

Filed and recorded in the Register of Deeds Office for Henderson County, N.C. this 30 day of March, 2006 at 2:30 o'clock P.M. in Book 1268 at page 255

Dedra W. Moles
Register of Deeds

By: Patsy B Higgins
asst.

Prepared by and Return to:
Shelton & Brewer 206 Third Avenue West Hendersonville, NC 28739

7

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR THE ORCHARDS OF FLAT ROCK

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE ORCHARDS OF FLAT ROCK, made and entered into this ___ day of March, 2006, by and between The Orchards, LLC (herein "Developer") and all Future Owners of Lots in THE ORCHARDS OF FLAT ROCK.

WITNESSETH:

THAT WHEREAS, Developer is the owner of certain property in Henderson County, North Carolina, referred to as "The Orchards," said property (the "Property") bearing parcel identification numbers 9588-64-9024 (Phase 1) and 9588-63-9201 (Phase 2) at the Land Records Division, Henderson County, North Carolina (the property described being and comprising the "Subdivision"); and

WHEREAS, the Developer desires for the protection and benefit of all persons who may hereinafter become owners of lots located within the Subdivision that the Property be developed and maintained with limitations and restrictions.

WHEREAS, these covenants are to run with the land and be binding upon all parties purchasing Lots and all persons claiming by, through or under the Developer until December 31, 2026 at which time said covenants shall automatically be extended for successive periods of (10) years unless by vote of a majority of persons then owning Lots within the Subdivision it is agreed to change these covenants in whole or in part.

Pursuant to North Carolina Law, Developer hereby gives notice that THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS. (hereinbelow at Article IV, section ten)

AGREEMENT:

NOW, THEREFORE, the Developer does hereby make the following declaration as to limitations and restrictions to which the subdivision shall be and are hereby subjected:

ARTICLE I

Definitions

1. "Act" shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.
2. "Association" shall mean and refer to The Orchards of Flat Rock Property Owners' Association, Inc., a nonprofit corporation organized under the

B 1 2 6 8 P 2 5 6

laws of the State of North Carolina, its successors and assigns.

3. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

4. "Bylaws" shall mean and refer to Bylaws of the Association.

5. "Common Elements" shall mean and refer to i) private roads designated on any subdivision Plat to be hereinafter recorded by Developer, as well as any other private road constructed by the Developer serving the Subdivision or any property adjoining the Subdivision; ii) the entrance area(s) as shown on such Plat; iii) any other property designated as such by the Developer; and iv) any real estate owned by the Association, other than a Lot.

6. "Developer" shall mean The Orchards, LLC, or its successors and/or assigns, including any person which succeeds to any Special Developer Rights as set forth herein and in the Act. Any consent to be obtained from Developer pursuant to these restrictions must only be obtained from The Orchards, LLC, or its successor(s), in its capacity as Developer.

7. "Directors" shall mean and refer to the members of the Board of Directors of the Association.

8. "Limited Common Elements" shall mean and refer to those portions of the Subdivision designated as being either for i) the exclusive use by one or more but fewer than all of the Lot Owners, or ii) designated by Developer, in its sole and absolute discretion, as benefiting, either directly, or indirectly, one or more but fewer than all of the Lot Owners.

9. "Lot" shall mean and refer to any parcel of land within the Subdivision and as shown on any plat hereinafter recorded by Developer of all or any part, of the Property and all other Lots which may be added pursuant to any other expansion right of Developer as described herein, and designated for separate ownership or occupancy by a Lot Owner.

10. "Lot Owner" and/or "Owner" shall mean and refer to the Developer or other person who owns fee simple title to any Lot which is part of the Subdivision; but does not include a person having an interest in a Lot solely as security for an obligation.

11. "Member" shall mean and refer to each Owner or Owners of a Lot within the Subdivision who shall also then be a member of the Association for such period of ownership. If a Lot is owned by more than one person, then such persons collectively shall be the Member and shall be entitled to vote only those voting shares allocated to such Lot.

12. "Restrictions" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Orchards of Flat Rock, as same may be released, amended or changed, either in whole or in part, as provided for herein.

B 1 2 6 8 - E 2 5 7

13. "Special Developer Rights" shall mean and refer to those rights defined in Chapter 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of Developer.

14. "Subdivision" and/or "Property" shall mean and refer only to that certain real property described in that deed recorded in Deed Book ___ Page ___ of the Henderson County, North Carolina Register's Office and as shown on any Plat of such real property described in said Deed as may hereinafter be recorded by Developer. An Overall Site Plan is depicted on that Progress Drawing entitled "The Orchards of Flat Rock" prepared for Lifestyle Homes of Distinction by Brooks & Medlock Engineering, PLLC, bearing Job. Number 148205. The Developer shall not be deemed to have subjected any other property which the Developer may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property is recorded in the Henderson County Registry of Deeds. The Developer specifically reserves the right to subject any other property which the Developer may now own or which Developer may hereafter acquire to the restrictions set forth herein. It is understood that the Developer will be recording additional plats of the Subdivision showing additional individual Lots.

ARTICLE II

Submission of Property to the Act and Creation of a Planned Community

1. Submission of the Property and Creation of the Subdivision: Pursuant and subject to the terms and provisions of the Act, Developer hereby creates a planned community subdivision initially comprised of the Property. Developer hereby submits all of such Subdivision property to the Act and the terms of this Agreement.

2. Name: The name of the subdivision created hereunder is The Orchards of Flat Rock.

3. Designation of Lots and Common Elements: The Developer does hereby designate that real property as shown on the Plat to be recorded as separate Lots and Common Elements.

4. Reservation of Special Developer or Developer Rights: Developer, and each of them separately, hereby reserves unto itself and its successors in interest as Special Developer or Developer Rights, the following: (a) Those Special Developer or Developer Rights as set forth in the Act; (b) The right, subject to the terms of Article XII, Section 3 herein, during the Developer's Control Period, to modify, amend, change, vary or release all or any part of these Restrictions; and (c) The right to redesignate a previously designated Lot as an easement or right-of-way for access adjoining property whether now or hereafter owned by such Developer.

