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DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS AND EASEMENTS FOR ARBORS AT MALLARD CREEK

Charlotte, Mecklenburg County
North Carolina

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STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ARBORS AT MALLARD CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ARBORS AT MALLARD CREEK (this "Declaration") is made as of the 30th day of July, 2004, by and among **ARBORS AT MALLARD CREEK, LLC**, a North Carolina limited liability company ("Declarant"); **WILLIAM S. MCLEAN AND WIFE, GAIL S. MCLEAN**, residents of Lumberton, North Carolina (collectively "McLean"); **CHARLES M. BLANKENSHIP**, unmarried, a resident of Charlotte, North Carolina ("Blankenship" and, together with McLean, the "Ground Lessors"); and **CRESCENT RESOURCES, LLC** a Georgia limited liability company ("Crescent"). The Declarant, Ground Lessors, and Crescent shall hereinafter collectively be referred to as the "Initial Owners".

STATEMENT OF PURPOSE

Initial Owners, collectively, are the owners of fee simple title to the "Property" (as defined below) and intend for the Property to be developed as a mixed use office and retail development.

In order to insure the proper use, appropriate development and improvement of the Property and to enhance the value, desirability and attractiveness of the Property and to provide for a method of maintenance and continued improvement of certain Common Facilities within the Property, the Initial Owners, for the use and benefit of themselves, their successors and assigns, do hereby declare, encumber, place and impose upon the Property certain covenants, conditions, restrictions and easements as more specifically set forth in this Declaration. This Declaration is intended to complement and supplement local governmental laws and regulations; and in the event of a conflict occurring between the provisions of this Declaration and such laws and regulations, the most strict requirements shall control.

NOW, THEREFORE, in consideration of the premises and of the mutual benefits and duties herein contained, Initial Owners hereby declare that the Property shall be held, developed, improved, leased, sold, transferred, conveyed and occupied subject to the following covenants, conditions, restrictions, reservations and easements, all of which are for the purpose of protecting the value and desirability of, and which shall run with title to, the Property and shall be binding on all parties having a right, title or interest therein, along with their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof.

ARTICLE I
Definitions

1.1 Definitions

(a) "Architectural Review Committee" shall mean and refer to the Architectural Review Committee created pursuant to Section 6.8 below.

(b) "Association" shall mean and refer to the Arbors at Mallard Creek Property Owners Association, Inc., its successors and assigns, a North Carolina non-profit corporation formed or to be formed by Declarant.

(c) "Bank Parcel" shall mean and refer to that certain Lot, currently existing or as may be shown on a future recorded map of the Property, located in the northwest quadrant of the intersection of West Mallard Creek Church Road and Claude Freeman Drive which is intended to be developed as a branch bank.

(d) "BMPs" shall mean and refer collectively to the detention ponds located on the Property and shown generally on the Site Plan, as well as the vegetation around the ponds which BMPs shall be owned by the Association, together with any bio-retention facilities constructed on any Lot and which are connected to storm water pipes draining into the detention ponds.

(e) "Building" or "Buildings" shall mean and refer to any permanent structure constructed or to be constructed on any Lot which will be occupied by the Owner or by tenants, invitees, guests, employees or agents of Owner or any other improvement for which a certificate of occupancy must be obtained from the Charlotte-Mecklenburg Building Standards Department prior to occupancy. The Building shall encompass the entire vertical structure of the improvements from the foundation to the roof and including all exterior walls and surfaces.

(f) "Common Facilities" shall mean and refer to the BMPs, the Entrance Areas, the Retaining Walls, the roads, if any, (until such time as, if ever, such roads are dedicated and accepted by the appropriate governmental authority), and all other Common Facilities designated as such, now or in the future, by Declarant under the terms of this Declaration or any supplement hereto, for the common use and enjoyment of all of the Owners in accordance with this Declaration.

(g) "Declarant" shall mean and refer to Arbors at Mallard Creek, LLC, a North Carolina limited liability company, and any party to whom the rights of Declarant hereunder are assigned by written instrument recorded in the Mecklenburg County Registry pursuant to Section 8.6 below.

(h) "Entrance Areas" shall mean and refer collectively to the areas at the intersections of Claude Freeman Drive Extension and Senator Royall Drive Extension with West Mallard Creek Church Road in the approximate locations and configurations shown on the Site Plan, together with any landscaping, irrigation systems, lighting, project monument signage and other entrance features and facilities installed in such areas.

(i) "Initial Owners" shall mean the Declarant, the Ground Lessors and Crescent, collectively, who are the fee simple owners of all of the land constituting the Property as of the date of this Declaration.

(j) "Lot" shall mean and refer to any lot, parcel or tract of land within the Property owned by Initial Owners, and any lot, parcel or tract of land subdivided out of the Property by Declarant, including, without limitation, any Outparcel, and either conveyed to another person or entity or specifically identified by Declarant as a "Lot" herein or in an amendment to this Declaration or a map of the Property (or any portion thereof) which is hereafter filed and recorded by Declarant in the land records of Mecklenburg County, North Carolina and shall

initially mean each of Lots 1 through 3 as shown on the Map. Any property conveyed to the Association shall not be deemed a Lot pursuant to this Declaration for purposes of voting or for collecting assessments. Notwithstanding the foregoing, any portion of the Property developed as a condominium shall be treated as and deemed a single Lot (notwithstanding the fact that individual units within the condominium may be individually owned and conveyed) for all purposes under this Declaration, including membership and voting rights and assessments, all of which such rights and obligations shall be held by and/or the responsibility of the applicable owner's association for such condominium, and which such association shall be treated as a single Member/Owner for all purposes hereunder.

(k) "Map" shall mean and refer to that certain plat of the Property recorded in Map Book 41 at page 755 of the Mecklenburg County Public Registry.

(l) "Member" shall mean and refer to every person or entity entitled to membership in the Association.

(m) "Mortgage" shall mean a mortgage, deed of trust, deed to secure debt or other security instrument affecting a Lot or Lots and which has been recorded among the land records of Mecklenburg County, North Carolina.

(n) "Mortgagee" shall mean and refer to the mortgagee, beneficiary, trustee or other holder of a Mortgage.

(o) "Outparcels" shall mean and refer to certain parcels of land located generally along the margin of the right of way of West Mallard Creek Church Road and which are designated as an outparcel by the Declarant on the Map or on any future recorded map of the Property or designated as an "Outparcel" in the initial deed of conveyance from one of the Initial Owners to a Grantee. Without limiting the above, Lot 3, as shown on the Map, is hereby designated as an Outparcel.

(p) "Owner" shall mean and refer, except as provided in Section 1.1(j) herein to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property; but such term shall not include a Mortgagee. Such term expressly includes any tenant or lessee that occupies any portion of the Property; provided, however, that such term does not include any tenant or lessee that occupies any portion of the Property for purposes of Article III involving membership and voting rights within the Association.

(q) "Property" shall mean and refer to all of the real property described on Exhibit A attached hereto, and incorporated herein.

(r) "Property Manager" shall mean and refer to First Colony Corporation, a North Carolina corporation, or any successor property manager designated by the Association, retained to maintain, repair and replace Structures within the Property as more particularly described in Section 3.3 of this Declaration.

(s) "Prorata Share", with regard to all matters, shall mean and refer, as to each Lot, to that percentage calculated by using a fraction, the numerator of which is the total gross square footage of Buildings located upon such Lot (or allocated to such lot as provided in Section 5.5 below), and the denominator of which is the total gross square footage of (1) all Buildings

located on the Property and (2) the aggregate gross square footage allocated to Lots (as provided in Section 5.5 below) on which no Buildings have yet to be constructed.

(t) "Retaining Walls" shall mean and refer to the retaining wall and screening walls to be built by Declarant in areas designated, or to be designated, as common areas by the Declarant and conveyed to the Association as part of the Common Facilities, and generally as shown on the Site Plan. Owners of individual lots may also construct Retaining Walls wholly within their Lots, in which case, such Owner(s) shall be responsible for the cost of such construction and any replacement thereof but which shall be maintained by the Association.

(u) "Site Plan" shall mean and refer to the Site Plan attached hereto as Exhibit B and incorporated herein by reference. The Site Plan is attached for reference only and should not be viewed as a representation or warranty that the Property will be developed exactly as shown on the Site Plan.

(v) "Structure" shall mean and refer to any thing or device the placement of which upon or within any Lot might affect the physical appearance thereof, including, by way of illustration and not limitation, improvements, buildings, sheds, covered areas, driveways, fountains, pools, parking areas, trees, shrubbery, paving, curbing, landscaping, fences or walls or any sign or sign board. "Structure" shall also mean any excavation or fill, the volume of which exceeds ten (10) cubic yards; or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot.

ARTICLE II
Property

2.1 Description. The Property made subject to this Declaration is described in Exhibit A attached hereto and incorporated herein by reference.

ARTICLE III
Property Owner's Association

3.1 Membership. Subject to Section 1.1(p) herein, every person or entity who is an Owner of any Lot which is included in the Property shall be a Member of the Association. For purposes of this Article III, the term "Owner" expressly excludes any tenant or lessee that occupies any portion of the Property. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

(a) Classes of Membership. The Association shall have two classes of membership:

(1) Class A. Class A Members shall be all Owners, except for Declarant prior to termination of its Class B membership. If, however, Declarant owns one or more Lots upon or after the termination of its Class B membership, then Declarant shall be a Class A Member relative to such Lot(s) then owned.

(2) Class B. The Class B Member shall be Declarant and its successors or assigns (as Declarant, and not merely as successor 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 pass from the date of filing this Declaration in the Office of the Register of Deeds for

Mecklenburg County, North Carolina, (ii) voluntary termination of the Class B membership by Declarant as evidenced by the recording of a certificate by Declarant in the Office of the Register of Deeds of Mecklenburg County 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.

3.2 Voting.

(a) Class A. Except for matters concerning annual assessments, special assessments and amendments to this Declaration, Class A Members shall not be entitled to vote until termination of the Class B membership, at which time Class A Members shall be entitled to vote, and the amount of their vote shall equal such Members' Prorata Share. On all matters relating to annual assessments, special assessments and amendments to this Declaration, the Class A Members shall be entitled to vote based on their Prorata Share; provided, however, that special voting rights in favor of the Class B Member shall apply to matters concerning designation of Property Manager and amendments to this Declaration (which are addressed in Section 3.3, and Section 8.1 hereof, respectively) and provided further that special voting rights in favor of the Owner of the Bank Parcel shall apply to matters concerning certain amendments to this Declaration (which are addressed in Section 6.6 hereof).

(b) Class B. Except for annual assessments, special assessments and amendments to this 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 this 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 below). Notwithstanding anything contained herein to the contrary, no changes shall be made in the designation or appointment of the Property Manager nor shall this 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.

(c) General Provisions. Except as provided in Section 1.1(j) herein, 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 this 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 this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property and Lots therein as provided hereby.

3.3 Powers of Association. The Association shall enter into a management agreement with First Colony Corporation, a North Carolina corporation, or a subsidiary designated by First Colony Corporation as property manager to manage and maintain the Property, which Property Manager's fees shall be part of the annual assessment described in Section 5.2. Notwithstanding anything contained in this Declaration to the contrary, so long as Declarant remains a Class B

Member, no change may be made in the appointment of the Property Manager without the express written consent of the Declarant. In the event that the Property Manager is an affiliate of (i.e. is under the control of, controls or is under the common control with) Declarant, any fee paid to the Property Manager must be reasonable and based on what fees would have been had negotiations been at arm's length. Until the Association is formed or otherwise organized, Declarant reserves the right to exercise all of the rights and powers of the Association in its place and stead, including, without limitation, the right to levy and collect dues and assessments.

The Association, through the Property Manager, shall have the right to maintain, repair and replace all of the landscaping, irrigation, lawns, parking areas, sidewalks, signs, roadways, Common Facilities, Retaining Walls and other portions of the Property, excluding any Buildings, and the cost thereof shall be part of the annual assessment described in Section 5.2. The Association shall have, and is hereby granted, an easement over all of the Property in order to conduct such maintenance, repair and replacement and each Owner shall be assessed for such maintenance, repairs and replacements, as set forth in Article V below.

Although the Association has the right to maintain Structures on the Outparcels, it is anticipated by the Owners that the Owners of the Outparcels shall be solely responsible for maintaining, repairing and replacing all parking areas, sidewalks, roadways and other portions of the Outparcels in a clean and aesthetically pleasing manner similar to the manner in which the remainder of the Property is maintained and such failure continues for thirty (30) days after written notice to such Owner from the Association. In the event that any Owner of an Outparcel fails to maintain such Outparcel in a clean, aesthetically pleasing manner similar to the manner in which the remainder of the Property is maintained, the Association shall have the right to maintain, repair and replace all of the parking areas, sidewalks, roadways and other portions of such Outparcel, excluding any Buildings, and the cost thereof shall be deemed a special assessment against the Owner of such Outparcel as described in Section 5.4 below. The Association shall maintain the lawns and any landscaping on the Outparcels.

ARTICLE IV
Easements

4.1 Easements. Initial Owners do hereby establish, declare, and grant, for the benefit of each and every portion of the Property, as an appurtenance thereto, and to and for the benefit of the Association, the following easements:

(a) Maintenance. The Association shall have a non-exclusive, perpetual right and easement, subject to the terms and provisions of this Declaration, the terms and provisions of the Bylaws of the Association and the rules and regulations adopted from time to time by the Association to enter on any portion of the Property for the purposes of installing, maintaining and replacing landscaping to any and all lawns, trees or shrubbery, maintaining, repairing and replacing sidewalks, curbing, roadways, parking areas, irrigation, signage and any and all other portions of the Property, excluding Buildings. It is expressly understood and acknowledged that this maintenance responsibility shall be conducted on behalf of the Association by and through the Property Manager and such other contractors, subcontractors or agents as deemed necessary by the Property Manager. It is the intent of this easement to allow for the Property to be maintained in a uniform, aesthetically pleasing manner for the mutual benefit of all Lots and their Owners. Notwithstanding the above, the Association shall not maintain the parking areas,

sidewalks, roadways, structures and other portions of the Outparcels, except landscaping and lawns, unless and until an Owner of an Outparcel fails to maintain such Outparcel as described in Section 3.3 above.

(b) Ingress; Egress. Perpetual, non-exclusive rights, privileges and easements for the passage of vehicles and for the passage and accommodation of pedestrians, over, across and through all roadways, driveways, curb cuts, aisles, walkways and sidewalks located within or to be located within the Property, exclusive of the Buildings, constructed by the Owners on the Property.

