



FOR REGISTRATION REGISTER OF DEEDS
William L. Covington
DURHAM COUNTY, NC
2006 OCT 04 02:21:33 PM
BK:5379 PG:626-629 FEE:\$20.00

INSTRUMENT # 2006047349

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

AMENDMENT TO DECLARATION OF
OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR THE
EVERWOOD PROPERTY OWNERS
ASSOCIATION, INC.

THIS AMENDMENT, made and entered this 27 day of September, 2006, by
OLD CHAPEL HILL PROPERTIES, LLC., a North Carolina limited liability company (the
"Declarant") owner of the property described in Schedule A of that Declaration of Covenants,
Conditions and Restrictions for the Everwood Property Owners Association, Inc., dated June 22,
2006 and filed June 30, 2006 in Book 5267, Page 868, in the Durham County North Carolina
Public Registry (the "Declaration").

WITNESSETH

WHEREAS, said Declaration of Covenants, Conditions, and Restrictions names the
home owners association specified therein as "Everwood Property Owners Association, Inc.";
and

WHEREAS, the North Carolina Secretary of State denied formation of a non-profit
corporation named "EVERWOOD PROPERTY OWNERS ASSOCIATION, INC."; and

WHEREAS, the Declarant desires to amend the above-referenced Declaration of
Covenants, Conditions, and Restrictions;

NOW, THEREFORE, pursuant to Article IX, Section 10 of said Declaration, the
Declarant hereby declares the said Declaration of Covenants, Conditions, and Restrictions
recorded in Book 5267 Page 868, Durham County Public Registry, to be amended as follows:

Return TO:

OLD CHAPEL PROPERTIES LLC
721 MOUNT CARMEL CHURCH ROAD
CHAPEL HILL, NC, 27517

REPLACE all references made in said Declaration to the "EVERWOOD PROPERTY OWNERS ASSOCIATION, INC." with the actual name of the association as filed with the North Carolina Secretary of State, namely the "EVERWOOD HOME OWNERS ASSOCIATION, INC."

The Declarant desires to amend only this item in said Declaration of Covenants, Conditions, and Restrictions as stated in Book 5267, Page 868 Durham County Public Registry. In all other respects, the Declaration of Covenants, Conditions and Restrictions shall remain in full force and effect.

IN TESTIMONY WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

OLD CHAPEL HILL PROPERTIES, LLC

BY: 
DAVID H. DANIEL, Manager

BY: 
WALKER HARRIS, Manager

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF Orange

I, Susan E. Many a notary public of the county and state aforesaid, certify that DAVID H. DANIEL, Manager of OLD CHAPEL HILL PROPERTIES, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Company.

WITNESS my hand and official stamp or seal this, the 27th day of September, 2006.

Susan E. Many
NOTARY PUBLIC

MY COMMISSION EXPIRES:

11/24/2008



STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF Orange

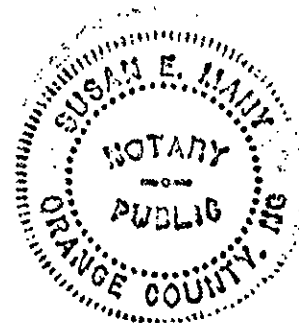
I, Susan E. Many a notary public of the county and state aforesaid, certify that WALKER HARRIS, Manager of OLD CHAPEL HILL PROPERTIES, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Company.

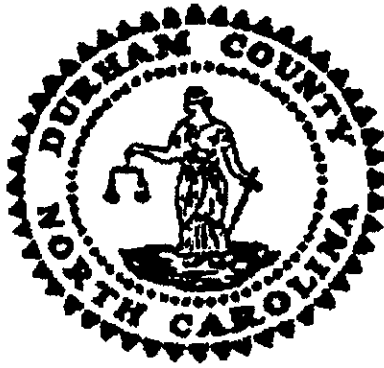
WITNESS my hand and official stamp or seal this, the 27th day of September, 2006.