B 1 2 6 8 P 2 5 8

ARTICLE III

Common Elements Ownership and Maintenance

1. Owner's Easements of Enjoyment: Every Owner shall have the right of ingress to and egress from the Common Area, together with the right of enjoyment in and to the Common Elements, which rights shall be appurtenant to and shall pass with the title to every Lot.
2. Delegation of Use: Any Owner may delegate his rights of enjoyment of the Common Elements to the members of his family, his tenants, contract purchasers who reside on the Lot, or his guests. A Lot Owner who has delegated rights to the Common Elements to his tenant shall not in addition to his tenant have rights to the Common Elements.
3. Rules and Regulations: The Board shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in its minutes, which shall be maintained at the office of the person or entity managing the Common Elements on behalf of the Association and available to the members for inspection during normal business hours, or at the designated office of the Association, if there is no property manager.
4. Leasing Common Elements Facilities: Subject to the ordinances of Henderson County, the Board shall have the power to lease the use of any recreational facility for functions or special events, and may charge reasonable admission or other fees for such use.
5. Operating Common Elements Facilities: The Board shall have the power to limit the number of guests, to regulate hours of operation and behavior, and to curtail any use or uses it deems necessary for either the protection of the facilities or the peace and tranquility of adjoining residents with regard to the recreational facilities located on the Common Elements. The Association shall promulgate rules regarding use of the swimming pool including rules regulating unsupervised use by children.
6. Developer's Conveyance of Title to Common Elements: At such time as it deems appropriate but not later than at such time that all of the Lots of all phases of The Orchards have been sold, Developer shall convey fee simple title to the Common Elements to the Association. The Association shall accept the conveyance of all such Common Elements pursuant to this section.
7. Mortgaging Common Elements: The Association shall have the power to borrow money for the purpose of improving the Common Elements, and pursuant thereto, to subject the Common Elements or any portion thereof that it owns to a Deed of Trust; provided, however, that the execution of such Deed of Trust shall require the same

B 1 2 6 8 P 2 5 9

approval of the membership which is required for special assessments for capital improvements.

8. Developer Use of Clubhouse: Developer has the right to the use of the clubhouse during the Developer Control Period and beyond said Control Period if necessary to complete Developer responsibilities hereunder.

ARTICLE IV

Land Use

1. Restrictions: All dwelling units or Lots and the Common Elements shall be subject to the restrictions herein.

2. Residential Use: All Lots shall be used for, improved for, and devoted exclusively to residential use.

3. Common Elements Construction or Alteration: No alteration or construction of the external area of any improvements on any Lot or in or upon any portion of the Common Elements shall be undertaken or allowed except at the direction of and with the express written consent of the Association.

4. Offensive or Annoying Activity or Nuisance: No immoral, illegal, obnoxious or offensive activity shall be carried on, in or upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to any resident within the Property. In the use of the Property, all applicable governmental regulations shall be observed.

5. Fences, Mailboxes and Antennas, Etc.: The Association may regulate or prohibit the erection of antennas, ham radio towers, fences (chain-link, stockade-type or otherwise) on any Lot. Only mailboxes furnished by the Developer or the Association may be used. No satellite dishes larger than 19 inches in diameter shall be allowed. No outside clothes lines are permitted.

6. Animals: No animals generally considered livestock may be kept on any lot, common area or limited common area of the premises. No commercial animal raising or boarding of any type shall be permitted on any lot, common area or limited common area. Only animals which are generally recognized as domestic pets, not to exceed a total of three (3) per dwelling (exclusive of fish, gerbils or other like caged pets, which are kept indoors at all times), may be kept on any Lot. All pets must be kept under the control of their Owner and kept in such a manner so as not to become a nuisance or any annoyance to other residents within the Subdivision. Any pet outside the boundaries of the lot of its Owner shall be restrained by a leash not to exceed seven (7) feet in length. Specific regulations may be promulgated from time to time by the Association, which may further restrict the type of pets to be allowed within the Subdivision, including breeds and sizes of pets to be prohibited so as to avoid nuisances. Owners shall be responsible for collecting and disposing of all pet excrement. Any failure of an Owner to properly dispose of pet excrement shall subject such Owner to a reasonable fine as determined and assessed by the Association Board.

B 1 2 6 8 P 2 6 0

7. **Parking:** No parking of unlicensed, uninspected or inoperable vehicles shall be allowed on the Property. No overnight parking of any motor vehicles shall be allowed on streets within the Property. Campers and boats may be parked in driveways within twenty-four hours before and after such time they are used. Residents of dwelling units may wash motor vehicles in their driveways. In addition, no one shall store or keep a trail-bike, motorcycle, motorized tri-wheel bike, tractor, truck, or other such motorized riding vehicle on the Property, except one pick-up truck and one or more operational automobiles and except as provided in the rules and regulations enacted by the Association.

8. **Motor Vehicles:** All motor vehicles shall be maintained in proper operating condition and in a condition so as not to be a nuisance by noise, exhaust emissions or otherwise.

9. **Trash Receptacles:** Storage, collection and disposal of trash shall be in compliance with rules set by the Association.

10. **Signs:** No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Owner on any portion of the exterior or interior (if visible from the outside) of any Lot, common or limited common area. As an exception hereto: (i) signs for Owner's names may be permitted but must be applied for and approved by the Association in accordance with procedures set out hereinabove at Article IV of this Declaration; and (ii) signs offering the Unit for sale or rent or identifying contractor and/or lender not exceeding three (3) square feet in size may be placed by the owner within a dwelling window. Notwithstanding the foregoing, the Association Board may, in its exclusive discretion, erect signs on the Property for identification or for such other purposes as the Board finds necessary. This section shall not be construed in any way so as to regulate or prohibit the display of the flag of the United States or North Carolina pursuant to N.C.G.S. 47F-3-121. However, pursuant to North Carolina General Statute Section 47F-3-121, **THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

11. **Trade or Business:** No trade or business shall be carried on upon any Lot or tract, but this restriction shall not prohibit a home occupation which does not cause any noxious or offensive activity and which does not significantly increase traffic within the property.

12. **Rentals:** No dwelling unit shall be rented for a period of less than twelve (12) months. Any Owner who rents a dwelling unit has an affirmative obligation to immediately report such rental, the period of the rental and the names of the tenants to the Association. A copy of any lease shall also be provided to the Association.

ARTICLE V

Membership and Voting Rights

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

81268 P261

2. The Association shall have two (2) classes of voting membership:

A. Class A: Class A members shall be all Owners, with the exception of Developer, who shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members; the vote for such Lot shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. If multiple Owners owning any Lot are unable to agree on their vote, their vote shall not be counted.