Except for situations specifically provided for in the following subsections or elsewhere in this Declaration, no fence or other barrier or Structure (whether temporary or permanent) shall be erected or permitted within or across any Lot which would prevent reasonably convenient access, ingress, and egress to, from and between the Lots, unless the Owner seeking to construct such fence, barrier or Structure obtains the consent of Owners holding at least seventy-five percent (75%) of the votes in the Association; provided, however, the foregoing provision shall not prohibit the installation of landscaping improvements, lighting standards, monument and handicapped parking signs, sidewalks, medians, bumper guards, curbing, stop signs and other forms of traffic controls to the extent shown on the Site Plan or, if not shown on the Site Plan, consistent with other plans approved by the Association's Architectural Review Committee. Each Owner shall have the right to close off a portion of its Lot at such intervals and for such minimum period of time as may be legally necessary, in the opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, prior to closing off any portion of the Lot, as herein provided, such Owner shall give written notice to all other Owners of its intention to do so and shall attempt to coordinate such closing with each such other Owner so that no unreasonable interference with the passage of pedestrians or vehicles shall occur. Any such closing shall occur at a time or on a day when the business located on the Property is not open to the public, if possible, and in any case shall be done so as to interfere as little as reasonably possible with the normal operation of the businesses located on the Property.

Each Owner shall use reasonable efforts to assure that construction traffic to and from its Lot shall not interfere with the use, occupancy and enjoyment of the remainder of the Property (or any part thereof).

The Association shall have the right, but not the obligation, to erect stop signs and to establish reasonable rules and regulations with respect to the roadways, curb cuts, aisles, walkways and sidewalks located on the Property, including, without limitation, speed limits and to establish rules and regulations with regard to any parking spaces located on any Common Facilities.

(c) Parking. Perpetual, non-exclusive rights, privileges and easements for vehicular parking within any surface vehicular parking spaces located on the Property, excluding the Outparcels, and for the use only of the Owners of the Lots and their agents, employees, contractors, tenants, invitees, licensees or business visitors, excluding, however, the Outparcels. There shall be no cross parking rights between the Outparcels and the remainder of the Property; that is, neither the Owners of other portions of the Property, nor their agents, employees, contractors, tenants, invitees, licensees or business visitors shall have the right to use any parking spaces on the Outparcels, and neither the Owners of the Outparcels nor their agents, employees,

contractors, tenants, invitees, licensees and business visitors shall have the right to use any parking spaces on the other portions of the Property. Notwithstanding anything contained herein to the contrary, each Owner of a Lot must maintain upon such Owner's Lot a sufficient number of parking spaces to comply with all governmental requirements with respect to parking on such Lot, to comply with the requirements of any tenant and to comply with the parking requirements established by the Architectural Review Committee in accordance with the Architectural Guidelines (described in Section 6.8 below).

(d) Utilities. Perpetual non-exclusive rights, privileges, and easements in, to, over, under, along, and across a strip of land ten (10) feet in width extending from the side and rear lines of each Lot, for the purposes of:

(i) Installing, operating, using, maintaining, repairing, replacing, relocating, and removing underground lines, equipment and facilities for the delivery of utility services to each Lot and the buildings and other improvements from time to time located thereon, including, but not limited to, sanitary sewer, water (fire and domestic), gas, electrical, telephone, and communications lines and other similar facilities that are not located within the rights-of-way for the streets and roads adjacent to such Lot (hereinafter and collectively referred to as "Utility Lines"); and,

(ii) Connecting and tying into the common Utility Lines for such purpose and using such common Utility Lines in connection with the delivery of such utility services to each Lot and the Buildings and other improvements from time to time located thereon.

Such utilities easement rights shall be subject to the following provisions as well as the other applicable provisions contained in this Declaration:

(1) If any Utility Line is to be installed pursuant hereto, the location of such Utility Line shall be subject to the prior written approval of the Owner whose Lot is to be burdened thereby, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, such Utility Line must be installed underground and an Owner's approval may be withheld for any reason with respect to a Utility Line proposed to be located within any area on such Owner's Lot where a Building either is located or is planned to be located in the future. The easement area related thereto shall be no larger than whatever is necessary to reasonably satisfy the utility company, as to an easement to a public utility, or five (5) feet on each side of the centerline of the Utility Line, as actually installed, as to a private easement. The Owner whose Lot is to be burdened shall have the right to require that a copy of an as-built survey of any such Utility Line be delivered to it at the installing Owner's expense. Parties wishing to install such lines shall use good faith efforts to place the Utility Lines within five (5) feet from the property Utility Lines of any Lot.

(2) Any Owner of a Lot installing and/or connecting to a Utility Line on the Lot of another Owner pursuant hereto shall (i) provide at least forty-five (45) days prior written notice to the Owner of the Lot on which such Utility Line is to be located of its intention to do such work, (ii) pay all costs and expenses with respect to such work, (iii) cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first-class materials and in a good and

workmanlike manner as quickly as possible and in a manner so as to minimize interference with the use of the Lots affected and the conduct or operation of the business of the Owner whose Lot is affected (iv) not increase the cost of the utility services to the other parties served by such Utility Line and not interrupt, diminish, or otherwise interfere with the utility services to the other parties served by such Utility Line (except during periods other than during the normal business operating hours of such other parties after notice is given to such other parties and during such periods as otherwise approved by such other parties), (v) comply in all respects with all applicable governmental laws, regulations, and requirements, (vi) promptly, at its sole cost and expense, clean the area (as needed) and restore the affected portion of the Property and facilities therein (including, without limitation, any disturbed landscaping improvements and irrigation facilities) to a condition equal to or better than the condition which existed prior to the commencement of such work, (vii) prior to commencing construction or installation of any such utilities, provide evidence of liability and builders risk insurance in an amount reasonably adequate given the work to be performed; and (viii) indemnify and hold the Owner of the Lot on which such Utility Line is installed and any occupants thereof harmless from and against any claims, actions, demands, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys' fees, which may result from any such work.

(3) The party tapping into any Utility Line shall be responsible for all connection charges, meter fees and charges, user fees, tap-on fees, impact fees, acreage fees, and similar fees and charges imposed as a result of the connection of any Utility Line to the improvements constructed upon its Lot.

(4) Declarant, the Association and/or the Owner of any Lot on which such Utility Lines are located shall have the right to dedicate and convey to appropriate governmental entities and public utility companies any Utility Lines installed pursuant to this section, provided any such dedication or conveyance shall not adversely affect the use and enjoyment of such Utility Lines by the Owners of the Lots, and to grant any other easements or licenses to such appropriate governmental entities and public utility companies as are reasonably necessary or desirable for obtaining adequate utility service for the benefit of the Property, provided such easements and licenses shall not interfere with the use and enjoyment of the encumbered Lots and are located outside of the areas on the Lots where a Building either is located or is expected to be located in the future. The Owners of the Lots shall cooperate with and assist Declarant, the Association and/or any such other Owner and shall join in and consent to such dedications and conveyances if requested by Declarant, the Association or any such other Owner, at no cost, however, to such cooperating Owners.

(e) Plat Easements. Perpetual, non-exclusive easement and right to use (i) for natural surface and storm water drainage, any and all storm drainage pipes, drains, conduits or other components of the storm drainage system currently constructed or hereafter constructed on the Property within any area designated as a public drainage easement, permanent detention easement or any other type of drainage or detention easement on the Map or on any future plat of the Property recorded in the Mecklenburg County Public Registry, to the extent reasonably necessary to serve the improvements constructed or to be constructed on the appurtenant Lots; (ii) any and all sanitary sewer pipes, drains, conduits or other components of a sanitary sewer

system currently constructed or hereafter constructed on the Property within any area designated as a sanitary sewer right-of-way, sanitary sewer lateral or any other designation which implies a sanitary sewer easement on the Map or on any future plat of the Property recorded in the Mecklenburg County Public Registry, to the extent reasonably necessary to serve the improvements constructed or to be constructed on the appurtenant Lots; and (iii) any and all water service pipes, lines or other components of a water service system currently constructed or hereafter constructed on the Property within any area designated as any type of water line easement identified on the Map or on any future plat of the Property recorded in the Mecklenburg County Public Registry, to the extent reasonably necessary to serve the improvements constructed or to be constructed on the appurtenant Lots. With regard to each of the above easements, to the extent that any existing pipe or line is of insufficient size to serve the servient Lot and any appurtenant Lots, the Owner of the appurtenant Lots seeking to use such pipes or lines, in accordance with the terms of this easement, shall be responsible, at its sole cost, for increasing the size or capability of such pipes or lines.

Further, each of the Initial Owners hereby grants to each of the other Owners, for the benefit of the other Owners' Lots, a temporary construction easement seven and one-half feet (7½') on either side of, and contiguous to the outer boundaries of each of the easements granted above in this subparagraph (e) for the purpose of installation of the necessary conduits, pipes and lines. Such temporary construction easement shall terminate upon completion of installation of such pipes and lines, but in any event, two (2) years from the date of recording of any plat originally designating and defining any such easement area in the Mecklenburg County Public Registry.

Each Owner reserves the right to pave and landscape the surface of the easement areas located on each Owner's respective property and described in this subparagraph (e) and to use those areas for vehicle parking, driveways, sidewalks and other purposes that do not unreasonably interfere with the use and enjoyment of the easement.

(f) Entrance Areas. The Association shall have a perpetual, non-exclusive easement over, across and upon the Entrance Areas for purposes of installing, constructing, reconstructing, operating, maintaining, repairing, replacing and removing signage (including associated lighting) for the purposes of identifying and promoting Arbors at Mallard Creek and, to the extent permitted by law and deemed appropriate by the Declarant, identifying certain Owners and their tenants within Arbors at Mallard Creek. All expenditures incurred by the Association in maintaining, repairing or replacing the foregoing improvements within the Entrance Areas shall be assessed hereunder by the Association as part of the Common Facilities maintenance costs.

(g) Construction Easement. A temporary construction easement in, to, over, under, along and across a strip of land ten (10) feet in width extending from the side and rear lines of each Lot ("Construction Easement") until such time as the Property is fully developed, for the purpose of allowing Owners to connect to or tie onto any existing internal driveways, roadways or parking areas now or hereafter constructed for the purposes of maintaining the uniform cross-access and cross-parking contemplated by this Declaration.

4.2 Common Facilities. The Common Facilities shall be such portions of the Property as shall be owned by the Association, or over which the Association has reserved easement rights as set forth in this Declaration in favor of Declarant, the Association, or the

Owners and which are designated as Common Facilities by the Declarant either in this Declaration or in a Supplemental Declaration filed of record in the Mecklenburg County Public Registry. The current Common Facilities shall include the BMPs, the Entrance Areas the Retaining Walls (located on property owned by the Association but not those constructed on an Owner's Lot) and any roads, which roads are shown on the Map or any future recorded Map of all or any portion of the Property and designated as a road or street but shall not include parking and driveway areas on individual Lots even though each Owner has cross access and parking easements as provided in Sections 4.1(b) and (c) above and even though the Association has reserved an easement for maintenance as provided in Section 4.1(a) above. The Association shall maintain the Common Facilities from assessments collected from the Owners as provided herein. Every Owner shall have a non-exclusive, perpetual right and easement of enjoyment in and to the Common Facilities which shall be appurtenant to each Lot; provided, however, such use shall be subject to the terms and conditions of this Declaration, to the terms and provisions of the Bylaws of the Association and the rules and regulations adopted from time to time by the Association.

4.3 Rights of Third Parties. The easements hereby established are private easements, and nothing herein shall be construed to create easements in favor of the general public. However, easements created under this Declaration in favor of an Owner and appurtenant to such Owner's Lot may be exercised, used, and enjoyed by such Owners' agents, employees, contractors, tenants, invitees, licensees, and business visitors; provided, however, that such rights shall be subject to the terms of this Declaration and to any rules and regulations adopted by the Association from time to time.

ARTICLE V
Assessments

5.1 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot shall, by acceptance of a conveyance therefor, whether or not it shall be so expressed in any instrument of conveyance, be deemed to (i) covenant and agree to all the terms and provisions of this Declaration and (ii) promise to pay to the Association both annual and special assessments and charges, such as are established and to be collected from time to time as hereinafter provided. Each such assessment, together with such interest thereon and costs of collection therefor as are hereinafter provided, shall be the personal obligation of the person or entity who was Owner of such Lot at the time when the assessment became due. In the case of co-ownership of a Lot, all of such Co-Owners shall be jointly and severally liable for the entire amount of the assessment. The annual and special assessments and charges, together with such interest thereon and costs of collection thereof as are hereinafter provided, remaining unpaid after the thirty (30) day period described in Section 5.6 below shall constitute a charge and lien upon the Lot against which such assessment is made effective as of the date of the filing of a claim of lien in the Office of the Clerk of Superior Court of Mecklenburg County. The Association shall, upon demand and payment of a reasonable charge, furnish to any Owner a certificate in writing signed by an authorized representative of the Association stating whether the assessments against any Owner's Lot have been paid and, if not, the amount due and owing. Such certificates shall be conclusive as evidence for third parties as to the status of assessments against such Lot.

5.2 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used for the improvement, maintenance, operation, repair, replacement and additions of and to the Property as described in Section 3.3 above, including, but not limited to, the payment of insurance, the management fee of any Property Manager engaged pursuant to Section 3.3 herein, the payment of taxes on portions of the Property owned by the Association in fee simple, the payment of utility charges related thereto (including water for any irrigation or sprinkler systems), the cost of maintaining any appurtenant easements, the cost of repairing or repaving any roadways in the Property and the Common Facilities, the payment of license, permit and inspection fees, costs of street signs and markers, the costs of enforcing this Declaration (including without limitation, attorney's fees and court costs), and the costs of labor, equipment, materials, management and supervision thereof. In addition, the Association may use annual assessments for the purpose of maintaining medians, landscaped areas and sprinkler systems adjacent to or within the public rights-of-way of any roadways adjacent to the Property, doing any other things necessary or desirable, in the discretion of the Association, to keep the Property in a neat and good order and to provide for the health, welfare and safety of the Owners and occupants of the Property.

5.3 Annual Assessment Amount/Annual Budgets. The annual assessment applicable to the Property shall be determined by the Association in its discretion, based upon actual and estimated costs and expenses for the applicable year, including a reserve fund for capital repairs and replacements, and, subject to Subsection (b) below, shall be apportioned based on the Prorata Shares of each Lot. At least sixty (60) days before the beginning of each fiscal year, the Association shall prepare a budget for the estimated expenses of the Association for the coming year for the performance of the Association's duties as set forth in this Declaration. The annual assessments shall be calculated in accordance with the Prorata Shares, in aggregate amounts reasonably expected to produce income equaling the total budget. In determining assessments, the Association may consider other sources of funds, including any surplus from prior years and any assessment income expected to be generated from additional Lots anticipated to become subject to assessment in the fiscal year. The Association shall send a copy of the budget and notice of the amount of the annual assessment to each Member at least thirty (30) days prior to the beginning of the fiscal year for which such budget is to be effective. Until such time as the Property is fully developed substantially in accordance with the Site Plan, or until substantially all entitlements for developable square footage has been used, the Association shall have the right, in its sole discretion, to increase the budget annually as the Association deems necessary to cover the estimated cost and expenses of the Association due to the addition of new Structures, or anticipated completion of new Structures during such year for which the budget is being prepared. Upon completion of development of the Property substantially in accordance with the Site Plan, the Association may increase the budget annually up to ten percent (10%) from the prior year in its sole discretion; provided, however, if any annual increase is more than ten percent (10%) from the prior year, such increase must be approved by Class A Members holding at least seventy-five percent (75%) of the Class A votes and the Class B Member. There shall be no obligation to call a meeting for the purpose of considering the budget and the annual assessments during the period from the date of the recording of this Declaration until such time as the Property is fully developed substantially in accordance with the Site Plan nor at any time thereafter provided that the annual budget does not increase by more than ten percent (10%) per year. After development of the Property is substantially completed in accordance with the Site Plan and in the event that the annual estimated budget increases the annual assessment by more than ten percent (10%), there shall be no obligation to call a meeting for the purpose of

considering the budget and the annual assessment except on petition of the Owners, or any combination thereof, who hold at least twenty-five percent (25%) of the Class A votes.