Susan E. Many
NOTARY PUBLIC

MY COMMISSION EXPIRES:

11/24/2008





WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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It is part of recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 10/04/2006 02:21:33 PM
Book: RE 5379 Page: 626-629
Document No.: 2006047349
AMD 4 PGS \$20.00
Recorder: JENNIFER H SMITH



2006047349



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2007 APR 27 01:42:50 PM
BK:5586 PG:84-91 FEE:\$32.00

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

INSTRUMENT # 2007018577

**SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS & FIRST AMENDMENT TO THE BYLAWS FOR THE
EVERWOOD HOME OWNERS ASSOCIATION, INC.**

W. H. Lambe Jr.
mailed to: 3708 Mayfair St. Durham, NC 27707
Prepared By: W. H. Lambe, Jr.

THIS AMENDMENT, made and entered this the 26th day of April, 2007, by OLD CHAPEL PROPERTIES, LLC., a North Carolina limited liability company (the "Declarant") owner of the property described in Schedule A of that Declaration of Covenants, Conditions and Restrictions for the Everwood Home Owners Association, Inc., dated June 22, 2006 and filed June 30, 2006 in Book 5267, Page 868-907, in the Durham County North Carolina Public Registry, which Declaration also includes the Bylaws for the Everwood Home Owners Association, Inc. (alternatively and as the case shall be, the "Declaration" or "Bylaws").

WITNESSETH

WHEREAS, said Declaration was first amended to replace all references made therein to the "EVERWOOD PROPERTY OWNERS ASSOCIATION, INC." with the actual name of the association, namely the "EVERWOOD HOME OWNERS ASSOCIATION, INC.", dated September 27, 2006 and filed October 4, 2006 in Book 5379, Page 626-629, in the Durham County North Carolina Public Registry; and

WHEREAS, the Declarant desires to further amend the Declaration to include the transfer provisions in Paragraph 3 of the Stormwater Facility Agreement and Covenant Version 082203 dated April 4, 2006 and filed May 17, 2006 in Book 5211, Page 552-560; Paragraph 3 of the Stormwater Facility Agreement and Covenant Version 082203 dated April 4, 2006 and filed May 17, 2006 in Book 5211, Page 561-569; and Paragraph 3 of the Stormwater Facility Agreement and Covenant Version 082203 dated April 4, 2006 and filed May 17, 2006 in Book 5211, Page 570-578 in the Durham County North Carolina Public Registry; and

WHEREAS, the Declarant desires to further amend the Declaration, more specifically Article VI, Section 3(a), to institute an initial charge equal to two months assessment at closing on the first sale to be used as working capital for the Association and to increase the annual assessment per Lot for the initial year of operation of the Association from a maximum of One Hundred Dollars (\$100.00) per year to a maximum of Five Hundred Forty Dollars (\$540.00) per year, payable quarterly at the rate of One Hundred Thirty Five Dollars (\$135); and

WHEREAS, the Declarant desires to further amend the Declaration, more specifically Article VI, Section 3(c), to provide for a Class B rate equal to 25% of that of the Class A rate; and

WHEREAS, the Declarant desires to amend Article III, Section 5 of the Bylaws to provide a three year staggered term and to set forth the procedure for the removal or resignation of the members of the Association's Board of Directors; and

NOW, THEREFORE, pursuant to Article IX, Section 10 of the Declaration and Article XII, Section 2 of the Bylaws, the Declarant hereby declares that the Declaration and Bylaws recorded in Book 5267 Page 868-907, Durham County Public Registry, be amended as follows:

I. Add a new "Article XI" to the Declaration entitled "Stormwater Facility Agreement and Covenant" which shall read as follows:

"Notwithstanding any provisions contained in this Declaration to the contrary,

- (i) The particular tract or group of tracts described in Schedule A of this Declaration upon which a stormwater facility is located (the "Facility") is a part of the common elements and shall be subject to the Stormwater Facility Agreement and Covenant Version 082203 dated April 4, 2006 and filed May 17, 2006 in Book 5211, Page 552-560, the Stormwater Facility Agreement and Covenant Version 082203 dated April 4, 2006 and filed May 17, 2006 in Book 5211, Page 561-569, and the Stormwater Facility Agreement and Covenant Version 082203 dated April 4, 2006 and filed May 17, 2006 in Book 5211, Page 570-578 in the Durham County North Carolina Public Registry (collectively, the "Facility Agreements");
- (ii) That the requirements of the Facility Agreements shall receive the highest priority for expenditures by the Association except for City and County assessments, ad valorem property taxes, insurance, and any other expenditures which are required by law to have a higher priority;
- (iii) That a separate fund shall be maintained by the Association for the reconstruction and repair of the Facility, separate from the fund(s) for routine maintenance of the Facility and from all other funds;
- (iv) That the reconstruction and repair fund shall contain at all times the dollar amount reasonably determined from time to time by the Director of Public

Works to be adequate to pay for the probable reconstruction and repair cost for a three-year period; that the fund shall be listed as a separate line in the Association's budget; and it shall be kept in an account insured by the FDIC or by another entity acceptable to the Director of Public Works;

- (v) Upon the vote of 2/3 of the members of the Association, special assessments shall be charged to each member of the association, to pay for the obligations under the Facility Agreements; and
- (vi) That, to the extent permitted by law, the Association shall not enter into voluntary dissolution unless the Facility is transferred to a person, as defined in the Facility Agreements, who has executed a stormwater facility agreement and covenant with the City of Durham."

2. Amend Article VI, "Section 3(a) Initial Assessment." of the Declaration by deleting and replacing the first sentence in the paragraph with the following new sentences, "An initial charge equal to two months assessment will be collected at closing on the first sale to be used as working capital by the Association. Assessments per Lot for the initial year of operation of the Association shall not exceed Five Hundred Forty Dollars (\$540.00) per year (Forty Five Dollars (\$45) per month), payable quarterly at the rate of One Hundred Thirty Five Dollars (\$135)."

3. Amend Article VI, "Section 3(c) Assessment for Class B Lots." of the Declaration by inserting a new second sentence which shall read as follows, "The Class B rate shall equal 25% of the Class A rate."

4. Amend Article III, "Section 5. Election." of the Bylaws by changing the title to "Section 5. Election, Term, Removal and Resignation." and then by adding the following sentences to the end of the paragraph:

"The directors shall be divided into three classes, as nearly equal in number as may be, to serve in the first instance for terms of one, two and three years, respectively, or until his or her death, resignation, removal, disqualification or until his or her successor is duly elected and qualified and thereafter the successors in each class of directors shall be elected to serve for terms of three years or until his or her death, resignation, removal, disqualification or until his or her successor is duly elected and qualified. In the event of any increase or decrease in the number of directors, the additional or eliminated directorships shall be so classified or chosen that all classes of directors shall remain or become as nearly equal in number as may be. Any Director may resign from the Board at any time by giving written notice to the President or Secretary of the Association and unless otherwise specified herein, acceptance of such resignation shall not be necessary to make it effective."

5. The Declarant desires to amend the Declaration and Bylaws only as set forth above. In all other respects, the Declaration and Bylaws shall remain unchanged and in full force and effect.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN TESTIMONY WHEREOF, the said parties have hereunto set their hands and seals
the day and year first above written.

OLD CHAPEL PROPERTIES, LLC

BY: David H. Daniel
DAVID H. DANIEL, Manager

BY: Walker Harris
WALKER HARRIS, Manager

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF Granville

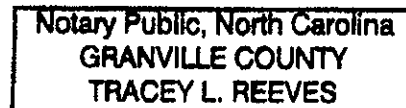
I, Tracey L. Reeves a notary public of the county and state aforesaid, certify that DAVID H. DANIEL, Manager of OLD CHAPEL PROPERTIES, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Company.