B. Class B: The Class B member shall be Developer and Developer shall be entitled to three (3) votes for each Lot Developer owns within the Subdivision. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

ARTICLE VI

Assessments

1. Creation of the Lien and Personal Obligation of Assessments: The Developer, for each Lot owned, hereby covenants, and every other Owner of any Lot subject to this Declaration, by acceptance of a deed therefor, whether or not expressed in any such deed of other covenant, is deemed to covenant and agrees to pay the Association:

(a) Annual assessments or charges, as determined by the Board;

(b) Special assessments for capital improvements, or unanticipated crises or contingencies, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on a Lot together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in the Act) incurred by the Association in collecting delinquent assessments shall also be the personal obligations of the person or entity who was the Owner of such Lot at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by them, notwithstanding that the lien for delinquent assessments shall continue to encumber the Lot. In addition, the Association shall have all those powers provided for in the Act, as it may be amended from time to time, including the ability to impose fines.

2. Developer Exclusion: Developer shall not be required to pay assessments for Lots or Common Elements owned by Developer.

3. Purpose of Assessments: The Assessments levied by the Association may be used for the following purposes:

B 1 2 6 8 P 2 6 2

- (a) for the promotion of the recreation and welfare of the residents of the property;
- (b) for the payment of ad valorem taxes and public assessments levied on the Common Elements or Limited Common Elements, if any;
- (c) for the maintenance and operation of any utility systems owned by the Association;
- (d) for the maintenance of private streets, roads, walkways, fences, and retaining walls within the Property, as well as all signs and lighting located thereon and adjacent thereto;
- (e) for the maintenance of the Common Elements or Limited Common Elements and the cost of labor, materials and equipment necessary for the proper use, enjoyment and maintenance of the Common Elements, including the clubhouse and furnishings therein;
- (f) for the exterior maintenance of all improvements on each Lot within the Property, including painting, repairing, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and the exterior improvements. Such exterior maintenance shall not include glass surfaces or locks. In the event that the need for maintenance or repair of a Lot or improvements thereon is caused by the willful or negligent acts of the Owner of any Lot or through the willful or negligent act of any family member, guest, or invitees of the Owner of any Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added and become part of the assessment to which such Lot is subject. The Association, in its sole discretion, determines what maintenance is required;
- (g) for landscape and yard work maintenance, including mowing of grass for all property within the Subdivision;
- (h) for snow removal regarding all streets and sidewalks within the Subdivision;
- (i) for maintenance of the entrance area; provided, that it is understood that if a gate is constructed, such gate shall not be construed as any representation or guaranty of security to residents of the Subdivision;
- (j) for the procurement and maintenance of liability and hazard insurance in accordance with the By-Laws and the regulations of the Federal National Mortgage Association, such liability insurance to insure the Association in a minimum amount of \$1,000,000.00 per occurrence, or any other appropriate insurance that the Association requires;
- (k) for garbage removal;
- (l) for the employment of professionals, such as accountants, attorneys, and management firms, to represent the Association when necessary;
- (m) to maintain a reasonable reserve for the foregoing purposes;

B 1 2 6 8 2 2 6 3

(n) maintenance of the swimming pool, and the clubhouse complex.

4. Special Assessments for Capital Improvements: In addition to the annual assessments authorized herein, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of Class A and Class B members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting.

5. Annual Assessments: Annual assessments shall be fixed by the Board of Directors of the Association. At least thirty (30) days in advance of each annual assessment, the Board of Directors of the Association shall fix the amount of the annual assessment against each Lot and send written notice of such assessment to every Owner subject thereto. The due dates of such assessments shall be established by the Board of Directors and such assessments shall be payable on the due date, but may be collected in monthly, quarterly, or annual assessments, as established by the Board. A delinquent account may be accelerated by the Association such that the entire year's assessment becomes immediately due. Assessments shall begin as to any Lot Owner a purchase of the Lot from Developer the month following closing. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association stating forth whether the assessment for a specified Lot has been paid. Assessments, as to subsequent purchasers, shall begin as a liability to such purchasers effective upon the first day of the month following closing.

6. Uniform Rate of Assessments: Both annual and special assessments must be fixed at a uniform rate for all Lots.

7. Remedies for Non-Payment of Assessments: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days of its due date, the Board may impose a late fee of the greater of: (i) twenty dollars (\$20.00) per month; or (ii) ten percent (10%) of any assessment installment unpaid. The Association may bring an action in law against the Owner personally obligated to pay the assessment and interest or foreclose the lien created therein in the same manner as described by the laws of the State of North Carolina for foreclosure of deeds of trust. Cost and reasonable attorney fees as provided for above for any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Elements, or abandonment of his dwelling unit or Lot. In the event that an action at law results in a judgment being entered against the Owner of any Lot and in favor of the Association, the Association shall be further empowered to obtain execution on such judgment in a manner to the extent provided for and permitted by the laws of the State of North Carolina. The Association may delegate collection of delinquent assessments to a duly-appointed property manager.

7A. Assessment of Fines for Non-Compliance: In the event that any Owner shall fail to comply with the terms of the Declaration, Bylaws, Rules or other restrictions

B 1 2 6 8 P 2 6 4

hereunder, the Association Board may notice such noncomplying Owner(s) of a hearing before an adjudicatory panel appointed by the Board, in accordance with N.C.G.S. 47F-3-107.1, and shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred (\$100.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-103.

8. Annual Budget: By majority vote of the Directors, the Board shall adopt an annual budget for the each year of operation which shall provide for the allocation of expenses in such a manner that the obligations imposed by this declaration and any and all amendments hereto shall be met.

9. Omission of Assessments: The omission by the Board, before the expiration of any year, to fix the assessments hereunder for that or for the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligations to pay any assessments.

10. Subordination of Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to any mortgage or deed of trust which is a first lien on a Lot within The Orchards. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Nothing herein shall prevent, and any mortgagee may, at its option, pay any delinquent obligations of a property Owner. Developer or Association shall notify by certified mail return receipt requested, any mortgagees of any delinquency or any default in the presence of any obligations of an Owner prior to taking any action against such Owner which would affect the mortgagee.