5.4 Special Assessments. Subject to the requisite approval of the Owners as provided herein and in addition to the annual assessments hereinabove authorized, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Structures, excluding Buildings, located on the Property. Except as set forth in the next sentence, special assessments shall be allocated among the Owners in the same manner as annual assessments. The Association may also, without any consent of the Owners, levy a special assessment against any Owner, who fails to maintain its Lot in accordance with the standards set forth in Section 6.3.

The Association may levy special assessments only upon the affirmative votes of Members holding at least fifty percent (50%) of the votes in the Association, in accordance with Section 3.2 herein; or, as to an Owner who fails to maintain its Lot in accordance with Section 6.3, at the discretion of the officers of the Association.

5.5 Commencement. Assessments on all Lots (including those owned by the Declarant) shall commence upon the first purchase of a Lot from the Initial Owner (unless the purchaser is Declarant). At the time of the initial sale or transfer of a Lot by the Initial Owners, the Declarant shall allocate a certain square footage of development rights which can be constructed by such grantee on the Lot and the record of such allocation shall be maintained by the Association. For purposes of determining the Prorata Share of the Owner of that Lot, the square footage of the Building intended for such Lot shall be the square footage so allocated by the Declarant; provided, however, once a Building is constructed on the Lot, the actual square footage of such Building shall be used for purposes of determining the Prorata Share rather than the allocated square footage as designated by the Declarant. Furthermore, for any Lot or Lots owned by the Initial Owners for which Declarant has not allocated a specific developable square footage, the aggregate Prorata Share for all such Lots shall be the difference between the total gross square footage of development permitted on the Property by zoning less the aggregate of (i) gross square footage of all existing Buildings on the Property and (ii) gross square footage of development rights previously allocated by Declarant to Lots not owned by the Initial Owners on which no Building exists; and Declarant shall allocate such difference among the Lots owned by the Initial Owners in proportion to the relative acreage that each such Lot bears to all such Lots.

5.6 Due Date and Limitation of Assessment Frequency. Annual assessments shall be levied by the Association annually in advance, shall be billed no less frequently than annually and shall be payable in advance at the beginning of each calendar quarter (or other period established by Declarant or the Association). Unless otherwise provided herein, all assessments (annual and special) shall be due and payable in full within thirty (30) days after billed to an Owner by the Association.

5.7 Records of Assessments. The Association shall cause to be maintained in the office of the Association and the Property Manager a record of all Lots and assessments applicable thereto which shall be open to inspection by any Owner. Written notice of each assessment shall be mailed to every Owner of the Lot subject to the assessment.

The Association shall, upon demand and payment of a reasonable charge, furnish to any Owner a certificate in writing signed by an authorized representative of the Association stating whether the assessments against the Owner's Lot have been paid and, if not, the amount due and owing. Such certificates shall be conclusive as evidence for third parties as to the status of assessments against such Lot.

5.8 Effect of Non-Payment of Assessment. If any assessment is not paid on the date as described in Section 5.6 above, then such assessment shall be delinquent and shall accrue interest thereon at the "prime rate" of interest announced from time to time by Wachovia Bank, National Association (or its successor), plus five percent (5%) per annum (such rate to change from time to time as the prime rate changes), unless a lesser rate is required under applicable law, in which event the lesser rate shall be applicable. The Association may bring an action at law against the Owner personally and/or file a lien as described in Section 5.1 above and foreclose the lien against the Lot, and there shall be added to the amount of such assessment all reasonable attorneys' fees and costs incurred by the Association in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as indicated above. The Association shall be entitled to foreclose such lien in the same manner as foreclosure of a mechanic's or materialmen's lien under Chapter 44A of the North Carolina General Statutes.

ARTICLE VI
Uses

6.1 Permitted Uses. The permitted uses of the Lots shall be any use allowed by the applicable governmental zoning ordinance.

The Declarant may establish additional restrictions for Lots within the Property, by provisions in the deeds to such Lots or by supplement to this Declaration, prior to the conveyance of the affected Lots. After the conveyance of Lots, the Declarant may not establish any additional uses or restrictions for such Lots without the consent of the Owner of the affected Lots.

6.2 Temporary Structures. No building or other Structure of a temporary nature shall be allowed on any Lot at any time except that of an Owner's contractors and subcontractors during the period of construction or repair to Structures.

6.3 Repair and Maintenance. As provided in Section 3.3, the Association shall be responsible for maintaining all Structures and landscaping within the Property other than the Buildings and, the parking areas, sidewalks and roadways located on any Outparcel. The Owner of each Lot within the Property shall be solely responsible for repairing, keeping and maintaining such Owner's Building in a safe, clean, neat and sanitary condition and shall comply in all respects with all governmental zoning, health, environmental, fire and police requirements and standards as may be established by the Association from time to time. Each Owner of an Outparcel shall continually repair, keep and maintain the Outparcel and shall repair, keep and maintain all parking lots, drives, driveways, boulevards and Structures within the boundaries of the Outparcel (other than landscaping and lawns) in a safe, clean, neat and sanitary condition, and shall comply in all respects with all governmental zoning, health, environmental, fire and police requirements and standards as may be established by the Association from time to time. Furthermore, each Owner of an Outparcel shall maintain such tract to a standard of quality at

least equal to that standard preserved by the Association in maintaining the remainder of the Property. Notwithstanding the above to the contrary, any Retaining Wall constructed by the Owner of a Lot and located on such Owner's Lot (i.e., is not part of the Common Facilities) will be maintained by the Association as provided above for all other Structures on a Lot; provided, however, the cost of any capital expenditures to repair or replace such Retaining Wall shall be solely the responsibility of the Owner of such Lot on which the Retaining Wall is located. If such Owner of the Retaining Wall does not promptly pay for any capital expenditure for repair or replacement, the Association, through its officers, shall have the right to levy a special assessment against such Lot Owner as provided in Section 5.4 above.

During construction of any Structures on any Lot, the Owner thereof shall keep any construction site, including adjacent Lots and roads, free of unsightly accumulation of trash, debris, rubbish and scrap materials and shall keep all roads clean of any mud and dirt; and construction materials, trailers, shacks and the like employed in connection with such construction shall be kept in a neat and orderly manner at all times.

In the event any Owner fails to observe required maintenance standards with respect to such Owner's Lot, the Association shall provide written notice thereof to the Owner, and the Owner shall have a period of thirty (30) days after receipt of such written notice within which to commence in a reasonable and expeditious fashion the correction of such maintenance deficiencies. If said deficiencies are not corrected within such thirty (30) day period, the Association reserves the right and easement to enter upon the Lot for purposes of correcting such deficiencies and thereafter to charge or assess the Owner of the Lot for the costs thereof as a special assessment. The Owner shall pay said special assessment within thirty (30) days after the date of the Association's statement to the Owner for the costs of correcting said deficiencies; provided, however, if such charges are not paid with said thirty (30) day period, the Association shall have the right to file a lien against such Lot and to enforce such lien as set forth in Sections 5.1, 5.4 and 5.8 above.

The standard of maintenance of the Lots and Structures shall be that of similar first class office and retail developments in the Mecklenburg County, North Carolina sub-market in which the Property is located.

6.4 Dirt, Dust and Waste Discharge. No use of the Property or Lots therein will be permitted which emits dust, sweepings, dirt or cinders into the atmosphere or discharges liquid, solid wastes or other harmful matter into any stream, river, pond, lake or other body of water which, in the opinion of the Association, may adversely affect the health, safety, comfort of, or the intended property use by, persons within the area.

6.5 Grading Rights. Declarant or the Association may at any time make such cuts and fills upon any Lot or other part of the Property and do such grading and earth moving as, in its judgment, may be necessary to improve or maintain the streets within or adjacent to the Property and to drain surface waters therefrom; and the Association may assign such rights to any appropriate municipal or other governmental authority, provided, however, that after the principal Structures have been constructed upon a Lot and completed in accordance with the Plans submitted and approved by the Architectural Review Committee in accordance with this Declaration, the rights of the Association with respect to this Section 6.5 shall terminate with

respect to all parts of each Lot, except the Association shall thereafter have the right to maintain existing streets and drainage facilities.

6.6 Prohibited Uses. The following shall not be permitted on any portion of the Property: labor camps; commercial storage of building or construction materials (except temporarily in connection with construction of Structures by Owners of Lots as is permitted herein); manufacturing, industrial, or warehouse operations (except controlled climate document storage uses which have direct outside access which are expressly permitted); dry cleaners (except for pick-up stations with no plant on the premises, which are expressly permitted); smelting of iron, tin, zinc or other ores; refining of petroleum or of petroleum products; flea markets; open air stalls; rodeos; tattoo parlors; sales lots for prefabricated structures; tire recapping plants; farm and heavy construction equipment and implement sales, leasing, service, storage, and similar activities; truck terminals; lumber, planning or sawing mills; pulpwood yards; storage yards; taxidermy; cemeteries (public and private); commercial poultry, livestock, and swine production; cattle feeder lots or fur-bearing animal rearing or breeding farms; abattoirs; junk yards; baling, storage or processing of scrap metal, glass, paper or rags, or storage or processing of wrecked or junked motor vehicles; quarries; race tracks; raceways or dragstrips; truck stops; sanitary landfills or garbage disposal areas; trailer or mobile home parks; any type of outdoor storage (unless appropriately screened as approved by the Architectural Control Committee); or massage parlor, cinema or bookstore generating significant revenue from selling or exhibiting material of a pornographic or adult nature. No Lot or other portion of the Property shall be used for any business the operation of which would result in the generation, storage or disposal of any flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents or any other substances or materials which are included under or regulated by Environmental Laws (as hereinafter defined) (collectively, "Hazardous Substances"), including, but not limited to, (i) any asbestos or insulation or other material composed of or containing asbestos, or (ii) any hazardous, toxic or dangerous substance, material or waste defined as such in (or for the purposes of) the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 15 U.S.C. § 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., any so-called state or local "Superfund" or "Superlien" laws, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance ("Environmental Laws"). Notwithstanding the above to the contrary, Petroleum and petroleum by-products may be sold on the Outparcels only so long as it is sold in the course of operating a gas station, is in conformance with all Environmental Laws and so long as any release of any Hazardous Substances from such operations is promptly remediated. Hazardous Substances may be sold on the Outparcels only if sold in small containers primarily for use by non-commercial consumers (*e.g.* quarts of oil and gallons of antifreeze).

During the term of this Declaration, without the express prior written consent of the Association and, so long as the Class B Member exists, consent of the Class B Member, no Owner of any Lot shall permit any exterior flashing lights, strobe lights, search lights, or video screens (provided interior video screens not visible from the exterior shall not be restricted); any

automobile or motorcycle sales facility; any bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, odd lot, closeout or liquidation store or flea market.

Furthermore, until three (3) years from the date of recording of the initial deed of conveyance from Declarant of the Bank Parcel, and continuing thereafter for only so long as the Bank Parcel is being actively used for retail banking operations, no part of the Property, other than the Bank Parcel, shall be used for (i) the installation and operation of an automated teller machine ("ATM") without first providing the then current Owner of the Bank Parcel a right of first offer to lease or purchase such ATM space, unless such ATM is located wholly within an office or retail store in which event no right of first offer shall be required to be given, or (ii) the operation of a retail branch bank. For purposes of this paragraph, "active retail banking operations" shall mean an open and operating branch bank providing customary retail banking services. Temporary closures for renovation or repairs (*i.e.* not to exceed 120 days) shall not constitute failure to maintain active operations. Notwithstanding anything contained herein to the contrary, no amendment to this Declaration which purports to revise the rights of the Owners of the Bank Parcel, as set forth in this paragraph (and the succeeding paragraphs relating to the First Offer Right) shall be effective without the express written consent of the Owner of the Bank Parcel.

In the event that the Owner of any Lot wishes to permit the installation of an ATM which is not located wholly within an office or retail store, prior to installation of such ATM, such Owner shall send to the then current Owner of the Bank Parcel a notice (an "ATM Notice") specifying the terms, other than the purchase price or rental rate, on which the offering Owner intends to offer to sell or lease such ATM site, whereupon the Owner of the Bank Parcel shall have a right to offer to purchase or lease such site (hereinafter referred to as the "First Offer Right") on the terms and conditions set forth in the ATM Notice and for a purchase price or rental rate to be specified by the Owner of the Bank Parcel.

The Owner of the Bank Parcel shall exercise the First Offer Right by delivery of a written notice containing the terms of such Owner's offer (the "Purchase/Lease Offer") to the offering Owner within ten (10) business days after the Owner of the Bank Parcel's receipt of the ATM Notice. If the Owner of the Bank Parcel exercises such First Offer Right and the offering Owner accepts the terms of the Owner of the Bank Parcel's Purchase/Lease Offer, then the two Owners shall promptly enter into a contract for the purchase and sale or for the lease, as applicable, of the subject property upon the terms and conditions set forth in the Purchase/Lease Offer.

If the offering Owner declines to accept the Purchase/Lease Offer from the Owner of the Bank Parcel, the offering Owner shall so notify the Owner of the Bank Parcel in writing, whereupon the offering Owner may proceed to sell/lease such property at any time within twelve (12) months thereafter.

If the offering Owner declines to accept the Purchase/Lease Offer and then fails to sell or lease, as applicable, the subject property to a third party within twelve (12) months thereafter, the First Offer Right shall be re-instated.

Notwithstanding anything to the contrary provided above, the offering Owner shall not sell/lease the ATM site, (i) at an effective net purchase price or lease rate, as applicable, that is less than ninety five percent (95%) of the effective net purchase price or lease rate contained in

automobile or motorcycle sales facility; any bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, odd lot, closeout or liquidation store or flea market.

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respect to all parts of each Lot, except the Association shall thereafter have the right to maintain existing streets and drainage facilities.