WITNESS my hand and official stamp or seal this, the 26 day of April, 2007.

Tracey L. Reeves
NOTARY PUBLIC

MY COMMISSION EXPIRES:

9-3-2011



STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF Durham

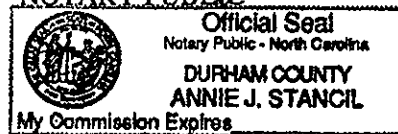
I, Annie J. Stancil a notary public of the county and state aforesaid, certify that WALKER HARRIS, Manager of OLD CHAPEL PROPERTIES, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Company.

WITNESS my hand and official stamp or seal this, the 26th day of April, 2007.

Annie J. Stancil
NOTARY PUBLIC

MY COMMISSION EXPIRES:

6/8/08





WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

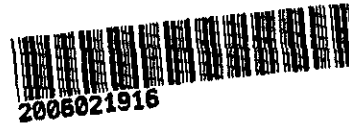
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and/or cancellation.

Filed For Registration: 04/27/2007 01:42:50 PM
Book: RE 5586 Page: 84-91
Document No.: 2007018577
AMD 8 PGS \$32.00
Recorder: JENNIFER H SMITH



2007018577



FOR REGISTRATION REGISTER OF DEEDS
WILLIE L. COVINGTON
DURHAM COUNTY, NC
2006 MAY 17 11:28:46 AM
BK:5211 PG:570-578 FEE:\$35.00

INSTRUMENT # 2006021916

*Prepared by City of Durham Department of Public Works, 101 City Hall Plaza, 3rd Floor, Durham, NC, 27701
Return to Department of Public Works - Storm Water Services Division 101 City Hall Plaza, 3rd Floor, Durham,
NC, 27701*

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

STORMWATER FACILITY AGREEMENT
AND COVENANT VERSION 082203

THIS AGREEMENT ("Agreement") is made and entered into this 4 day of April, 2006 by and between **Old Chapel Properties, LLC**. ("Permittee") and the City of Durham, a North Carolina municipal corporation ("City").

1. Background

a. This Agreement concerns the perpetual maintenance of a stormwater facility ("the Facility") on property owned by the Permittee, and related requirements regarding the Facility. The City has adopted, and from time to time will adopt, stormwater management regulations applicable to certain real property in which Permittee holds an interest. That property is generally located **southeast of the intersection of Garrett Road and Old Chapel Hill Road, and is commonly known as Everwood Subdivision** and is described in the deeds recorded with the Durham County Register of Deeds at the following book and page numbers: **Deed Book 1383, Page 606**. This development hereafter is referred to as "the Property". Within the Property may be a particular tract or group of tracts owned by the Permittee upon which the Facility is located. That property is found at **Plat Book 100, Page 194**, and is referred to in this Agreement as "the Site". Within the Site is the Facility which is a **Stormwater Bioretention Area (BR #1) designed to have a surface area of 1,743 square feet at an elevation of 252.65 feet**. It is located on the northwest side of the Property. The Site and the Property may be the same (see definition of Site in c. below).

b. The City's ordinances require that stormwater facilities be created and maintained on some properties. The ordinances further require that, before an occupancy permit may be issued for any structure constructed within a property which includes a stormwater facility, the owner must enter into an Agreement with the City to provide for the operation and maintenance of the Facility. This Agreement is intended to comply with that requirement.

c. **Definitions.** The terms defined above are supplemented by the following terms, which, as used in this Agreement, are defined as follows:

"Director of Public Works" means the City's Director of Public Works or his or her designee.

"City Manager" means the Durham City Manager or an Assistant City Manager.

"Facility" means the privately-owned stormwater control facility that is the subject of this Agreement, and that satisfies the requirements of the City's ordinances and regulations for such facilities.

"Permittee" means the party executing this Agreement with the City and successor owners of the Site.

"Person" includes natural persons, business trusts, joint ventures, governments, governmental subdivisions, governmental agencies, firms, corporations, associations, partnerships, and other legal entities.