ARTICLE VII

Insurance

All Owners of Lots on which dwelling units are located are required to have fire and extended coverage insurance in an amount sufficient to cover the full replacement cost thereof. All Owners of Lots on which units are located shall have an affirmative obligation to provide the Developer or the Association with a copy of the declaration page of their current fire and extended coverage insurance policy at or prior to Closing. In the event of damage to or destruction of any dwelling unit which would be covered by a standard fire and extended coverage insurance policy, the Owner of such dwelling unit shall have the affirmative responsibility of reconstructing or repairing it regardless of whether such Owner has such a standard fire and extended coverage insurance policy. In the event of the Owner's failure to repair or reconstruct such dwelling unit, the Association may, at its discretion, clean up the debris or repair the damage and add the costs thereof to the assessment against the Lot upon which said dwelling unit is located, and collect such assessments pursuant to the provisions of Article VI.

81268 P.265

ARTICLE VIII

Easements

1. Easements Established: All Lots and Common Elements within the Subdivision shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas, telephone, cable television and electric power lines and ingress and egress and for other purposes as shall be established by the Association.

2. Road Rights-of-Way: All Lots within the Subdivision property are serviced by certain road rights-of-way described on plats to be recorded. Developer does hereby dedicate said rights of way as shown as public roadways, and is constructing such road rights of way in accordance with current Department of Transportation specifications. As such, and pursuant to N.C.G.S. Section 136-102.6, all future Lot Owners acknowledge that the rights of way as shown on the Plat are public road rights-of-way dedicated to public use and will be developed in accordance with the minimum right-of-way and construction standards established by the North Carolina Department of Transportation for acceptance on the State highway system. As such, all future Lot Owners, and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of such road rights of way until such time as the Department of Transportation assumes the obligation for the maintenance of said road rights of way.

3. Encroachments and Developer's Easements to Correct Drainage: All dwelling units or Lots and the Common Elements shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Developer to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, steps and walls. If an encroachment is created as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be and remain a valid easement for such encroachment for the maintenance of the same. For a period of twenty-five (25) years from the date of conveyance of the first Lot in a phase, the Developer reserves a blanket easement on, over and under the ground within that phase to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety, and appearance, expressly including the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Developer shall restore the affected property to its original condition to the extent practicable. Developer shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Developer. Nothing in this section shall be deemed to impose an obligation upon Developer to maintain and correct drainage and surface water conditions.

4. Easements to Henderson County and Public or Private Utilities: A perpetual easement is hereby established for county, state or public or private utilities serving the area, their agents and employees over all Common Elements hereby or hereafter established for postal and private mail delivery, garbage collection, setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, or cable

B 1 2 6 8 E 2 6 6

service, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

5. Easement for Construction Purposes: Developer shall have full rights of ingress and egress to and through, over and about the Common Elements in the Subdivision during such period of time as Developer is engaged in any construction or improvement work on or within the Subdivision. Developer shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc. which are being utilized. No Owner, his guests or invitees shall in any way interfere or hamper Developer, its employees, successors or assigns, in connection with such construction, it being understood and agreed that the construction activities of Developer or its contractors or subcontractors, so far as practical, not interfere with the quiet enjoyment of Lots within the Subdivision.

6. Duke Power Contract: The Developer reserves the right to subject the Property to a contract with Duke Power for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Duke by the Association.

ARTICLE IX

Party Walls

1. General Rules of Law to Apply: Each wall which is built as a part of the original construction of the homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply therein.

2. Sharing of Repair and Maintenance: The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of dwelling units adjoining such party wall.

3. Destruction by Fire or Other Casualty: If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall equally contribute to the cost of restoration thereof without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. Weatherproofing: Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

5. Right to Contribution Runs with the Land: The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

B 1 2 6 8 E 2 6 7

6. **Arbitration:** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE X

Obligations to Mortgagees

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgages to include Deeds of Trust or other security instruments) encumbering any Lots located within the Subdivision:

- (a) Developer or Association shall be obligated to notify the holder of any first mortgage or deed of trust on a Lot, upon request of such holder, of any default by the Lot Owner and the performance of any of such Owner's obligations described herein, including failure to pay assessments when due, which is not cured within sixty days from the date of such default;
- (b) First mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements;
- (c) No provision herein shall be construed to give a Lot Owner or any other party priority over any rights of first mortgagees of Lots in The Orchards pursuant to their mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of, Common Elements property.

ARTICLE XI

The Orchards Property Owners' Association

The Developer does hereby establish a non-profit corporation which shall be known as The Orchards of Flat Rock Property Owners' Association (herein "Association"). The purpose of the Association shall be to provide for the orderly enforcement of these covenants, including, but not limited to, the maintenance, upkeep and repair of the joint rights of way within the Subdivision and any Common Elements or any other matter or area determined by the Association to be a Common Element or other area of common interest. The Board of Directors as established in the Bylaws of the Association shall constitute the Executive Board as defined in N.C.G.S. 47E3-103 and shall be subject to the provisions of such statute, except as set forth in this Declaration or the terms of the Bylaws of the Association.

81268 P268

ARTICLE XII

General Matters

1. Adjoining Properties and Governmental Actions: All purchasers of Lots do hereby acknowledge that Developer has made no representations as to uses of adjoining properties and such purchasers have been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Lot within the Subdivision, such purchasers do hereby understand and agree that Developer is not responsible for any activities or actions conducted on any property adjoining the Subdivision, or in any way relating to or arising out of any use of any property adjoining the Subdivision. The purchaser of any Lot acknowledges that they have investigated on their own accord how such uses may affect the Subdivision and are satisfied that they do not materially or substantially affect the value, use or enjoyment of any Lot.

2. Enforcement: Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. Action for enforcement may be brought by the Association or any Lot Owner. In addition, the Association may impose reasonable fines pursuant to the Act against any property Owner for violation of these Restrictions. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other property Owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of the covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorney's fee as a part of such action.

3. Amendment and Modification. The Developer does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. Except as otherwise set forth in these Restrictions, during the Control Period, the Developer hereby reserves the absolute right to modify and/or to amend these Restrictions in whole or in part in Developer's sole and absolute discretion as the Developer deems proper and appropriate. After the Control Period, any amendments to these Restrictions shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the Members, sixty-seven percent (67%) of the Members vote in favor of such amendment and once made, shall be come effective when recorded in the Henderson County, North Carolina, Register's Office. For the purpose of any such vote of the Members, each Member shall vote as

B 1 2 6 8 . 2 2 6 8

set forth in Article V herein. Whenever herein the Developer has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Developer. Nothing herein shall require or shall be construed so as to require the Developer or its related persons or entities to subject all or any part of its remaining adjoining property to these Restrictions.