6.6 Prohibited Uses. The following shall not be permitted on any portion of the Property: labor camps; commercial storage of building or construction materials (except temporarily in connection with construction of Structures by Owners of Lots as is permitted herein); manufacturing, industrial, or warehouse operations (except controlled climate document storage uses which have direct outside access which are expressly permitted); dry cleaners (except for pick-up stations with no plant on the premises, which are expressly permitted); smelting of iron, tin, zinc or other ores; refining of petroleum or of petroleum products; flea markets; open air stalls; rodeos; tattoo parlors; sales lots for prefabricated structures; tire recapping plants; farm and heavy construction equipment and implement sales, leasing, service, storage, and similar activities; truck terminals; lumber, planning or sawing mills; pulpwood yards; storage yards; taxidermy; cemeteries (public and private); commercial poultry, livestock, and swine production; cattle feeder lots or fur-bearing animal rearing or breeding farms; abattoirs; junk yards; baling, storage or processing of scrap metal, glass, paper or rags, or storage or processing of wrecked or junked motor vehicles; quarries; race tracks; raceways or dragstrips; truck stops; sanitary landfills or garbage disposal areas; trailer or mobile home parks; any type of outdoor storage (unless appropriately screened as approved by the Architectural Control Committee); or massage parlor, cinema or bookstore generating significant revenue from selling or exhibiting material of a pornographic or adult nature. No Lot or other portion of the Property shall be used for any business the operation of which would result in the generation, storage or disposal of any flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents or any other substances or materials which are included under or regulated by Environmental Laws (as hereinafter defined) (collectively, "Hazardous Substances"), including, but not limited to, (i) any asbestos or insulation or other material composed of or containing asbestos, or (ii) any hazardous, toxic or dangerous substance, material or waste defined as such in (or for the purposes of) the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 15 U.S.C. § 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., any so-called state or local "Superfund" or "Superlien" laws, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance ("Environmental Laws"). Notwithstanding the above to the contrary, Petroleum and petroleum by-products may be sold on the Outparcels only so long as it is sold in the course of operating a gas station, is in conformance with all Environmental Laws and so long as any release of any Hazardous Substances from such operations is promptly remediated. Hazardous Substances may be sold on the Outparcels only if sold in small containers primarily for use by non-commercial consumers (*e.g.* quarts of oil and gallons of antifreeze).

During the term of this Declaration, without the express prior written consent of the Association and, so long as the Class B Member exists, consent of the Class B Member, no Owner of any Lot shall permit any exterior flashing lights, strobe lights, search lights, or video screens (provided interior video screens not visible from the exterior shall not be restricted); any

automobile or motorcycle sales facility; any bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, odd lot, closeout or liquidation store or flea market.

Furthermore, until three (3) years from the date of recording of the initial deed of conveyance from Declarant of the Bank Parcel, and continuing thereafter for only so long as the Bank Parcel is being actively used for retail banking operations, no part of the Property, other than the Bank Parcel, shall be used for (i) the installation and operation of an automated teller machine ("ATM") without first providing the then current Owner of the Bank Parcel a right of first offer to lease or purchase such ATM space, unless such ATM is located wholly within an office or retail store in which event no right of first offer shall be required to be given, or (ii) the operation of a retail branch bank. For purposes of this paragraph, "active retail banking operations" shall mean an open and operating branch bank providing customary retail banking services. Temporary closures for renovation or repairs (*i.e.* not to exceed 120 days) shall not constitute failure to maintain active operations. Notwithstanding anything contained herein to the contrary, no amendment to this Declaration which purports to revise the rights of the Owners of the Bank Parcel, as set forth in this paragraph (and the succeeding paragraphs relating to the First Offer Right) shall be effective without the express written consent of the Owner of the Bank Parcel.

In the event that the Owner of any Lot wishes to permit the installation of an ATM which is not located wholly within an office or retail store, prior to installation of such ATM, such Owner shall send to the then current Owner of the Bank Parcel a notice (an "ATM Notice") specifying the terms, other than the purchase price or rental rate, on which the offering Owner intends to offer to sell or lease such ATM site, whereupon the Owner of the Bank Parcel shall have a right to offer to purchase or lease such site (hereinafter referred to as the "First Offer Right") on the terms and conditions set forth in the ATM Notice and for a purchase price or rental rate to be specified by the Owner of the Bank Parcel.

The Owner of the Bank Parcel shall exercise the First Offer Right by delivery of a written notice containing the terms of such Owner's offer (the "Purchase/Lease Offer") to the offering Owner within ten (10) business days after the Owner of the Bank Parcel's receipt of the ATM Notice. If the Owner of the Bank Parcel exercises such First Offer Right and the offering Owner accepts the terms of the Owner of the Bank Parcel's Purchase/Lease Offer, then the two Owners shall promptly enter into a contract for the purchase and sale or for the lease, as applicable, of the subject property upon the terms and conditions set forth in the Purchase/Lease Offer.

If the offering Owner declines to accept the Purchase/Lease Offer from the Owner of the Bank Parcel, the offering Owner shall so notify the Owner of the Bank Parcel in writing, whereupon the offering Owner may proceed to sell/lease such property at any time within twelve (12) months thereafter.

If the offering Owner declines to accept the Purchase/Lease Offer and then fails to sell or lease, as applicable, the subject property to a third party within twelve (12) months thereafter, the First Offer Right shall be re-instated.

Notwithstanding anything to the contrary provided above, the offering Owner shall not sell/lease the ATM site, (i) at an effective net purchase price or lease rate, as applicable, that is less than ninety five percent (95%) of the effective net purchase price or lease rate contained in

the Purchase/Lease Offer, or (ii) on other terms materially less favorable to the offering Owner than those set forth in the Purchase/Lease Offer, unless the offering Owner first offers such property to the Owner of the Bank Parcel at such price and/or on such changed terms and conditions, including rental rate, if applicable, (the "Revised Offer"). The Owner of the Bank Parcel shall have a period of ten (10) business days after receipt of any such Revised Offer in which to accept the Revised Offer by delivery of written acceptance to the offering Owner, in which such ATM site shall be purchased or leased, as applicable, by the Owner of the Bank Parcel upon the terms and conditions contained in such Revised Offer.

If the Owner of the Bank Parcel fails to accept the Revised Offer within such ten (10) business day period, the offering Owner may proceed to sell/lease such property at any time within twelve (12) months thereafter in the same manner as provided above.

The Owner of the Bank Parcel's First Offer Right with respect to any proposed sell/lease of an ATM site shall terminate upon the consummation of the sale/lease of such site (i) with respect to which the Owner of the Bank Parcel has failed to exercise its First Offer Right, (ii) with respect to which the offering Owner has declined the Purchase/Lease Offer, or (iii) with respect to which the Owner of the Bank Parcel has declined to accept the Revised Offer and, in regards to items (ii) and (iii), the site is subsequently sold or leased, as applicable, within twelve (12) months after the offer has been declined.

6.7 Compliance with Environmental Laws. Each Owner shall comply with all applicable Environmental Laws. Each Owner shall keep or cause the such Owner's Lot to be kept free from Hazardous Substances (except those substances used by any Owner in the ordinary course of his respective business and except in compliance with all Environmental Laws and where such could not reasonably be expected to give rise to liability under Environmental Laws) and in compliance with all Environmental Laws. Owners shall not install or use any underground storage tanks ("USTs") except for such USTs that may be used on the Outparcels to store and dispense gasoline, and then only in strict compliance with all Environmental Laws, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances on the Property in quantities or conditions that would violate or give rise to any obligation to take remedial or other action under any applicable Environmental Laws. Without limiting the generality of the foregoing, during the term of this Declaration, no Owner shall install in the Improvements or permit to be installed in the Improvements any asbestos or asbestos-containing materials. Each Owner shall remedy or cause to be remedied in a timely manner (and in any event within the time period permitted by applicable Environmental Laws) any violation of Environmental Laws or any condition that could give rise to liability under Environmental Laws which occurs on such Owner's Lot or anywhere on the Property if caused by any action or omission by such Owner, its employees, agents, tenants, invites or guests. Without limiting the foregoing, any Owner shall, promptly and regardless of the source of the contamination or threat to the environment or human health, at its own expense, take all actions as shall be necessary or prudent, for the clean-up of such Owner's Lot and any and all portions of the Property or other affected property, provided such contamination or threat is caused by any act or omission by such Owner, its employees, agents, tenants, guests or invitees, including, without limitation, all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to the Association) and shall further pay or cause to be paid, at no expense to the Association, all clean-up, administrative and enforcement costs of applicable

governmental agencies which may be asserted against the Property. In the event any Owner fails to do so, the Association may, but shall not be obligated to, cause the Property or other affected property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws, and the Association shall be deemed to have contracted with the Owner for such work and materials, and shall be entitled to file a mechanic's lien against the Owner's Lot for the Owner's share of the cost of such work and materials, together with interest thereon, with all rights incident thereto, all in accordance with Chapter 44A of the North Carolina General Statutes and with Sections 5.1 and 5.8 hereof. Owners hereby grant to the Association and its agents and employees access to the Property and a license to remove any items deemed by the Association to be Hazardous Substances and to do all things the Association shall deem necessary to bring the Property into conformance with Environmental Laws.

6.8 Architectural Compatibility/Submission of Plans/The Association's Approval Rights.

(a) There is hereby established an Architectural Review Committee whose members shall be appointed by the Declarant so long as the Class B Member exists, and thereafter, shall be elected by the Association. The Architectural Review Committee shall consist of three members including a licensed architect, engineer or landscape architect and a person with building construction experience. The initial members are hereby appointed as follows:

Architect/Engineer or Landscape Architect:	Stephen Overcash
Person with Building Construction Experience:	Robert J. Otten, Jr.
Declarant's Representative:	E. Heath Knott

Members of the Architectural Review Committee shall serve at the pleasure of the Declarant so long as the Class B Member remains in place. Any changes in membership shall be effective upon written notice thereof, given by Declarant to the Association. The vote of any two members shall constitute the action of the Architectural Review Committee.

It shall be the duty of the Architectural Review Committee to perform the functions required of it by this Declaration; to consider an act upon such proposals and plans which are submitted to it pursuant to the terms hereof; to revise the Architectural Guidelines, the initial version of which is attached hereto as Exhibit C; and to perform all other duties delegated to and imposed upon it by this Declaration. Specifically, the Architectural Review Committee shall have the right, from time to time, in its sole discretion, to adopt, amend and repeal the Architectural Guidelines.

(b) Architectural Compatibility/Content of Plans/Procedure. It is the intention of Declarant that all Structures within the Property be constructed, installed, erected, operated and maintained so that the Property shall be aesthetically and architecturally harmonious. Accordingly, except as otherwise provided herein, all Structures within the Property, including the initial construction and any alterations, additions, exterior remodeling or reconstruction of any Structures following the initial construction thereof, shall be performed only in accordance with Plans (as hereinafter defined) approved by the Architectural Review Committee for such work as provided herein. With respect to each Lot, prior to the commencement of the construction and installation of any Structures whatsoever on said Lot, or any part thereof, the

Owner of such Lot shall deliver to the Architectural Review Committee, in duplicate, detailed plans and specifications for such proposed Structures (collectively, the "Plans"), including and encompassing (at a minimum) the following:

(i) scaled elevations (including all architectural details and showing all sides and accurate grade at a scale of one-fourth (1/4) inch equals one (1) foot, exterior design concepts and specifications, material selections and specifications (including samples) and color (including samples) for the exterior surfaces of the proposed Structures;

(ii) a complete site plan and specifications [which shall be dimensional and based on a scale of one (1) inch equals forty (40) feet or larger] (a) showing the location and size of the proposed Structures on the Lot, including, without limitation, trash receptacles, trash compactors, service areas, storage areas, mechanical and electrical equipment, fencing, structural screening, landscaping screening and other building appurtenances, loading areas, walks, walkways, sidewalks, roadways, driveways, curbs and gutters and other improvements, and (b) providing details as to the location, size and type of all pipes, lines, conduits, and appurtenant equipment and facilities for the provision of sanitary sewage, storm water, water, electricity, gas, telephone, steam and other utility services to serve such Lot;

(iii) a signage plan and specifications showing the scaled elevations, design concepts, lighting fixture type (if applicable), lighting method (if applicable), material selections (including samples), color (including samples), configuration, location, height, size, and verbiage for all signage to be located by the Owner on such Lot;

(iv) a landscaping plan and specifications showing the proposed landscaping, including detailed information regarding the species, type, height, caliper and spacing of all trees, shrubs and other landscaping, reflecting the locations of all berms, providing the height and toe of all berms and including plans and specifications for the landscaping irrigation facilities to be installed;

(v) a lighting plan and specifications reflecting the plans and specifications for all exterior lighting fixtures, poles and facilities (including, without limitation, the location, height, size, fixture type, fixture shape, fixture and lighting color, fixture material and lighting method) to be installed on the Lot, including, without limitation, the lighting facilities to be installed in or near parking and driveway areas (and, to create a uniform lighting effect, Declarant may require the lighting plans and specifications for each Lot to be the standard used in connection with the first Structures constructed on the Property);

(vi) a detailed grading and drainage plan and specifications for the Lot, providing, without limitation, all relevant data and calculations with regard to the quantity and direction of storm water runoff from the Lot and the size, location and material types for all pipes, catch basins, headwalls, ditches, swales, and other drainage structures and improvements; and

(vii) relevant information and documentation with respect to the finished grade elevation and topography (which shall show topography at two (2) foot contours and shall be based on a scale of one (1) inch equals forty (40) feet or larger) of the Lot.