"Property" means the larger development that, when developed, requires a stormwater Facility to serve it.

"Site" means the one or more lots or tracts within the Property, one of which contains the stormwater Facility. In a residential development, such lots will be those that are intended to be owned by all residents, through a homeowners' association. In nonresidential developments and apartments, the Site will generally be the same as the Property.

"Transfer" includes sell, convey, assign or alienate all or a portion of an interest in the Site or Property. Transfers do not include acquisitions of mortgages or similar encumbrances.

2. **Fees: Title Opinion: Construction Inspections and Maintenance.**

The Permittee shall cause the following to be done:

a. At the time of delivering this Agreement executed by the Permittee to the City, pay the stormwater permit fee in the amount determined by the Director of Public Works:

b. Provide to the City an opinion of title of the Property or the Site, as directed by the City, by an attorney licensed to practice law in North Carolina and update that opinion to the time of recording this Agreement. The opinion(s) shall show that the party or parties executing this Agreement have title, in fee, to the Property, or to the Site. The Director of Public Works shall indicate whether the opinion shall pertain to the Property or the Site, if such are different. The opinion shall indicate no liens or encumbrances that the Director of Public Works deems to interfere with the City's having adequate security in accordance with Section 6.

c. Construct the Facility in accordance with the plans approved by the Director of Public Works before applying for a certificate of compliance for any structure on the Property, it being agreed that no building on the Property is eligible for a certificate of compliance until the Facility has been so constructed;

d. Inspect the Facility, perform routine maintenance on the Facility, and make all necessary repairs to the Facility, all as directed by the Director of Public Works. This shall include the following work:

i. **Grass and Vegetative Cover.**

A. Design, install and maintain landscaping around the Facility so that it will not reduce the capacity or hinder the operation and maintenance of the Facility.

B. Maintain the vegetative cover of the Facility to prevent erosion.

C. Except as provided in 2 (d) (i) (D) below, mow the area as needed to prevent the grass and other plants (other than maintained shrubs and trees) from exceeding a height of fifteen (15) inches.

D. Keep open channels free of undesirable growth and maintained to the design cross-section and area as shown on the Plans, and keep the height of the vegetation on the slopes and bottom from exceeding eight (8) inches.

- E. Replace landscape materials that fail to live and prosper, as required by the Director of Public Works.
- ii. Embankments, Slopes, and Dams. Inspect and repair embankments, slopes, and dams for damage from erosion, sloughing, animal burrows, and woody vegetation.
- iii. Removal and Disposal of Trash, Debris, and Sediment.
 - A. Keep the Facility's outlet structure cleared of all blockages.
 - B. Clean the channels and pipes as necessary to provide for the free conveyance of stormwater as designed.
 - C. Remove debris and sediment as needed to maintain the primary outlet capacity and Facility storage volume when the depth of the Facility has been reduced by more than one (1) foot from the design depth, or when the Facility's storage volume has been reduced by twenty percent (20%) from the design volume.
 - D. Remove all sediment from sediment forebays, traps, and basins.
- iv. Insects, Odors, and Algae.
 - A. Maintain the Facility in a manner to control odors and algae to the extent that the Director of Public Works determines to be necessary.
 - B. Apply, when and as directed by the Director of Public Works, a larvicide approved by the Durham County Health Department for insect control, and take other measures to control insects as directed by the Director of Public Works.
- v. Fencing. Nothing in this Agreement is intended to prevent the Permittee from placing fencing and other security measures near or around the Facility, provided that the Permittee shall first submit information on the proposed construction to the Director of Public Works and obtain her consent. The Director of Public Works shall grant permission if she finds that the fencing and other measures will not interfere with the Facility. Nothing in this Agreement is intended to affect the Permittee's obligation, if any, to exercise care with respect to persons who may enter the Site.
- e. Cause the Facility to be inspected, by a registered professional engineer or a registered landscape architect, on an annual basis beginning one year after the Facility is accepted by the Director of Public Works and, after each inspection, without specific request by the City, provide the Director of Public Works with two copies of such report. The Facility is accepted upon the Director of Public Works acceptance of the as-built plans of the Facility.
- f. If the Director of Public Works reasonably determines that the Facility is in need of maintenance or repair or other work, she shall so notify the Permittee, who shall promptly take necessary actions to maintain or repair the Facility, including doing any work specified by the Director of Public Works.