4. Developer Control. The "Control Period" or "Developer Control Period" shall mean that period of time from the date of the recording of these restrictions through the earlier of 1) January 1, 2021, or 2) that date upon which Developer conveys the last Lot as shown on the plat or any subsequent recorded plat adding property as an additional phase of the Subdivision.

5. Additional Property. Developer may add subsequently acquired contiguous property to the subdivision which will be developed in a similar manner as this first phase and will be made subject to these covenants, conditions and restrictions.

IN WITNESS HEREOF, the Developer has hereunto set its hand and seal the day and year above first written.

THE ORCHARDS, LLC

[Signature]
By:

STATE OF NORTH CAROLINA, COUNTY OF HENDERSON
I, Rhonda E. Moore a Notary Public of the County and State
aforesaid, certify that Beize Alexander, as Member/Manager of The Orchards,
LLC, a limited liability company, personally came before me this day and acknowledged the
execution by him of the foregoing instrument on behalf of the company.

Witness My Hand and Official Seal, this the 28th day of March, 2006.

[Signature]
Notary Public

My Commission Expires:
1/29/07



BYLAWS OF
ORCHARDS OF FLAT ROCK PROPERTY OWNERS' ASSOCIATION, INC.
A NORTH CAROLINA NON-PROFIT CORPORATION

ARTICLE I

Identity

These are the Bylaws of The Orchards of FLAT ROCK Property Owners' Association, Inc., a North Carolina non-profit corporation, (the "Association").

For purposes of these Bylaws, terms specifically defined either in the Restrictions for and amendments thereto (the "Restrictions") located in Henderson County or the North Carolina Nonprofit Corporation Act, Chapter 55A, North Carolina General Statutes (the "Non-Profit Act"), shall have the same meaning herein. Unless the Restrictions or Bylaws expressly provide otherwise, the procedures and substantive matters governing the Association can be determined by reference to the Act.

ARTICLE II

Definitions

2.1. "The Orchards" shall mean that real estate located in the Subdivision as set forth in the Restrictions.

2.2. "Common Element", "Community Property" and/or "Common Community Areas" shall mean those areas used in common by all the Owners of Lots within the Subdivision, including the private roads providing access to public rights-of-way and/or such areas that may be denoted as "Common Element", "Community Property" or "Common Community Areas" on plats of record for the Subdivision.

2.3. "Developer" shall mean The Orchards, LLC.

2.4. "Developer Control Period" shall mean the time in which Developer has to exercise certain exclusive rights such as, but not limited to, electing the Board of Directors of the Association and/or retaining approval authority for amendments to the Bylaws. The Developer Control Period shall be as set forth in the Restrictions.

2.5. "Lot" shall mean any improved or unimproved parcel of land located within The Orchards and intended to be developed now or hereafter as a single-family residential dwelling.

2.6. "Owner" shall mean and refer to the Owner or Owners as shown by the real estate records in the Office of the Register of Deeds of Henderson County, North Carolina, of fee simple title to any Lot situated within the Subdivision. For purposes of voting or representation on any Committees or Boards, the marital spouse of the Owner may be treated as being an "Owner".

ARTICLE III

Qualifications and Responsibilities

3.1. **Membership.** Every Lot Owner in The Orchards shall be a member of the Association, and shall remain a member until he ceases to be a Lot Owner.

3.2. **More Than One Owner.** When there is more than one Owner of a Lot, all such persons shall be members of the Association.

3.3. **Registration.** It shall be the duty of each Lot Owner to register his name and his mailing address with the Secretary of the Association. If a Lot Owner does not so register, the Association shall be under no obligation to recognize his privileges of being a member. In addition, a Lot Owner shall register with the Secretary the name and mailing address of any applicable person, firm or company holding a note secured by a first deed of trust lien on that Lot (the "First Mortgage").

3.4. **Prohibition of Assignment.** The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Lot.

3.5. Provide the Secretary of the Association proof of Homeowner's Insurance no later than the date of closing.

ARTICLE IV

Members' Meeting and Voting

4.1. **Place.** Meetings of the members shall be held at such place within the Subdivision or within Henderson County, North Carolina, as may be designated from time to time by the Board of Directors of the Association (the "Board").

4.2. **Annual Meetings.** The members shall meet at least once each year in July, the day being specified in the notice of such meeting given pursuant to Section 4.4. At each annual meeting, the members may transact any business properly coming before them.

4.3. **Special Meetings.** Special meetings of the members may be called at any time by the President or by the Board, and shall be called and held within sixty (60) days after written request thereof signed by members of the Association entitled to cast at least ten percent (10.0%) of the total votes in the Association is delivered to any officer or Director of the Association. No business shall be transacted at a special meeting except that which is stated in the notice thereof

4.4. **Notice.** Notice of all meetings of the members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each member. Such notice shall be in writing, and shall be hand delivered or sent by United States mail to the members at the addresses of their respective Lots and to other addresses as any member may have designated to the President or Secretary as it appears on the records of the Association, at least thirty (30) days in advance of any annual or special meeting. Notice shall be deemed delivered when deposited in the United States mail addressed to the member at his address for the respective Lot and/or as it appears on the records of the Association.

The Association may vote or transact business on any matter at an annual meeting whether or not specific notice of said item had been given in the notice of the annual meeting. However, for special meetings, only items which were included in the meeting's notice to members can be voted on.

4.5. Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least forty percent (40%) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present

4.6. Voting. Each Lot Owner is entitled to one vote per Lot owned. When there is more than one Owner of a Lot, said Owners shall designate the person authorized to vote for said Lot.

4.7. Manner of Casting Votes. Votes may be cast in person or by proxy. A proxy must be in writing, be signed by all Owners of the Lot, the votes of which are subject to the proxy, be given only to another member or to a Security Holder of that Lot, and be filed with the Secretary on or before the meeting. A proxy shall be valid until revoked in writing by all Lot Owners of such Lot. A proxy should denote the vote desired on a specific issue and/or be a general authorization to the proxy holder to vote according to his discretion.

4.8. Required Votes. All questions shall be decided by a majority of the votes cast on the question, unless the provisions of applicable law, the Restrictions or these Bylaws require a greater vote.

4.9. Action by Members Without Meeting. Any action that may be taken at a meeting of the members, may be taken without a meeting if such action is authorized in writing setting forth the action taken and is signed by all members, or if such action is taken in any other manner permitted by law.