In addition to samples of materials and colors specifically required to be submitted as part of the Plans (as described above), the Architectural Review Committee is entitled to request and require the submitting party to submit samples of other materials and colors identified or referenced in the Plans (for which samples may not be specifically required as part of the Plans submission described above). Except as otherwise provided below, the Architectural Review Committee may disapprove Plans for any reason, including purely aesthetic reasons, which in the sole discretion of the Architectural Review Committee shall be deemed sufficient. The Architectural Review Committee shall either approve or disapprove Plans within fifteen (15) business days of the receipt thereof, although the Architectural Review Committee's approval of Plans may in some cases be contingent upon the approval of such Plans by one or more third parties, including other Owners and tenants in the Property. If the Architectural Review Committee approves Plans as submitted, one (1) complete set of the Plans shall be marked "Approved" and signed by the Architectural Review Committee and returned to the submitting party; and the remaining set of the Plans shall be filed in the Architectural Review Committee's office. If the Architectural Review Committee disapproves the Plans, one (1) complete set of the Plans shall be marked "Disapproved" and signed by the Architectural Review Committee and returned to the submitting party, accompanied by a reasonably detailed statement of items in the Plans found by the Architectural Review Committee not to be acceptable. If the Architectural Review Committee approves Plans for a Lot, any modification or change in the approved Plans must be submitted in duplicate to the Architectural Review Committee for review and approval in accordance with the procedure specified above. If the Architectural Review Committee disapproves Plans for a Lot, upon the resubmission to the Architectural Review Committee of the Plans (with revisions) in duplicate, the Architectural Review Committee shall either approve or disapprove the resubmitted Plans within ten (10) business days of the receipt thereof. Once the Architectural Review Committee has approved the Plans for a Lot, the construction of the Structures on said Lot as described in said Plans shall be promptly commenced and diligently pursued to completion; and, unless the Architectural Review Committee agrees in writing to a different time schedule, if such construction is not commenced within nine (9) months following the date of the Architectural Review Committee's initial approval of the Plans therefor, such approval shall be deemed automatically rescinded, and before construction of Structures on said Lot may be thereafter commenced, the Plans therefor must again be submitted to and approved by the Architectural Review Committee pursuant to the terms and procedures set forth above for an initial submission of Plans. Upon the completion of the initial construction and installation of any such Structures on a Lot in accordance with approved Plans, the same shall not thereafter be changed or altered without the prior written approval of the Architectural Review Committee (although the Architectural Review Committee's approval of such changes or alterations may in some cases be contingent upon the approval of such changes or alterations by one or more third parties, including other Owners and tenants in the Property) if such changes or alterations would materially modify the exterior appearance of such Structures, which approval shall be sought pursuant to the terms and procedures set forth above for an initial submission of Plans and, notwithstanding the terms above, shall not be unreasonably withheld, conditioned or delayed by the Architectural Review Committee (in accordance with the criteria set forth above). Further, the Architectural Review Committee shall not unreasonably withhold, condition or delay its approval of any proposed changes or alterations to any Structures (which were constructed in

accordance with approved Plans therefor) which are consistent with the architectural design, aesthetic quality, and exterior materials and colors of the existing Structures on the Property and the Architectural Guidelines, although (as described above) the Architectural Review Committee's approval of proposed changes or alterations may in some cases be contingent upon the approval of such changes or alterations by one or more third parties, including other Owners and tenants in the Property. Provided, however, and notwithstanding the foregoing or any other term or provision in this Declaration to the contrary, the Architectural Review Committee's disapproval of any proposed expansion of a Structure shall be conclusively deemed reasonable if such expansion would (i) impair, obstruct or deny access to service and loading areas (including, without limitation, any service access road), (ii) reduce the number of parking spaces in the Property, (iii) interfere with, impair or obstruct the flow of pedestrian and/or vehicular traffic within the Property; or (iv) not comply with the Architectural Guidelines. Nothing herein shall require that the Architectural Review Committee's approval be obtained with respect to the interior designs or interior floor plans of the Structures located on any Lot.

(c) The Architectural Review Committee's Failure to Respond to Plans. If the Architectural Review Committee fails to approve or disapprove any Plans within fifteen (15) business days after receipt thereof by the Architectural Review Committee (in the case of an initial submittal of such Plans) or within ten (10) business days after receipt thereof by the Architectural Review Committee (in the case of any resubmittal of Plans) and (i) provided the Plans were complete (according to the requirements and standards set forth above), (ii) provided the Plans describe Structures which comply with and conform to all of the requirements of this Declaration and the Architectural Guidelines, and (iii) provided the Architectural Review Committee shall again fail to approve or disapprove such Plans within ten (10) business days after an additional written request to respond to such Plans is delivered to the Architectural Review Committee by the submitting party [such additional written request shall conspicuously state on a separate cover sheet that the Architectural Review Committee's approval rights under this Declaration will expire if no response is given by the Architectural Review Committee within the specified ten (10) business day period and shall be delivered to the Architectural Review Committee by the submitting party following the expiration of the initial fifteen (15) business day or ten (10) business day response period (as the case may be) specified above], such Plans shall be conclusively presumed to have been approved by the Architectural Review Committee pursuant to this Declaration. Provided, however, and notwithstanding the generality of the foregoing, the Architectural Review Committee has no right or power, by its failure to respond with respect to any Plans submitted to it within the applicable time period specified herein, to waive or grant any variances relating to any requirements or standards set forth in this Declaration; however, failure to respond shall be deemed rebuttable evidence that such Plans comply with the standards set forth in this Declaration.

(d) Non-Conforming or Unapproved Structures. In addition to any remedies contemplated or permitted pursuant to other provisions in this Declaration, the Association may require any Owner to restore, at the Owner's sole cost and expense, such Owner's Lot to the condition that existed prior to the installation or construction of Structures thereon ("restoration," for purposes of this subsection, to include, without limitation, the demolition and removal of any unapproved Structures) if such Structures were commenced or constructed in violation of this Section 6.8. In addition, if any Owner knowingly and intentionally commences or constructs Structures in violation of this Section 6.8, such Owner shall pay to the Association a sum of one hundred dollars ($100) per day ("Violation Fee"). Each Violation Fee, together with such

interest thereon and costs of collection therefor, shall be a charge and continuing lien upon the Lot against which such assessment is made as of the effective date of each Violation Fee, and shall allow the Association to claim a mechanic's lien for the cost of such performance with all rights incident thereto, including those provided in Sections 5.1 and 5.8 hereof. Each Owner acknowledges that it would be difficult to determine damages if an Owner violates this Section above, and that the fines imposed herein constitute a fair and reasonable estimate of damages and do not constitute a penalty. Notwithstanding any provision herein to the contrary, all Structures shall be deemed approved and in compliance with this Section 6.8 unless an Owner has received written notice of violation from the Association or the Architectural Review Committee prior to six (6) months following the completion of construction or installation of the Structure.

(e) Limitation of Liability. Neither the Architectural Review Committee, the Association nor the partners, officers, directors, employees and/or agents of the Architectural Review Committee or the Association shall be liable in damages or otherwise to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with any submittal or re-submittal of Plans for review and approval under this Declaration. Without the prior written consent of the Association, no Owner who submits or resubmits Plans may bring an action or suit against the Association, the Architectural Review Committee, or the Association's or Architectural Review Committee's partners, officers, directors, employees and/or agents to recover any such damages, and such parties hereby release, remise and quitclaim all claims, demands and causes of action for damages arising out of or in connection with any mistake of judgment, negligence or nonfeasance of the Association, the Architectural Review Committee, or either of their partners, officers, directors, employees and/or agents relating to the review and approval, disapproval or failure to respond with respect to any Plans which are submitted or resubmitted under this Declaration; and such parties hereby waive all rights and entitlements they may have under any provision or principle of law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

(f) No Liability for Design or Other Defects. The approval of any Plans under this Declaration by the Architectural Review Committee shall not impose any liability or responsibility whatsoever upon the Architectural Review Committee, the Association or either of their partners, officers, directors, employees and/or agents (i) with respect to the compliance or non-compliance of any such Plans, or any structures erected or installed in accordance therewith, with applicable zoning ordinances, building codes, signage ordinances, or other applicable governmental laws, ordinances or regulations or (ii) with respect to defects in or relating to the Plans, including, without limitation, defects relating to engineering matters, structural design matters and the quality or suitability of materials.

6.9 General Requirements and Restrictions Regarding Construction.

(a) All construction activities within the Property shall be performed in a good and workmanlike manner, using first-class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Property.

(b) All construction activities within the Property shall be performed in accordance with the following provisions:

(i) so as not to unreasonably interfere with any construction work being performed on the remainder of the Property (or any part thereof); and

(ii) so as not to unreasonably interfere with the use, occupancy or enjoyment of any other portion of the Property (or any part thereof) or the business conducted on any other portion of the Property or by any other Owner.

(c) Each Owner shall diligently complete all construction activities within its Lot as quickly as feasible, shall regularly (as needed) clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris and, upon completion of all construction activities, shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work. If an Owner does not fulfill the terms of this section, the Association shall have the same rights to perform, or cause to be performed, the obligations of such Owner, and the Association shall be deemed to have contracted with the Owner for such work and materials, and shall be entitled to file a mechanic's lien against the Owner's Lot for the Owner's share of the cost of such work and materials with all rights incident thereto, all in accordance with Chapter 44A of the North Carolina General Statutes and with Sections 5.1 and 5.8 hereof.

ARTICLE VII
Insurance

7.1 Association.

The Association shall have the right and authority to obtain and maintain such insurance as the Association may from time to time deem advisable, including, without limitation, coverages of the types and kinds set forth below, in such amounts as the Association shall deem advisable:

(a) Fire and casualty insurance on all improvements and all fixtures included as a part of the Common Facilities and all personal property and supplies comprising a portion of the Common Facilities. All such policies shall provide that adjustment of loss shall be approved by the Association.

(b) Public liability insurance in such limits as the Association may, from time to time, determine to be customary for projects similar in construction, location and use to any Common Facilities, and customary for projects similar to Arbors at Mallard Creek, covering the Association, the Architectural Review Committee, the Property Manager, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Facilities and out of the activities of Declarant or Association with respect to maintenance, repair and replacement of Structures on the Property, excluding Buildings.

(c) Fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds, or the assessments, in an amount determined by the Association in its discretion. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(d) Such other insurance coverages, including flood insurance and worker's compensation, as the Association shall determine from time to time to be desirable.

Premiums upon such insurance policies purchased by the Association shall be paid by the Association and collected from the Owners as part of the assessments pursuant to Article V hereof.

7.2 Owners.

(a) Public Liability Insurance. Each Owner shall maintain or cause to be maintained in full force and effect a comprehensive policy of general liability insurance with an insurer with a policyholder rating ("Best Rating") of at least A and financial size category of at least Class X as rated in the most recent edition of "Best's Key Rating Guide" for insurance companies, that is licensed to do business in the State of North Carolina, for any and all claims for damages to property and/or for any personal injury or loss of life in, upon, or about the Lot in a combined single limit amount of not less than Two Million Dollars ($2,000,000.00). Such insurance shall extend to the contractual obligations of the insured party arising out of the indemnification obligations set forth in this Declaration. Each Owner shall furnish to the Association, upon request, evidence that the insurance described above is in full force and effect. All policies of insurance carried by any Owner pursuant hereto shall name the Association as an additional insured, and shall provide that the same may not be canceled (including, without limitation, a non-renewal) or amended without at least thirty (30) days prior written notice being given by the insurer to the Association.

(b) Fire and Casualty Insurance. Effective upon the commencement of construction of Structures on a Lot, the Owner of such Lot shall carry, or cause to be carried, with a financially responsible insurance company or companies licensed to do business in the State of North Carolina fire insurance (with an extended coverage endorsement) in an amount at least equal to one hundred percent (100%) of the replacement cost (exclusive of the cost of excavation, foundations, and footings) of the Structures constructed on its Lot, insuring against causes or events which from time to time are included as covered risks under standard insurance industry practices within the classification of fire insurance with an extended coverage or "all risk" endorsement, and specifically against at least the following perils: loss or damage by fire, windstorm, tornado, hail, explosion, malicious mischief, vandalism, aircraft, vehicle, and smoke damage.

(c) Insurance Relating to Construction Activities. Prior to commencing any construction activities within the Property, the Owner performing or causing to be performed such construction activities shall maintain, or cause to be maintained, so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

(i) Workers' Compensation - statutory limits;

(ii) Employer's Liability - $500,000;

(iii) Commercial General Liability on an occurrence basis with personal injury coverage and broad form property damage (said policy shall be endorsed to remove the XCU exclusion relating to explosion, collapse, and underground property damage) with

combined single limits coverage equal to $1,000,000 per occurrence and $2,000,000 aggregate; and

(iv) Comprehensive Automobile Liability, including Non-Ownership and Hired Car Coverage as well as owned vehicles with at least the following limits:

(a) Bodily Injury - $500,000 per person, $1,000,000 per occurrence;

(b) Property Damage - $250,000 per occurrence.

If the construction activity involves the use of another Lot (as specifically contemplated and permitted herein), then the Owner of any such Lot which shall be used for such construction activity shall be named as an additional insured and such insurance shall provide that the same shall not be canceled without at least thirty (30) days prior written notice to the named insureds (it being understood that if such insurance is canceled or expires, then the constructing Owner shall immediately stop all work on or use of another Owner's Lot until either the required insurance is reinstated or replacement insurance is obtained).

(d) Waiver of Subrogation. All such insurance shall include a waiver of subrogation by the insurer against the other Owners for any property damage so long as the same is obtainable without extra cost. If extra cost shall be chargeable therefor, each party shall advise the other thereof and the amount of the extra cost; and the other party, at its election, may pay the same but shall not be obligated to do so. Each Owner hereby waives any rights of recovery against any other Owner, its directors, officers, members, employees, agents, and tenants for any property damage or consequential loss which is covered by or would be covered by the policies required to be carried by such Owner hereunder, to the extent of the proceeds payable under such policies.

(e) Changes in Owners' Coverages. The Association shall have the right and authority, from time to time as it may deem advisable, to amend the types of insurance coverages and amounts required of the Owners hereunder so long as such amendments are commercially reasonable and have been approved by Members holding fifty percent (50%) of the Class A votes of the Association and the Class B Member; provided, however, the Association may increase, through its board of directors, the required amounts of insurance at any time to those that are commercially reasonable for similar properties in the Mecklenburg County, North Carolina area without any such vote.

ARTICLE VIII
General Provisions

8.1 Duration; Modification, Amendment or Termination.

(a) Duration. The terms and provisions of this Declaration shall be appurtenant to, and shall run with and bind title to, the Property and Lots therein and shall be binding upon and inure to the benefit of all Owners and Mortgagees of the Property and of Lots therein, and their respective heirs, executors, legal representatives, successors and assigns, and all other parties hereafter having an interest in any portion of the Property or Lots therein and all parties claiming by, through or under them and shall be and remain in full force and effect to the fullest extent permitted by law for a period of twenty (20) years from the date of filing this Declaration in the

Office of the Register of Deeds for Mecklenburg County, North Carolina. Thereafter, as then in force, this Declaration shall be continued automatically for successive ten (10) year periods without further notice and without limitation, unless terminated as provided in Section 8.1(b) below. Every purchaser, grantee or assignee of any interest in the Property or Lots therein subject to this Declaration, by acceptance of a deed or other instrument of conveyance therefore, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property and Lots therein as provided hereby. Notwithstanding anything to the contrary contained in this Declaration, any easements granted or reserved hereunder are and shall be perpetual and non-exclusive in nature and shall run with the Property and Lots therein except to the extent, if any, otherwise provided in this Declaration.

(b) Modification, Amendment or Termination.

(1) By Declarant. So long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration and the Exhibits to provide for additional restrictions as provided in Section 6.1 above.

(2) By Owners. Except as provided in Section 8.1(b)(1) above, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of Members of the Association holding at least two-thirds (2/3) of the votes of the Association in accordance with Section 3.2 above. Notwithstanding anything to the contrary contained in this Declaration, so long as Declarant remains a Class B Member, whether or not Declarant owns any portion of the Property, no modification, amendment or termination of this Declaration may be made without the approval of the Class B Member and its successors and assigns (as Declarant).

(3) Binding Effect. Any such modification, amendment or termination of this Declaration adopted in accordance with the provisions of this Section 8.1(b) 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 this Declaration, by acceptance of a deed or other instrument of conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property and Lots therein as provided hereby. Notwithstanding any of the foregoing, no modification or amendment of this Declaration may revoke any consent, approval or waiver properly given or granted pursuant to the authority of this Declaration.