3. Transfer of the Property. If the Permittee proposes to Transfer any interest in the Site, the Permittee shall, prior to transfer:

a. Notify the intended Transferee that it is required to execute an Agreement, in a form approved by the Director of Public Works, and deliver the appropriately executed Agreement to the City, along with title opinions regarding the ownership by the Transferee; and

b. If the intended Transferee is an owners' association, unit owner's association, or homeowners' association, provide the Director of Public Works a copy of the association's recorded declaration. In addition, Permittee must ensure that the declaration provides:

- i. That the Facility is a part of the common elements and shall be subject to the Agreement;
- ii. That the requirements of this Agreement shall receive the highest priority for expenditures by the association except for City and County assessments, ad valorem property taxes, insurance, and any other expenditures which are required by law to have a higher priority;
- iii. That a separate fund shall be maintained by the association for the reconstruction and repair of the Facility, separate from the fund(s) for routine maintenance of the Facility and from all other funds;
- iv. That the reconstruction and repair fund shall contain at all times the dollar amount reasonably determined from time to time by the Director of Public Works to be adequate to pay for the probable reconstruction and repair cost for a three-year period; that the fund shall be listed as a separate line in the association's budget; and it shall be kept in an account insured by the FDIC or by another entity acceptable to the Director of Public Works;
- v. Upon the vote of 2/3 of the members of the association, special assessments shall be charged to each member of the association, to pay for the obligations under this Agreement;
- vi. That, to the extent permitted by law, the association shall not enter into voluntary dissolution unless the Facility is transferred to a Person who has executed an Agreement.

If the Permittee Transfers, or permits the Transfer of, an interest without complying with this Section 3, that failure to comply shall not invalidate the Transfer, but Transferee shall remain obligated under this Agreement. In addition, the City may in its discretion require the surety referred to in Section 4 to pay the City some or all of the Face Amount (defined in Section 4).

4. Bond/Security. In order to secure the Permittee's obligations under this Agreement, the Permittee shall immediately deliver to the City one or more bonds, sureties, or similar instruments which are acceptable to the City in substance, form, and guarantor, in the amount of **seventy three thousand, three hundred and eighty four dollars (\$73,384.00)** ("the Face Amount"), which is twenty (20) times the average annual maintenance cost estimated by the Director of Public Works. The bond or other instrument shall remain in effect permanently unless the City of Durham (by its City Manager) and the Permittee execute an Agreement, under the official seal of the City of Durham, stating that "the Permittee's obligation under Section 4 of the Stormwater Facility Agreement and Covenant made on [date] between the City of Durham and [name of Permittee] to provide a bond or other instrument has been changed as follows [stating the new requirement or that it has been eliminated]." If the Director of Public Works notifies the Permittee that an instrument, surety, or other guarantor is unacceptable to the Director of Public Works, the Permittee shall, within thirty (30) days substitute an acceptable instrument, surety, or other guarantor or pay the City the Face Amount.

5. Right of Entry on Site. The Permittee hereby grants to the City the right of ingress, egress, and regress over and across the Property and the Site for the purpose of inspecting the Facility and for the purpose of correcting, repairing, replacing, and maintaining the Facility and exercising the other rights of the City that are provided for by this Agreement.