4.10. Prohibition of Cumulative Voting. There shall be no cumulative voting.

ARTICLE V

Directors

5.1. Number and Qualifications of Directors. The Board shall consist of three (3) natural persons, as determined in the sole discretion of Developer during the Developer Control Period and thereafter by a majority of the members. During the Developer Control Period, a Director need not be a member of the Association or be a resident of North Carolina. A Board member may be the Developer or a representative of Developer. After the Developer Control Period expires, a Director must be a Lot Owner or the individual nominee of a Lot Owner which is other than an individual.

5.2. Election of Directors. During the Developer Control Period, the Developer reserves the right to elect the Board. Election of Directors by the members shall occur at the first annual meeting of the members after the end of the Developer Control Period, and at each subsequent annual meeting after the term of the Directors have expired. The members shall elect the Directors by a majority of the votes cast in the election. Directors shall be for two (2) years. No Director may serve consecutive terms. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

5.3 Term. The term of the Directors during the Developer Control Period shall be in the sole discretion of Developer. After the Developer Control Period has expired, the term of the

5.4. Removal. During the Developer Control Period, the Developer retains the sole authority to remove any Director, with or without cause. After the Developer Control Period has expired, any Director may be removed, with or without cause, by a vote of the members entitled to cast at least sixty-six and two-thirds percent (66 2/3%) of the total votes in the Association, at a special meeting called for such purpose. During the Developer Control Period, the Developer shall appoint a successor to serve for the balance of the removed Director's term (which term is within the sole discretion of Developer during the Developer Control Period). Thereafter, the members by majority vote shall appoint a successor to serve the balance of the removed Director's term.

5.5. Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

5.6 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors, but at least three (3) times a fiscal year (as that term is defined in Sections 5.13(a) and 8.2 below). Notice of regular meetings shall be given to each Director, personally or by mail, telephone, facsimile or telegraph, at least thirty (30) days prior to the meeting.

5.7. Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request signed by two (2) Directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours' notice of such special meeting shall be given personally or by mail, telephone, facsimile or telegraph to each Director, provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

5.8. Quorum: Adjournment if No Quorum. Fifty percent (50.0%) of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present, in accordance with the provisions of N.C.G.S. 47E-3-109. The signing by a Director of the minutes of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

5.9. Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Restrictions or these Bylaws.

5.10. Meeting Forums: Board Action Without Meeting. Although regular or special meetings may occur at such places as specified in the notice, regular or special meetings by means of a conference telephone or similar communication device are permissible as long as

the required notice is given. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in writing, setting forth the action taken, signed by all Directors.

5.11. Compensation of Directors Restricted, Directors shall receive no compensation for their services but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

5.12. Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Act, the Restrictions (as delegated by the Developer), the Articles, and these Bylaws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Act, the Restrictions, the Articles, and these Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and provide to members annually by July 1st, a budget report for the fiscal year commencing August 1st and concluding July 31st of the following calendar year (the "Fiscal Year"), said report containing at least the following:

- (i) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.
- (ii) A statement of the financial condition of the Association for the last Fiscal Year.
- (iii) A statement of the status of any pending suits or judgments in which the Association is a party.
- (iv) A statement of the insurance coverage provided by the Association. A statement of any unpaid assessments payable to the Association, identifying the Lot and the amount of the unpaid assessment All Lot Owners do hereby acknowledge that this reporting of unpaid assessments shall not constitute a violation of any federal or state unfair debt collection laws.

(b) To adopt and amend budgets and to determine, and collect assessments to pay the Association's common expenses, including operating expenses and Community Property maintenance fees (the term "Common Expenses" being defined with more particularity in Section 9.12), and capital improvement costs. The Board may engage an accountant to do the Association bookkeeping, to file annual returns and to assist in preparing the report described above.

(c) To regulate the use of, and to maintain, repair, replace, modify and improve the Community Property.

(d) To adopt and amend rules and regulations affecting the Single Family Residential Lots and to establish reasonable penalties for infraction thereof.

(e) To enforce the provisions of the Restrictions, the Articles, these Bylaws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate agents and independent contractors.

(g) To institute, defend, intervene in, or settle any litigation or administrative proceeding in its own name on behalf of itself or two (2) or more Lot Owners on matters affecting the Community Property.

(h) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose. To borrow money for the maintenance, repair, replacement, modification or improvement of the Community Property and to pledge and pay assessments, and any and all other revenue and income; for such purpose.

(i) To buy Lots in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in Lots from time to time owned by the Association.

(k) To impose and receive payments, fees and charges for the use, rental or operation of the Community Property for all purposes permitted a Nonprofit corporation.

(l) To grant leases, licenses, concessions and easements through and over the Community Property, unless contrary to the Restrictions.

(m) To impose and collect reasonable charges, including reasonable costs and attorneys' fees, for the enforcement of any use restrictions or rules and regulations set forth in the Restrictions or these Bylaws.

(n) To provide for indemnification of the Association's Officers and Directors and maintain Officers and Directors liability insurance.

(o) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Restrictions, these Bylaws, or the rules and regulations.

Any assessments, charges or fines levied against members shall specifically relate to the need to preserve and fulfill the purposes set forth in the Association's Articles of Incorporation and are applied to Owners of Lots in their capacity as owners-members rather than in some other capacity such as customers for services.

ARTICLE VI Officers

6.1 Designation of Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. During the Developer Control Period, officers do not have to be members or residents of North Carolina. Officers may include the Developer or a representative of Developer. After the Developer Control Period, each officer shall be a Lot Owner or the individual nominee of a Lot Owner which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the

same time hold another office in the Association. The Board may elect an assistant treasurer, an assistant secretary and such other officers as in its judgment may be necessary.

6.2. Election of Officers. Officers of the Association shall be elected by the Board. Elections shall be held every two (2) years at the first meeting of the Board held after the annual meeting of the members. The first Board shall elect officers as soon as practicable after filing of the Articles.

6.3 Term. Each officer shall serve until his successor has been duly elected and has qualified.

6.4. Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

6.5. Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

6.6. Powers and Duties of Officers.

(a) President. The President shall be the chief executive officer of the Association and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice-President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association, except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and upon request, shall submit them, together with all vouchers, receipts, records, and other papers to the Board for examination and approval; shall deposit all monies and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

6.7 Execution of Agreements, Etc. All agreements, deeds, mortgages, or other instruments (including amendments to the Declaration) shall be executed by the President or Vice President, or by such other person or persons as may be designated by the Board.