8.2 Casualty Damage. If any Structure located on the Lot is damaged or destroyed by fire or other casualty, then the Owner of the Lot on which the Building or improvement is (or was) located shall have the option to elect within sixty (60) days of that damage or destruction to rebuild, or not to rebuild, by written notice to the Association. If that Owner elects not to repair or restore the damage, the Owner shall, within ninety (90) days of the date of damage or destruction, demolish the destroyed or damaged Building or improvement, clean up any and all rubbish and debris, level the area, landscape and grade or pave the area, and thereafter maintain its Lot in a good, clean, safe and presentable condition. Within twenty (20) days after any such fire or other casualty and until the foregoing restoration, landscaping, or paving, as the case may be, is completed, the Owner of the damaged or destroyed Building or improvement shall (a) screen the damaged or destroyed areas from view with a solid plyboard wall not less than eight

feet (8') in height and painted a solid color, and (b) not allow debris, dirt or construction materials to accumulate or remain outside the plyboard wall.

If the Owner of the damaged or destroyed Structure does not fulfill the terms of this section, the Association, upon notice of such failure to the Owner and expiration of a ten (10) day cure period after Owners' receipt of such notice, shall have the same rights to perform, or cause to be performed, the obligations of such Owner and the Association shall be deemed to have contracted with the Owner for such work and materials, and shall be entitled to file a mechanic's lien against the Owner's Lot for the Owner's share of the cost of such work and materials with all rights incident thereto, all in accordance with Chapter 44A of the North Carolina General Statutes and with Sections 5.1 and 5.8 hereof.

8.3 Enforcement Powers. Any violation of this Declaration, whether in whole or in part, is hereby declared to be a nuisance and, without limitation, the Association or any Owner shall be entitled to avail itself of all remedies available under applicable law or in equity for the abatement of a nuisance in addition to all other rights and remedies set forth hereunder or otherwise available at law or in equity. This Declaration may be enforced by Declarant and its successors and assigns, as Declarant, and by the Association, by proceedings at law or in equity against the person, firm or other entity violating or attempting to violate any covenant or covenants, either to restrain the violation thereof or to recover damages together with reasonable attorneys' fees and court costs. Further, in the event Declarant or the Association fails to act to enforce any covenant or restriction herein, any Owner of any Lot may enforce these restrictions as aforesaid against any other Owner. Declarant agrees for itself and the Association that this Declaration and the covenants contained herein shall be enforced uniformly and without prejudice against any Owner.

8.4 Partial Invalidity. Any invalidation of any one or more of the restrictions set forth in this Declaration by judgment, court order, or statute or failure on the part of Declarant or its successors or assigns to enforce any of said restrictions shall in no way affect any of the other provisions hereof or be deemed a waiver of the right to enforce such restrictions any time after the violation thereof.

8.5 Binding Effect; Waiver. Except as otherwise specifically provided herein, this Declaration shall bind and inure to the benefit of and be enforceable by Declarant and its successors and assigns (as Declarant), the Association and the Owner or Owners of any Lot and their respective heirs, successors and assigns. The failure of any person entitled to enforce this Declaration or any provision hereof to enforce same shall not be deemed a waiver of the right of any such person to enforce this Declaration or any portion thereof thereafter. Waiver or any attempted waiver of this Declaration with respect to any Lot shall not be deemed a waiver thereof as to any other Lot nor, with respect to the Lot in question, as to any subsequent violation, nor shall the violation of this Declaration with respect to any one Lot affect the applicability or enforceability of this Declaration with respect to any other Lot(s).

8.6 Rights Assignable. Any and all rights, powers, easements and reservations of Declarant herein contained may be assigned to any person(s), corporation(s), limited liability company(s) or other legal entity(ies) which will assume the duties of Declarant pertaining to the particular rights, powers, easements and reservations assigned, and upon any such person(s)', corporation(s)', limited liability company(s)' or other legal entity(ies)' evidencing his or its

consent in writing to accept such assignment and assume such duties, he or it shall, to the extent of such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. The term "Declarant," as used herein, includes all such assignees and their heirs, successors and assigns (including, but not limited to, the Association). Any assignment or appointment made under this Section 8.6 shall be in recordable form and shall be recorded in the appropriate land record offices for Mecklenburg County, North Carolina.

8.7 Mortgagees' Protection; Subordination of Liens. Violation of this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith and for value upon any portion of the Property. Any lien created hereunder for the benefit of the Declarant or its successor, including any lien created and foreclosed pursuant to Sections 5.1 and 5.8 hereof shall be junior and subordinate to any such Mortgage unless a lien shall have been filed in the Office of the Clerk of Court of Mecklenburg County prior to the recordation of such Mortgage; provided, however, any Mortgagee in actual possession or any purchaser at any trustee's, mortgagee's or foreclosure sale shall be bound by and be subject to this Declaration as fully as any other Owner of the Property effective upon the date of acquisition.

8.8 Chain of Title. Each grantee, lessee or other person in interest or occupancy accepting a conveyance, leasehold interest or other demise of an interest in or to or in connection with any Lot, whether or not the same incorporates or refers to this Declaration, covenants for himself or itself, his or its heirs, successors and assigns to observe and perform and be bound by this Declaration and to incorporate this Declaration by reference in any conveyance or leasehold estate of all or any portion of his or its interest in any real property subject hereto.

8.9 Ambiguities. If any discrepancy, conflict or ambiguity is found to exist with respect to any matters set forth in this Declaration, such ambiguity, conflict or discrepancy shall be resolved and determined by Declarant in its sole discretion. Declarant shall have the right to interpret the provisions of this Declaration and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof. Any conflict between any construction or interpretation of Declarant and that of any other person or entity entitled to enforce any of the provisions hereof shall be resolved in favor of the construction or interpretation of Declarant.

8.10 No Reversionary Interest. This Declaration shall not be construed as conditions subsequent or creating a possibility of reverter, and no provision hereof shall be deemed to vest in Declarant or any other persons any reversionary interest with respect to any Lot. Except as provided above, all reversionary rights are hereby expressly waived by Declarant.

8.11 Zoning Requirements. This Declaration shall not be interpreted as permitting any action or thing prohibited by applicable zoning laws, or any laws, ordinances or regulations of any governmental authority or by specific restrictions imposed by any deed or other instrument of conveyance. In the event of any conflicts, the most restrictive provision shall be taken to govern and control.

8.12 Exoneration of Declarant. Each Owner of any Lot in the Property or any other party interested in the Property expressly agrees that no duty or obligation is imposed upon

Declarant to enforce or attempt to enforce any of the covenants or restrictions contained herein, nor shall Declarant be subject to any liability of any kind or nature whatsoever with respect to any third party as a result of failing to enforce same. Furthermore, Declarant's approval (or approval by the Association or the Architectural Review Committee) of any construction, Building or Structure, preliminary plans, Plans, specifications, site or landscaping plans or elevations or any other approvals or consents given by Declarant, the Architectural Review Committee or by the Association pursuant hereto or otherwise shall not be deemed a warranty, representation or covenant that any such Structures, Buildings, improvements, landscaping or other action taken pursuant hereto or in reliance thereon complies with any or all applicable laws, rules, requirements or regulations, the sole responsibility for such compliance being upon the Owner seeking approval; and Declarant, the Architectural Review Committee and the Association are expressly released and relieved of any and all liability and responsibility in connection therewith.

8.13 Rezoning. For a period of twenty (20) years from the date hereof, no Owner or contract purchaser of any Lot, other than Declarant, shall apply for rezoning, changes or proffers, special use permits or special exceptions for any part of the Property without the prior written consent of Declarant, which consent may be granted or withheld in Declarant's sole discretion.

8.14 Re-subdivision. No Owner, other than Declarant, may subdivide any Lot as initially conveyed by Declarant without the prior written consent of Declarant or the Association, which consent may be granted or withheld in their sole discretion. However, Declarant may provide for the right of an Owner to subdivide a Lot in the deed conveying such Lot, and such approval shall remain effective for the period of time specified in such deed.

8.15 North Carolina Planned Communities Act. Each of the Owners hereby acknowledge and agree that this Declaration and the Property shall not be subject to the North Carolina Planned Communities Act codified in Chapter 47F of the North Carolina General Statutes.

8.16 Captions. The captions of each Article, Section and Subsection hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article, Section or Subsection to which they refer.

[Signatures on following page]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the day and year first above written.

ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company

By: Arbors Land Partners, LLC, a North Carolina limited liability company, Manager

By: First Colony Corporation, a North Carolina corporation, Manager

By: _____

Its: President Business Development

By: Mallard Land Partners, LLC, a North Carolina limited liability company, Manager

By: _____

Its: Manager Member

_____

CHARLES M. BLANKENSHIP

_____

WILLIAM S. MCLEAN

_____

GAIL S. MCLEAN

CRESCENT RESOURCES, LLC, a Georgia limited liability company

By: _____

Its: _____

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the day and year first above written.

ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company

By: Arbors Land Partners, LLC, a North Carolina limited liability company, Manager

By: First Colony Corporation, a North Carolina corporation, Manager

By: _____
Its: _____

By: Mallard Land Partners, LLC, a North Carolina limited liability company, Manager

By: _____
Its: _____

_____
CHARLES M. BLANKENSHIP

_____
WILLIAM S. MCLEAN

_____
GAIL S. MCLEAN

CRESCENT RESOURCES, LLC, a Georgia limited liability company

By: _____
Its: Vice President

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly execut
of the day and year first above written.

ARBORS AT MALLARD CREEK, LLC, a North Car
limited liability company

By: Arbors Land Partners, LLC, a North Carolina limited liability company, Manager

By: First Colony Corporation, a North Caro corporation, Manager

By: _____
Its: _____

By: Mallard Land Partners, LLC, a North Carolina limited liability company, Manager

By: _____
Its: _____

Charles M. Blankenship
CHARLES M. BLANKENSHIP

WILLIAM S. MCLEAN

GAIL S. MCLEAN

CRESCENT RESOURCES, LLC, a Georgia limited liability company

By: _____
Its: _____

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the day and year first above written.

ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company

By: Arbors Land Partners, LLC, a North Carolina limited liability company, Manager

By: First Colony Corporation, a North Carolina corporation, Manager

By: _____
Its: _____

By: Mallard Land Partners, LLC, a North Carolina limited liability company, Manager

By: _____
Its: _____

_____
CHARLES M. BLANKENSHIP

_____
WILLIAM S. MCLEAN

_____
GAIL S. MCLEAN

CRESCENT RESOURCES, LLC, a Georgia limited liability company

By: _____
Its: _____

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Gail Goss, a Notary Public of aforesaid County and State, certify that W. Charles Campbell personally came before me this day and acknowledged that he/she is Pres Business Dev of First Colony Corporation, a North Carolina corporation ("Corporation"), Manager of ARBORS LAND PARTNERS, LLC, a North Carolina limited liability company ("ALP"), which is Manager of ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company ("Company") and that he/she, as Pres-Business Dev, being authorized to do so, executed the foregoing on behalf of the Corporation as Manager of ALP as Manager of the Company.

Witness my hand and official seal, this the 5th day of July, 2004.

Gail Goss
NOTARY PUBLIC

My Commission Expires:

2-27-06
[NOTARIAL SEAL]

GAIL GOSS NOTARY PUBLIC MECKLENBURG COUNTY, N.C.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, J. C. Alexander, a Notary Public of aforesaid County and State, certify that Jack Lennson Member personally came before me this day and acknowledged that he/she is ~~Manager~~ of MALLARD LAND PARTNERS, LLC, a North Carolina limited liability company ("MLP"), which is Manager of ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company ("Company"), and that he/she, as Manager, being authorized to do so, executed the foregoing on behalf of MLP as Manager of the Company.

Witness my hand and official seal, this the 30th day of July, 2004.

J C Alexander
NOTARY PUBLIC

My Commission Expires:

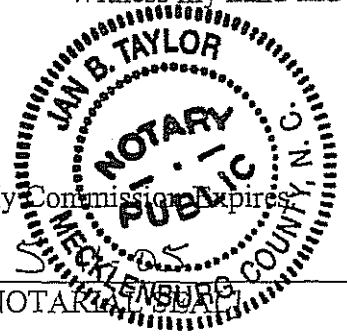
March 30, 2008
[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Jan B Taylor, a Notary Public of aforesaid County and State, certify that CHARLES M. BLANKENSHIP, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the 29 day of July, 2004.



Jan B Taylor
NOTARY PUBLIC

My Commission Expires:

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____, a Notary Public of aforesaid County and State, certify that WILLIAM S. MCLEAN, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the _____ day of July, 2004.

_____
NOTARY PUBLIC

My Commission Expires:

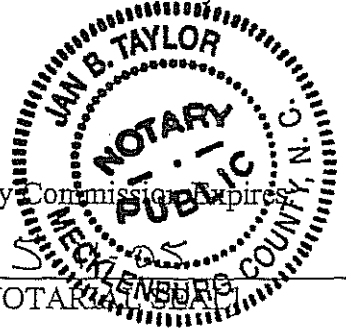
_____
[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Jan B Taylor, a Notary Public of aforesaid County and State, certify that CHARLES M. BLANKENSHIP, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the 29 day of July, 2004.



Jan B Taylor
NOTARY PUBLIC

My Commission Expires:

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____, a Notary Public of aforesaid County and State, certify that WILLIAM S. MCLEAN, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the _____ day of July, 2004.

_____
NOTARY PUBLIC

My Commission Expires:

_____
[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Gail Goss, a Notary Public of aforesaid County and State, certify that W. Charles Campbell personally came before me this day and acknowledged that he/she is Pres Business Dev of First Colony Corporation, a North Carolina corporation ("Corporation"), Manager of ARBORS LAND PARTNERS, LLC, a North Carolina limited liability company ("ALP"), which is Manager of ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company ("Company") and that he/she, as Pres-Business Dev, being authorized to do so, executed the foregoing on behalf of the Corporation as Manager of ALP as Manager of the Company.

Witness my hand and official seal, this the 5th day of July, 2004.

Gail Goss
NOTARY PUBLIC

My Commission Expires:

2-27-06
[NOTARIAL SEAL]

GAIL GOSS NOTARY PUBLIC MECKLENBURG COUNTY, N. C.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, J. C. Alexander, a Notary Public of aforesaid County and State, certify that Jack Lennson personally came before me this day and acknowledged that he/she is ~~Manager~~ member of MALLARD LAND PARTNERS, LLC, a North Carolina limited liability company ("MLP"), which is Manager of ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company ("Company"), and that he/she, as Manager, being authorized to do so, executed the foregoing on behalf of MLP as Manager of the Company.

Witness my hand and official seal, this the 30th day of July, 2004.

J C Alexander
NOTARY PUBLIC

My Commission Expires:

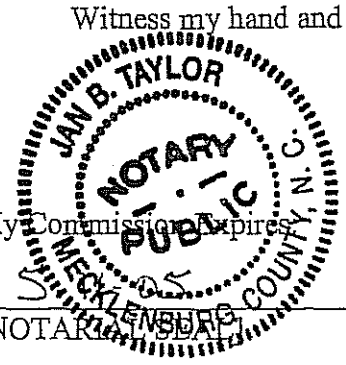
March 30, 2008
[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Jan B Taylor, a Notary Public of aforesaid County and State, certify that CHARLES M. BLANKENSHIP, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the 29 day of July, 2004.



