where action of two or more officers is required.

Section 2. Election and Term. The officers of the Association shall be elected by the Board of Directors at the annual meeting. Each officer shall hold office until the next annual meeting and until a successor is elected and qualifies.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed by the Board whenever in its judgment the best interests of the Association will be served, but removal shall be without prejudice to any contract rights of the individual removed.

Section 4. Resignation. An officer or agent may resign at any time by communicating such resignation to the Association. A resignation is effective when it is communicated unless it specifies in writing a later effective date.

Section 5. Vacancies. Vacancies among the officers may be filled and new offices may be created and filled by the Board of Directors.

Section 6. Chair of the Board of Directors. The Chair of the Board of Directors, if such officer is elected, shall preside at meetings of the Board of Directors and shall have such other authority and perform such other duties as the Board of Directors shall designate.

Section 7. President. The President shall be the chief executive officer of the Association and, subject to the control of the Board of Directors, shall supervise and control the management of the Association in accordance with these Bylaws. In default of a Chair of the Board, the President shall preside at meetings of the Board of Directors. The President shall sign, with any other proper officer, instruments which may be lawfully executed on behalf of the Association, except where required or permitted by law to be otherwise signed and executed, and except where the signing and execution shall be delegated by the Board of Directors to some other officer or agent. In general, the President shall perform all duties incident to the office of President and such other duties as may be assigned by the Board of Directors from time to time.

Section 8. Vice Presidents. The Vice Presidents shall exercise the powers of the President during that officer's absence or inability to act. Any action taken by a Vice President in the performance of the duties of the President shall be presumptive evidence of the absence or inability to act of the President at the time the action was taken. The Vice Presidents shall have such other powers and perform such other duties as may be assigned by the Board of Directors.

Section 9. Treasurer. The Treasurer shall have custody of all funds and securities belonging to the Association and shall receive, deposit or disburse the same under the direction of the Board of Directors; provided, that the Board may appoint a custodian or depository for any such funds or securities, and the Board may designate those persons upon whose signature or authority such funds may be disbursed or transferred. The Treasurer shall in general perform the duties incident to the office and such other duties as may be assigned from time to time by the President or the Board of Directors.

Section 10. Assistant Treasurers. Each Assistant Treasurer shall have such powers and perform such duties as may be assigned by the Board of Directors, and the Assistant



Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability to act.

Section 11. Secretary. The Secretary shall keep accurate records of the acts and proceedings of all meetings of the Board of Directors and the Board of Directors and shall give all notices required by law and these Bylaws. The Secretary shall have general charge of the corporate books and records and of the corporate seal and shall affix the corporate seal to any lawfully executed instrument requiring it. The Secretary shall sign such instruments as may require the signature of the Secretary and in general shall perform all the duties incident to the office of Secretary and such other duties as may be assigned from time to time by the President or by the Board of Directors.

Section 12. Assistant Secretaries. Each Assistant Secretary shall have such powers and perform such duties as may be assigned by the Board of Directors, and the Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability to act.

#### **ARTICLE VIII - INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 1. General Policy. It shall be the policy of the Association to indemnify to the maximum extent permitted by Chapter 55A of the General Statutes of North Carolina any one or more of the Directors, officers, employees, or agents and former Directors, officers, employees or agents of the Association, and persons who serve or have served at the request of the Association as directors, officers, partners, trustees, employees or agents of another foreign or domestic Association, partnership, joint venture, trust or other enterprise, against judgments, penalties, settlements and other liabilities incurred by them in connection with any pending, threatened or completed action, suit or proceeding, whether civil, criminal, investigative or administrative (a "proceeding") and against reasonable costs and expenses (including attorneys' fees) in connection with any proceeding, where such liabilities and litigation expenses were incurred incident to the good faith performance of their duties.

Section 2. Use of Corporate Funds. The Association may advance expenses in connection with any proceeding to any such person in accordance with applicable law. The use of funds of the Association for indemnification or for the purchase and maintenance of insurance for the benefit of the persons designated in Section I of this Article shall be deemed a proper expense of the Association.

#### **ARTICLE IX - GENERAL PROVISIONS**

Section 1. Seal. The seal of the Association shall bear the name of the Association and the letters "NC"

Section 2. Waiver of Notice. A Director, Member or other person entitled to receive a notice required to be given under the provisions of these Bylaws, the Articles of Incorporation or by applicable law, may waive such notice by signing a written waiver, whether before or after the date and time stated in the notice. The waiver shall be filed with the minutes or corporate records. An individual's attendance at or participation in a meeting waives any required notice to that individual of the meeting unless the individual at the beginning of the

meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

**Section 3. Checks.** All checks, drafts or orders for the payment of money shall be signed by the officer or officers or other individuals that the Board of Directors may from time to time designate.

**Section 4. Bond.** The Board of Directors may by resolution require any or all officers, agents or employees of the Association to give bond to the Association, with sufficient sureties, conditioned upon the faithful performance of the duties of their offices or positions, and to comply with such other conditions as may from time to time be required by the Board.

**Section 5. Loans.** No loans shall be contracted on behalf of the Association and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

**Section 6. Fiscal Year.** The fiscal year of the Association shall be the period ending on December 31 of each year.

**Section 7. Conflict of Interest.** A Director shall inform the Board of Directors of any direct or indirect conflict of interest which the Director has with regard to any transaction contemplated by the Board of Directors (a "Conflict of Interest"). A Conflict of Interest shall exist in Board actions including, but not be limited to, actions concerning a transaction (i) in which the Director has a material financial interest, or (ii) in which the Director is presently serving as a director, trustee, officer or general partner of another party.

Pursuant to the provisions of Section 55A-8-31 of the General Statutes of North Carolina, the Director may participate in the discussion but may not vote on the transaction and when a Director does not vote because of a Conflict of Interest, the act of the majority of the Directors voting shall be the act of the Board of Directors if a quorum is present at the meeting.

**Section 8. Amendments.** So long as the Class B member exists, the Class B Member may unilaterally amend these Bylaws at any time and from time to time for any purpose. However, any such amendment shall not (i) adversely affect the title to any Lot unless the Owner shall consent thereto in writing and (ii) have a material adverse effect upon any right of any Member.

In the event there is no Class B Member, or, with the consent of the Class B Member, these Bylaws may be amended or repealed and new bylaws may be adopted by the affirmative vote of a majority of the entire Board of Directors at any annual, regular or special meeting of the Board, or by a majority of the Class A Members present at any meeting at which a quorum is present; provided, that notice of the meeting shall have been given which states that the purpose or one of the purposes of the meeting is to consider a proposed amendment to the Bylaws and includes a copy or summary of the proposed amendment or states the general nature of the amendment. Such notice may be waived as provided in these Bylaws.

Section 9. Governing Document. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and the Articles or these Bylaws, the Declaration shall control.

THIS IS TO CERTIFY that the above Bylaws of Arbors at Mallard Creek Property Owners Association, Inc. were duly adopted by the Board of Directors effective as of September 1, 2006.

This the 18th day of October, 2006.

  
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Cynthia McCrory- Secretary

[Corporate Seal]