6.8 Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

ARTICLE VII

Indemnification of Directors and Officers

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the North Carolina General Statutes, as now enacted or hereafter amended. In addition, the Association is authorized to maintain Officers and Directors Liability Insurance.

ARTICLE VIII

Fiscal Management

8.1. Depository. The Board shall designate a depository for the funds of the Association, and may change such depository at any time. Withdrawal of funds from such depository shall be only by checks signed by any two (2) officers of the Association, or as authorized by the Board. In the event the Board should engage the services of a managing agent, said agent shall be empowered to withdraw funds in accordance with the specific procedures adopted by said managing agent.

8.2. Fiscal Year. The Fiscal Year of the Association shall run the 1st of August through July 31st of the following calendar year provided that the Board, from time to time, by resolution, may change the Fiscal Year to some other designated period.

ARTICLE IX

Assessments

9.1. General Assessments and Additional Limited Assessments.

(a) Obligation of Members to Pay Assessments: Amount of Levy. Each Lot Owner shall be personally and severally liable for an assessment determined by dividing the total acreage of such Owner's Lot by the total acreage of all Lots within the Subdivision, and then multiplying by the total amount of the Association's Common Expenses as determined in the Board's discretion. The levy of an annual assessment noted above does not include any special assessment which may be levied against a Lot Owner in accordance with Section 9.7 below.

(b) Obligation of Some Members to Pay Additional Limited Assessment. Some Lot Owners as may be designated by Developer shall, in addition to the assessment provided for in paragraph 9.1(a) above, pay an additional limited assessment (herein "Limited Assessment") for such items and expenses which are unique and limited to that particular group or phase of Lots as designated by Developer. Each such designated Lot Owner shall be personally and severally liable for such additional Limited Assessment (in addition to the general assessment set forth above) determined by dividing the total acreage of such Owner's Lot by the total acreage of all Lots within the designated particular group or phase of Lots as determined in the Board's sole discretion at the time of the additional Limited Assessment, multiplied by the total amount of the Limited Common Expenses or Single Family Residential Limited Expense (if applicable) and such other expenses as may be shared by and unique to the designated particular group or phase of Lots. The levy of such Limited

Assessment noted above does not include any special assessment which may be levied against a Lot Owner in accordance with Section 9.7 below.

9.2. Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each Lot in accordance with its percentage of the share of assessments, and, if allocated, shall be owned by the Lot Owner, and, if allocated, may be paid to the Lot Owner or credited against that Lot's share of Common Expenses subsequently assessed. Notwithstanding the above, the Board shall retain the authority to apply said surpluses to any current Fiscal Year expenditures in order to satisfy the exempt function income qualification for Nonprofit corporations under Section 528 of the Internal Revenue Code.

9.3. Preparation of Budget and Levying of Assessment. Except as hereinafter provided, for each Calendar Year, beginning with the Calendar Year commencing on January 1, 2006, the Board shall prepare and adopt a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. After preparation and adoption of each such budget, the Board shall provide each member with a copy, and shall give each member notice of the assessment made against that member's Lot based upon such budget and may also state the interest to be charged on delinquent payments thereof (other than as provided in these Bylaws). The assessment shall be deemed levied upon the giving of such notice.

9.4. Assessment A Lien. Every assessment shall constitute a lien upon each Lot as set forth in the provisions of N.C.G.S. 47F-3-116, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against that Lot and (ii) liens and encumbrances recorded before the docketing of a claim of lien.

9.5. Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Payments shall be made to the Association, or as the Board may from time to time otherwise direct. Unless the notice states contrary, annual assessments are typically due and payable in monthly installments at the first of every month.

9.6. Notice to First Mortgagees. Although the lien of assessments may be superior to the lien of a First Mortgagee, any enforcement of said assessment lien by the Association's filing of a collection or foreclosure action with the courts shall require the giving of notice to the applicable First Mortgagee, if any. All Owners of Lots acknowledge that such notice shall not constitute a violation of any state or federal unfair debt collection laws. Failure to give the notice provided for herein shall not be a defense for the defaulting member in the enforcement action filed by the Association.

9.7. Special Assessments. In addition to the assessments levied pursuant to Section 9.3., the Board, in its sole discretion during the Developer Control Period, may levy special assessments at such other and additional times as in its judgment are required for:

- (a) Alterations, restoration and reconstruction of Community Property and its facilities.
- (b) Improvements, acquisitions and additions to the Community Property.
- (c) Payment of costs and expenses incurred in curing defaults pursuant to

Sections 10.1. and 10.3. hereof.

Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment and shall be payable as determined by the Board and as set out in such notice. After the Developer Control Period, the Board may levy special assessments only with the consent of 67% of the members voting.

9.8. Failure to Prepare Budget and Levy Annual Assessment: Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 9.3, each member shall continue to pay the assessment then previously levied pursuant to Section 9.3 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

9.9. Assessment Roll: Certificate. All assessments shall be set forth upon a roll of the Lots which shall be available in the office of the Association for inspection at all reasonable times by members and Security Holders, and their duly authorized representatives. Such roll shall include, for each Lot, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Lot Owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his Lot. The certificate shall be furnished within fourteen (14) business days after receipt of the request and shall be binding upon the Association and all Lot Owners. For such certificate a reasonable fee may be charged by the Board. All Owners of Lots acknowledge that such notice provided in an assessment roll or certificate shall not constitute a violation of any state or federal unfair debt collection laws.

9.10. Default and Enforcement If any assessment, or installment thereof, remains delinquent for thirty (30) days, then that assessment, and all other assessments then a lien against that Lot, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and such lien may be enforced in accordance with Article 2, Chapter 44A of the North Carolina General Statutes, with Chapter 47A for liens on unpaid common expenses or such other relief allowed by law. All fees; late charges, attorneys' fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate.

The Association also shall be entitled to suspend the right of a defaulting Lot Owner to use the Community Property, to the extent allowed by law, and its facilities until the delinquency is cured.

The remedies noted herein for default on assessments shall include, without limitation, any and all remedies set forth in the Restrictions. The failure of the Association to enforce any assessment delinquency shall not constitute a waiver or abrogation of the right of the Association or its agents to enforce such delinquency in the future, irrespective of the number

of breaches thereof that may have occurred by the member regarding assessments.