Jan B Taylor
NOTARY PUBLIC

My Commission Expires: 8-25-05

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____, a Notary Public of aforesaid County and State, certify that WILLIAM S. MCLEAN, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the _____ day of July, 2004.

_____
NOTARY PUBLIC

My Commission Expires:

_____
[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____, a Notary Public of aforesaid County and State, certify that CHARLES M. BLANKENSHIP, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the _____ day of July, 2004.

_____
NOTARY PUBLIC

My Commission Expires:

_____
[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF ~~MECKLENBURG~~ ROBESON

I, Cynthia H. Mauldin, a Notary Public of aforesaid County and State, certify that WILLIAM S. MCLEAN, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the 29th day of July, 2004.

Cynthia H. Mauldin
NOTARY PUBLIC

My Commission Expires: April 12, 2007

_____
[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF ~~MECKLENBURG~~ ROBESON

I, Cynthia H. Mauldin, a Notary Public of aforesaid County and State, certify that GAIL S. MCLEAN, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this the 29th day of July, 2004.

Cynthia H. Mauldin
NOTARY PUBLIC

My Commission Expires: April 12, 2007

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Trena W. Grindstaff, a Notary Public of ~~aforesaid~~ Gaston County and State, certify that Henry C. Lomax, Jr. personally came before me this day and acknowledged that ~~he/she~~ is Vice President of CRESCENT RESOURCES, LLC, a Georgia limited liability company, and that ~~he/she~~, as Vice President, being authorized to do so, executed the foregoing on behalf of the Company.

Witness my hand and official seal, this the 6th day of ~~July~~ August, 2004.

Trena W. Grindstaff
NOTARY PUBLIC

My Commission Expires:

February 3, 2007
[NOTARIAL SEAL]

TRENA W. GRINDSTAFF
NOTARY PUBLIC
GASTON COUNTY, N.C.
MY COMMISSION EXPIRES
FEBRUARY
3
2007

EXHIBIT A

THE "PROPERTY"

Being all those certain tracts or parcels of land located in the City of Charlotte, Mecklenburg County, North Carolina, and being more particularly described as follows:

Tract 1:

BEING all of Lot 1, Lot 2 and Lot 3 as shown on plat entitled "Final Plat of the Arbors at Mallard Creek" which is recorded in Map Book 41, Page 755 of the Mecklenburg County Public Registry.

Tract 2:

COMMENCING at NCGS "Ransom" located at N - 581033.211, E - 1477954.232, Elev. - 785.89; thence North 59-38-32 West 2,679.23 feet ground distance (2,678.80 feet grid distance with a combined grid factor of 0.9998408) to a #5 rebar located on the northerly right of way margin of West Mallard Creek Church Road (120' public R/W), said rebar being the POINT AND PLACE OF BEGINNING; thence with the northerly right of way margin of West Mallard Creek Church Road the following four (4) courses and distances: (1) North 65-40-09 West 3.35 feet to a R/W disk; (2) South 23-10-51 West 20.00 feet to a #5 rebar; (3) with the arc of a circular curve to the left having a radius of 2,924.79 feet, an arc distance of 177.76 feet and being subtended by a chord bearing North 68-33-38 West 177.74 feet to a #5 rebar; and (4) North 70-35-53 West 31.90 feet to a #5 rebar; thence with a new line the following 15 courses and distances: (1) North 21-17-51 East 197.57 feet to a #5 rebar; (2) North 21-18-56 East 36.18 feet to a #5 rebar; (3) North 68-56-49 West 46.83 feet to a #5 rebar; (4) North 21-03-11 East 109.87 feet to a #5 rebar; (5) with the arc of a circular curve to the left having a radius of 112.00 feet, an arc distance of 22.07 feet and being subtended by a chord bearing South 88-31-23 West 22.04 feet to a point; (6) South 82-52-37 West 33.10 feet to a point; (7) with the arc of a circular curve to the right having a radius of 130.00 feet, an arc distance of 49.72 feet and being subtended by a chord bearing North 86-29-50 West 49.42 feet to a point; (8) North 75-32-23 West 118.23 feet to a #5 rebar; (9) North 14-27-35 East 30.00 feet to a #5 rebar; (10) North 75-32-25 West 43.86 feet to a #5 rebar; (11) North 72-18-02 West 182.29 feet to a point; (12) with the arc of a circular curve to the right having a radius of 100.00 feet, an arc distance of 41.53 feet and being subtended by a chord bearing North 60-24-08 West 41.24 feet to a point; (13) North 48-30-13 West 78.82 feet to a #5 rebar (14) with the arc of a curve to the left having a radius of 250.00 feet, an arc distance of 220.15 feet and being subtended by a chord bearing North 73-43-52 West 213.11 feet to a #5 rebar; and (15) South 81-02-28 West 120.69 feet to a #5 rebar located on the easterly line of the property of High Family Partnership I, LP (now or formerly) as described in Book 11709, Page 822, Mecklenburg County Public Registry; thence with the easterly line of the High Family Partnership I, LP property North 08-59-49 West 181.70 feet to a #5 rebar; thence with a new line the following 37 courses and distances: (1) South 75-46-55 East 69.44 feet to a point (2) South 61-12-26 East 22.88 feet to a point; (3) South 00-47-19 West 69.46 feet to a point; (4) South 16-39-10 East 25.02 feet to a point (5) North 89-58-42 East 55.70 feet to a point; (6) North 82-34-51 East 46.27 feet to a point; (7) North 87-45-56 East 43.50 feet to a point; (8) South 83-50-19 East 92.11 feet to a point; (9) South 85-44-56 East 57.86 feet to a point; (10)

South 50-03-57 East 41.33 feet to a point: (11) South 74-51-41 East 25.30 feet to a point; (12) South 81-01-12 East 29.80 feet to point; (13) South 57-11-12 East 58.60 feet to a point; (14) North 81-58-53 East 39.36 feet to point; (15) South 82-00-15 East 32.17 feet to point; (16) South 85-50-03 East 31.24 feet to point; (17) South 60-41-45 East 38.18 feet to point; (18) South 67-06-55 East 57.17 feet to point; (19) South 56-00-09 East 26.83 feet to point; (20) North 81-47-43 East 22.78 feet to point; (21) South 71-42-18 East 17.85 feet to point; (22) South 86-03-47 East 70.12 feet to point; (23) South 72-38-36 East 4.15 feet to point; (24) North 48-36-35 East 14.03 feet to point; (25) South 61-18-30 East 24.58 feet to point; (26) South 28-44-55 East 19.73 feet to point; (27) South 47-40-37 East 34.08 feet to point; (28) South 77-55-42 East 18.85 feet to point; (29) North 67-38-58 East 13.23 feet to point; (30) South 60-11-16 East 18.55 feet to point; (31) North 84-44-44 East 51.26 feet to point; (32) South 48-15-49 East 22.25 feet to point; (33) South 37-52-14 East 36.66 feet to point; (34) South 50-06-23 East 58.16 feet to point; (35) South 39-44-52 East 50.83 feet to point; (36) South 74-21-28 East 45.77 feet to point; and (37) South 24-48-04 West 407.75 feet to the POINT AND PLACE OF BEGINNING, containing 5.0022 acres, more or less, as shown on "Final Plat of Arbor Hills" drawn by David A. Weirich, PLS, L-3846, dated May 16, 2003, last revised June 17, 2003.

Tract 3:

COMMENCING at NCGS "Ransom" located at N - 581033.211, E - 1477954.232, Elev. - 785.89; thence North 59-38-32 West 2,679.23 feet ground distance (2,678.80 feet grid distance with a combined grid factor of 0.9998408) to a #5 rebar located on the northerly right of way margin of West Mallard Creek Church Road (120' public R/W), thence with the northerly right of way margin of West Mallard Creek Church Road the following four courses and distances: (1) North 65-40-09 West 3.35 feet to a R/W disk; (2) South 23-10-51 West 20.00 feet to a #5 rebar; (3) with the arc of a circular curve to the left having a radius of 2,924.79 feet, an arc distance of 177.76 feet and being subtended by a chord bearing North 68-33-38 West 177.74 feet to a #5 rebar; and (4) North 70-35-53 West 31.90 feet to the POINT AND PLACE OF BEGINNING; thence continuing along West Mallard Creek Church Road the following seven courses and distances: (1) North 71-19-18 West 60.45 feet to a point; (2) North 71-49-35 West 24.27 feet to a point; (3) North 72-10-53 West 85.47 feet to a #5 rebar; (4) North 72-20-06 West 56.55 feet to a point; (5) North 72-20-06 West 9.75 feet to a #5 rebar; (6) North 72-20-06 West 10.19 feet to a point; and (7) North 72-20-06 West 494.05 feet to a #5 rebar located at the southeasterly corner of the property of Nasir Ahmad (now or formerly) as described in Book 10231, Pages 221 and 225, Mecklenburg County Public Registry; thence with the easterly line of the Ahmad property North 10-40-43 West 166.32 feet to a #5 rebar located at the southeasterly corner of the property of High Family Partnership I, LP (now or formerly) as described in Book 11709, Page 822, aforesaid registry; thence with the easterly line of the High Family Partnership I, LP property North 08-59-49 West 186.56 feet to a #5 rebar; thence with a new line the following 15 courses and distances: (1) North 81-02-28 East 120.69 feet to a #5 rebar; (2) with the arc of a curve to the right having a radius of 250.00 feet, an arc distance of 220.15 feet and being subtended by a chord bearing South 73-43-52 East 213.11 feet to a #5 rebar; (3) South 48-30-13 East 78.82 feet to a point; (4) with the arc of a circular curve to the left having a radius of 100.00 feet, an arc distance of 41.53 feet and being subtended by a chord bearing South 60-24-08 East 41.24 feet to a point; (5) South 72-18-02 East 182.29 feet to a #5 rebar; (6) South 75-32-25 East 43.86 feet to a #5 rebar; (7) South 14-27-35 West 30.00 feet to a #5 rebar; (8) South 75-32-23 East 118.23 feet to a point; (9) with the arc of a circular curve to the left having a radius of 130.00 feet, an arc

distance of 49.72 feet and being subtended by a chord bearing South 86-29-50 East 49.42 feet to a point; (10) North 82-52-37 East 33.10 feet to a point; (11) with the arc of a circular curve to the right having a radius of 112.00 feet, an arc distance of 22.07 feet and being subtended by a chord bearing North 88-31-23 East 22.04 feet to a #5 rebar; (12) South 21-03-11 West 109.87 feet to a #5 rebar; (13) South 68-56-49 East 46.83 feet to a #5 rebar; (14) South 21-18-56 West 36.18 feet to a #5 rebar; and (15) South 21-17-51 West 197.57 feet to the POINT AND PLACE OF BEGINNING, containing 6.5331 acres, more or less, as shown on "Final Plat of Arbor Hills" drawn by David A. Weirich, PLS, L-3846, dated May 16, 2003, last revised June 17, 2003.

EXHIBIT B

THE "SITE PLAN"

That certain The Arbors at Mallard Creek, Charlotte, North Carolina, Overall Site Plan dated July 27, 2004, prepared by DPR Associates, Inc. for Lat Purser & Associates, as shown on Exhibit B-1, attached hereto and incorporated herein by reference.

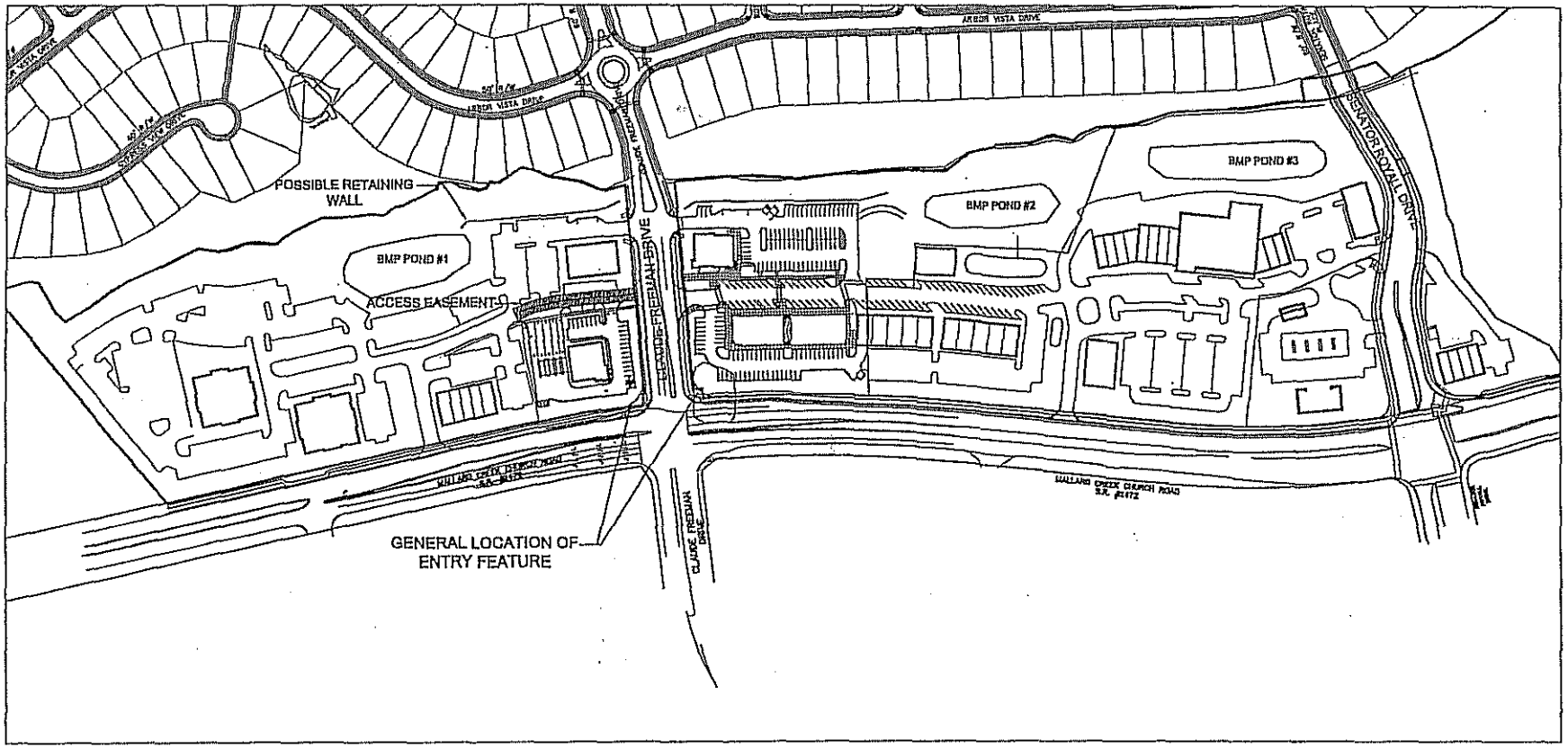


EXHIBIT B-1

DPR ASSOCIATES, INC.
Landscape Architects
Planners & Engineers
420 Hawthorne Lane
Charlotte, NC 28204
704/333-1201

THE ARBORS AT MALLARD CREEK

CHARLOTTE, NORTH CAROLINA

OVERALL SITE PLAN

FOR

LAT PURSER & ASSOCIATES

Date: 7/27/04

Job #:03033

Scale: GRAPHIC

0 100' 200' 400'

Dwg. No: MPR-1

EXHIBIT C

CHITECTURAL GUIDELINES

out limiting the generality of any restrictions contained in the ions, Restrictions and Easements for Arbors At Mallard Creek erty, nor any part thereof or any Lot located therein, shall be ne following:

y Improvements. Temporary improvements expressly permitted nd used solely in connection with the construction of permanent s may be allowed provided they are located as inconspicuously as and are removed immediately after completion of such

as. No antenna or satellite dish for transmission or reception of gnals or any other form of electromagnetic radiation or radio signal d or maintained on any building site outside any building, whether ovement or otherwise, unless appropriately screened such that the are not visible from the roadways or any buildings in the Property.

ice/Utility Lines. No service and/or utility lines, pipes or conduits d, placed or maintained anywhere in or upon the Property unless the ed and maintained underground or concealed in, under or on buildings improvements, except that electrical transformers may be permitted if . Nothing herein shall be deemed to forbid the erection and use of or telephone service poles incident to the construction of permitted or the installation of permanent outdoor safety light poles so long as the h permanent light poles are underground.

ervice Screening, Storage Areas. Garbage and refuse containers shall be contained within buildings or shall be concealed by means of a screening es, constructed of material similar to and compatible with that of the se elements shall be integrated with the concept of the building plan, be s not to attract attention, and shall be located in an inconspicuous place as acticable.

Storage Tanks. No storage tanks, including, but not limited to those used of water or propane gas, shall be permitted on the Property unless concealed ing wall, with gates, constructed of material similar to and compatible with uilding.

Mail Boxes. No mail boxes shall be permitted on the Property outside of a nless located in a gazebo, or other "open air", but covered structure or unless boxes are placed at a location within the Property that is not visible from any adways or the Property.

THE ARBORS AT MALLARD CREEK
CHARLOTTE, NORTH CAROLINA
OVERALL SITE PLAN
For
LAT PURSER & ASSOCIATES

Date: 7/27/04
Job #:03033
Scale: GRAPHIC
Dwg. No: MPR-1

G. Air Conditioning Equipment. All roof mounted mechanical equipment and vents should be anticipated and screened accordingly with parapets and screen walls only and neither skylights nor screened roofs shall be required.

H. Fences. Any fence constructed on the Property must be compatible with use of the Property as a first-class mixed use development and shall not include chain link or barbed wire fence, except only those chain link fences as shall be approved by the Architectural Review Committee and located at or near the boundaries of the Property or around the BMPs or along the tops of the Retaining Walls.

I. Nuisances. No use or operation shall be conducted on the Property by any owner, lessee, licensee, or occupant which shall create a nuisance to the Property. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any building site and no odors shall be permitted to arise therefrom so as to render any building site or portion thereof unsanitary, unsightly or offensive as would constitute a legal nuisance.

J. Lighting. A uniform lighting system will be employed throughout the developed areas, including roadway, parking areas and sidewalks.

K. Materials. All materials for external facades of any buildings or improvements shall be constructed of either brick, stone, EFIS (as accents only and not as a primary building material), glass or architectural pre-cast concrete or any combination thereof. The external façade (excluding roofs) of any improvement or building shall not be constructed of metal, wood or stucco. Furthermore, the color used of any external façade shall be consistent with a first-class mixed use development.

L. Building Height. In no event shall any building or other improvement constructed on the Property exceed two (2) stories above grade level.

2. Limitations on Improvements. No buildings or improvements of any kind shall be permitted on the Property unless constructed or developed in accordance with the following:

A. Setback Lines. Any improvements constructed on the Property shall be constructed in accordance with the setback and buffer requirements required by applicable zoning regulations.

B. Landscaping.

1. All developed areas of the Property, including without limitation, the area between the building and each street curb (including areas within the rights-of-way of adjacent streets) not devoted to driveways, parking areas and sidewalks, shall be landscaped in an attractive, well-kept condition in accordance with applicable zoning ordinances and consistent with a first-class mixed use development.

2. Landscaping shall be installed within sixty (60) days from the date of occupancy or substantial completion of any building, whichever date first occurs.

3. All landscaping shall be maintained in an attractive, sightly, and well-kept condition in accordance with the condition at time of initial installation.

C. Signs. No pylon, pole, flashing, moving or audible signs shall be permitted on the Property. Furthermore, no signs, billboards, or advertising shall be erected, placed or maintained in any buffer areas of the Property, except a monument sign identifying the name of the development and/or principal occupant or occupants of the development. Except as otherwise provided above, other signs shall be permitted provided such signs:

1. Are in accordance with then applicable ordinances or regulations enacted by any governmental agency having jurisdiction over such issues and have been approved by the Architectural Review Committee;

2. Relate to persons or firms occupying the premises;

3. Are not located on canopy roofs, building roofs or project above the building or top wall upon which it is mounted;

4. If attached to buildings or structures, are placed flat against such building or structure;

5. Have no visibly exposed conduit, tubing, raceways, conductors, transformers or other equipment;

6. If lighted, such lighting is accomplished by individual letter internal illumination (not neon tube lighting), back lighted letters or concealed or integrated flood lights; but not otherwise;

7. Do not have painted letters which are prohibited; and

8. Do not reveal any signmakers' labels or other identification on the exposed surface of signs.

Notwithstanding the above, so long as Declarant remains a Class B Member as defined in the Declaration, a temporary billboard or sign advertising or announcing Declarant's intended development or use of the property shall be permitted on the Property. Declarant shall be obligated to maintain such temporary sign in a neat and well maintained condition and not allow such sign to become faded or worn.

D. Parking Areas.

Any area designated as parking shall be paved and curbed.

E. Storage and Loading Areas.

1. Loading doors, docks, facilities, or other service areas shall be set back in accordance with applicable zoning requirements.

2. No materials, supplies, merchandise or equipment (including company-owned or operated trucks, but excluding materials and equipment used during construction) shall be stored in any area of the Property except inside of a closed building. Outside storage is not permitted.

3. Loading doors, docks, facilities and other service areas shall be adequately screened with architectural walls or landscaping to minimize the effect of their appearance from any streets or the Property.

CONSENT AND SUBORDINATION

REGIONS BANK ("Lender"), owner and holder of a note secured by that certain Deed of Trust from Arbors at Mallard Creek, LLC, a North Carolina limited liability company, to Bryan F. Kennedy, III, Trustee for the benefit of Lender dated June 10, 2004 and recorded in Book 17348 at Page 543 in the Mecklenburg County Public Registry (the "Deed of Trust"), hereby consents to the execution, delivery and recording of the foregoing Declaration of Covenants, Conditions, Restrictions and Easements for Arbors at Mallard Creek by and among Arbors at Mallard Creek, LLC, Crescent Resources, LLC, Charles M. Blankenship, William S. McLean and Gail S. McLean (the "Declaration") and agrees that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof. Lender also consents and subordinates the lien of the Deed of Trust to any and all easements, and other conditions identified and/or depicted on that plat entitled "Final Plat of the Arbors at Mallard Creek" recorded in Map Book 41 at Page 755 of the Mecklenburg County Public Registry ("Plat Easements") and agree that any subsequent foreclosure of the Deed of Trust shall not extinguish the Plat Easements, and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property shall be subject and subordinate to the Plat Easements.

IN WITNESS WHEREOF, the undersigned has duly executed these presents under due authority as of this the 3rd day of August, 2004.

REGIONS BANK,
Owner and Holder

By: _____
SVP

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Linda S McCall, a Notary Public of aforesaid County and State, certify that Charles Bartz personally came before me this day and acknowledged that he/she is Senior Vice President of REGIONS BANK, and that he/she, as Senior Vice President being authorized to do so, executed the foregoing on behalf of the Bank.

WITNESS my hand and official seal, this 3rd day of August, 2004.

Linda S McCall
NOTARY PUBLIC

My Commission Expires: 1-18-09

[NOTARIAL SEAL]

G. Air Conditioning Equipment. All roof mounted mechanical equipment and vents should be anticipated and screened accordingly with parapets and screen walls only and neither skylights nor screened roofs shall be required.

H. Fences. Any fence constructed on the Property must be compatible with use of the Property as a first-class mixed use development and shall not include chain link or barbed wire fence, except only those chain link fences as shall be approved by the Architectural Review Committee and located at or near the boundaries of the Property or around the BMPs or along the tops of the Retaining Walls.

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B. Landscaping.

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2. Landscaping shall be installed within sixty (60) days from the date of occupancy or substantial completion of any building, whichever date first occurs.

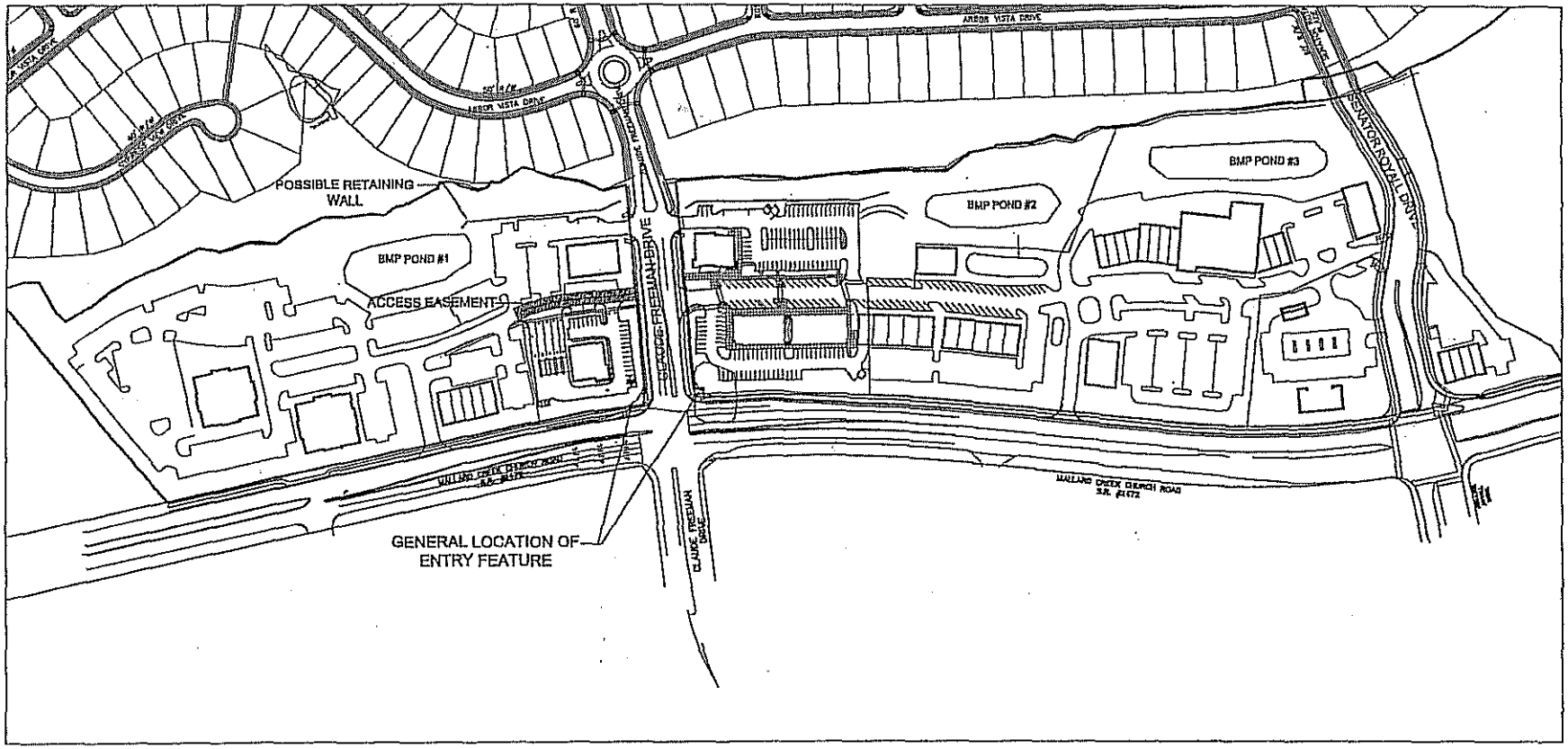

EXHIBIT B-1

DPR
DESIGN PLANNING RESEARCH

DPR ASSOCIATES, INC.
Landscape Architects
Planners & Engineers
420 Hawthorne Lane
Charlotte, NC 28204
704/332-1204

THE ARBORS AT MALLARD CREEK

CHARLOTTE, NORTH CAROLINA

OVERALL SITE PLAN

FOR

LAT PURSER & ASSOCIATES

Date: 7/27/04

Job #:03033

Scale:
GRAPHIC

0 100' 200' 400'

Dwg. No:

MPR-1

EXHIBIT C

ARCHITECTURAL GUIDELINES

1. Prohibitions. Without limiting the generality of any restrictions contained in the Declaration of Covenants, Conditions, Restrictions and Easements for Arbors At Mallard Creek ("Declaration"), neither the Property, nor any part thereof or any Lot located therein, shall be used or operated in violation of the following:

A. Temporary Improvements. Temporary improvements expressly permitted under the Declaration and used solely in connection with the construction of permanent permitted improvements may be allowed provided they are located as inconspicuously as reasonably practicable and are removed immediately after completion of such constructions.

B. Antennas. No antenna or satellite dish for transmission or reception of television or radio signals or any other form of electromagnetic radiation or radio signal shall be erected, used or maintained on any building site outside any building, whether attached to an improvement or otherwise, unless appropriately screened such that the antennas or satellites are not visible from the roadways or any buildings in the Property.

C. Service/Utility Lines. No service and/or utility lines, pipes or conduits shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be placed and maintained underground or concealed in, under or on buildings or other permitted improvements, except that electrical transformers may be permitted if properly screened. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone service poles incident to the construction of permitted improvements, nor the installation of permanent outdoor safety light poles so long as the lines serving such permanent light poles are underground.

D. Service Screening, Storage Areas. Garbage and refuse containers shall be concealed and contained within buildings or shall be concealed by means of a screening wall, with gates, constructed of material similar to and compatible with that of the building. These elements shall be integrated with the concept of the building plan, be designed so as not to attract attention, and shall be located in an inconspicuous place as reasonably practicable.

E. Storage Tanks. No storage tanks, including, but not limited to those used for storage of water or propane gas, shall be permitted on the Property unless concealed by a screening wall, with gates, constructed of material similar to and compatible with that of the building.

F. Mail Boxes. No mail boxes shall be permitted on the Property outside of a building, unless located in a gazebo, or other "open air", but covered structure or unless such mailboxes are placed at a location within the Property that is not visible from any public roadways or the Property.