9.11. Interest on Delinquent Assessments. Assessments, or installments thereof, paid before they become delinquent, shall not bear interest, but any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days of its due date, the Board may impose a late fee of the greater of: (i) twenty dollars (\$20.00) per month; or (ii) ten percent (10%) of any assessment installment unpaid. The Association may bring an action in law against the Owner personally obligated to pay the assessment and interest or foreclose the lien created therein in the same manner as described by the laws of the State of North Carolina for foreclosure of deeds of trust. Cost and reasonable attorney fees as provided for above for any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Elements, or abandonment of his dwelling unit or Lot. In the event that an action at law results in a judgment being entered against the Owner of any Lot and in favor of the Association, the Association shall be further empowered to obtain execution on such judgment in a manner to the extent provided for and permitted by the laws of the State of North Carolina. The Association may delegate collection of delinquent assessments to a duly-appointed agent. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

9.12. Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by any specific provision of these Bylaws or the Restrictions, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Common Elements; costs associated with the maintenance, repair and improvement of the Common Elements; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 5.13(g) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association as a result of the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Element, or any part of either thereof, is or may be subject including, but not limited to amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VII hereof

9.13. Limited Common Expenses. Limited Common Expenses shall mean and include all sums declared to be Limited Common Expenses by any specific provisions of these Bylaws or the Restrictions, and shall include, without limitation, all costs expended for the care, maintenance and upkeep of Limited Common Elements. Assessment shall be in accordance with Section 9.1(b) above. Certain Lots within the Subdivision may be designated by Developer as benefiting from the Limited Common Elements more so than other Lots within the Subdivision. Such Lots so designated shall pay such Limited Common Expense assessments as may be required to maintain the Limited Common Elements.

ARTICLE X

Compliance, Enforcement, Fines and Penalties, Other Than Assessment Liens

10.1. Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Restrictions, these Bylaws, the Articles, or the rules and regulations, as the same may be amended from time to time, by any Lot Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover fines and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Lot Owner, or by any person or class of persons adversely affected. Also, if any member fails to perform any obligation under the Act, the Restrictions, these Bylaws, the Articles or such rules and regulations as hereinafter promulgated, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Lot, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Lot owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Lot Owner to use the Common Community Areas and its facilities until the default is cured

10.2. Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, and to each First Mortgagee of that member's Lot when required under Section 9.6 of these Bylaws, a written notice specifying the nature of the default or failure, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default or failure specified, or serve upon or mail during the specified cure period a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each First Mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member and each such First Mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or to proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a copy of its determination. A violating party shall have thirty (30) days to appeal a decision of the Board to a court of law and failure to file said appeal within thirty (30) days after receipt of the hearing determination or notice of default and cure if a hearing is not requested shall bar any challenges or any causes of action brought afterwards by said party. The Board's finding of default shall be conclusive in a case of a party's failure to appeal within the above prescribed time. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing, then the Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

10.3. **Remedy of Abatement in Addition to Other Remedies.** In the event a member fails to effect the cure specified by the Board within the time period set out in Section 10.2. hereof, where the default is a structure, thing, or condition existing in or on the premises of the member's Lot, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's Lot in which, on which, or as to which, such default exists, and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefor as provided in Section 10.1. hereof), the structure, thing, or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

10.4. **Injunction.** Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 10.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

10.5. **Recovery of Attorneys' Fees and Costs.** In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at the higher of (i) 4% over the prime rate announced by Branch Banking & Trust Company at the time the costs are incurred and (ii) the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

10.6. **Nonwaiver of Covenants.** The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Restrictions, these Bylaws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

10.7. **Assessment Liens.** Assessment liens shall be enforced pursuant to Article IX hereof and not pursuant to this Article X.

ARTICLE XI

Amendment

During the Developer Control Period, the power to alter, amend, or repeal the Bylaws or adopt new Bylaws shall be vested in the Board with Developer approval being necessary for any particular change. After the Developer Control Period has expired, the amendment of Bylaws or adoption of new Bylaws can only occur at a regular meeting of the Members and shall require: an affirmative vote of sixty-seven percent (67%) of all of the Members of the Association who own Single Family Residential Lots to such changes.

ARTICLE XII

General Provisions

12.1. Rules and Regulations.

(a) **By the Board.** The Board, including the first Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation and use of the Community Property so as to promote the common use and enjoyment thereof by Lot Owners and Occupants and for the protection and preservation thereof.

(b) **By the Association.** After the Developer Control Period has expired, any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations (subject to the same application allowed in subsection (a) of this Section 12.1) may be adopted, by members at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(c) **Uniform Application.** All rules and regulations shall be uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not reasonable or practicable.

(d) **Copies Furnished.** Copies of all such rules and regulations and any amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, or post, or make available, such rules or regulations shall not affect in any way their validity or enforceability.

12.2. **Parliamentary Authority.** Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceeding when not in conflict with the Restrictions, these Bylaws, The Articles, the Act, or any statutes of the State of North Carolina applicable thereto. The President of the Association shall have the authority to appoint a parliamentarian.

12.3 **Compliance with the Act: Conflict: Severability.** These Bylaws are established in compliance with the Act. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said Act, the provisions of said Act shall control unless the Act permits these Bylaws to override the Act, in which event these Bylaws shall control. In the case of any conflict between the provisions of these Bylaws and the Restrictions, the Restrictions shall control. If any term, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

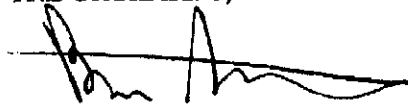
12.4 **Form of Notice.** Whenever in the Restrictions, the Act or these Bylaws it shall be required or permitted that notice or demand be given or served on the Association or a Lot Owner or a First Mortgagee or other party entitled to notice, such notice or demand shall be given in writing by registered or certified mail, postage prepaid, to the respective addresses

as hereinafter set forth. All notices or demands provided under the terms of the Restrictions, the Act or these Bylaws shall be effective when actually received by a party entitled to notice or when attempted to be delivered as authorized above. The addresses of a party entitled to notice may be changed, from time to time, by either party serving notice as above provided.

ARTICLE XIII

Effective Date. These By-Laws are effective as of March 28, 2006 and shall remain in full force and effect until amended in accordance with the terms set forth herein and as set forth in the Declaration of Covenants, Conditions and Restrictions for the Orchards of Flat Rock.

THE ORCHARDS, LLC

A handwritten signature in black ink, appearing to read "Bruce M. Alexander", written over a horizontal line.

By: Bruce M. Alexander, Member/Manager