6. Remedies for Violations; Lien on Property; Future Obligations Secured.

a. If the Permittee fails to perform its obligations under this Agreement, the City may send notice to the Permittee to demand that it so perform. If the Permittee fails to comply with such demand within thirty (30) days from the date of mailing thereof, the City may enter the Property and the Site and perform some or all of the work that the Permittee was required to do in carrying out its obligations under this Agreement, and the City may do any of such work as the Director of Public Works deems appropriate to place the Facility in proper working condition. The Permittee shall pay the City for the cost incurred by the City to do that work, including reasonable amounts, calculated under procedures established by the Director of Public Works, for the City's overhead and use of City employees, equipment, and property. Interest shall accrue on those monetary obligations of the Permittee at the rate of one and one-half percent (1 - ½%) per month until paid. Without limiting other remedies available to the City, including recourse to the bond or other instrument referred to in Section 4, it is agreed that those monetary obligations shall be a lien on the Site and may be collected as unpaid taxes in accordance with N.C.G.S. 160A-193. If the City collects on the bond, letter of credit, or other instrument furnished pursuant to this Agreement the proceeds shall be applied to the amounts due under this paragraph and the Permittee shall replace the bond/security to the full face amount in Section 4.

b. This Agreement may be enforced by any remedy available in law or in equity, including but not limited to injunctive relief. The remedies provided by this Section 6 are cumulative, and are in addition to any other remedies available to the City.

c. The Permittee shall pay an attorney's fee of fifteen percent (15%) of the outstanding balance of the amount owed to the City under Section 6(a) of this Agreement if the balance is collected by or through an attorney at law. The liability of a surety or other Person guaranteeing the Permittee's obligations under this Agreement shall include said attorney's fees.

d. The City may withhold any or all permits or other approvals necessary to complete the development of the Property if the Permittee has failed to perform its obligations under this Agreement.

7. Release of Lien by Certificate.

a. Duty to Furnish a Certificate -- On the request of any of the Persons prescribed in subdivision (a) (i) below, and upon the condition prescribed by subsection (a) (ii) below, the Director of Public Works shall furnish a written certificate stating the amount of any monetary liabilities owed by the Permittee to the City pursuant to this Agreement (together with any interest and costs accrued thereon) that are a lien on the Property or the Site.

- i. Who May Make Request -- Any of the following Persons shall be entitled to request the certificate:
- A. An owner of the Property;
 - B. An occupant of the Property;
 - C. A Person having a lien on the Property;
 - D. A Person having a legal interest or estate in the Property;
 - E. A Person having a contract to purchase or lease the Property or a Person having contracted to make a loan secured by the Property;
 - F. The authorized agent or attorney of any Person described in subdivisions (a) (i) (A) through (E) above.

ii. Duty of Person Making Request -- The Director of Public Works shall not be required to furnish a certificate unless the Person making the request specifies the name of the Permittee, specifies the Book and Page in the office of Register of Deeds where this Agreement or a memorandum thereof is recorded, and provides a copy of the first page of this Agreement.

b. Reliance on the Certificate -- When a certificate has been issued as provided in Section 7(a) above, all monetary liabilities owed pursuant to this Agreement that have accrued against the Site or the Property for the period covered by the certificate shall cease to be a lien against the Property, except to the extent of monetary liabilities stated to be due in the certificate, as to all Persons obtaining such a certificate and their successors in interest who rely on the certificate:

- i. By paying the amount of monetary liabilities stated therein to be a lien on the Property;
- ii. By purchasing or leasing the Property; or
- iii. By lending money secured by the Property.

c. Without limiting the effect of this Section 7, it is agreed that no oral statement made by any City employee as to the amount of monetary liabilities that are a lien on the Property pursuant to this Agreement shall bind the City.

8. Warranty. The Permittee covenants with the City, that Permittee is seized of the Property and the Site in fee simple, has the right to convey the same in fee simple, that title is free and clear of all encumbrances, and that Permittee will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions stated in the attorney's opinion of title provided in accordance with Section 2 (b) above.

9. Notice. When a notice is required or permitted by this Agreement, it shall be given in writing to the City delivered to the Director of Public Works, 101 City Hall Plaza, Durham, NC 27701, or upon the Permittee, at **Old Chapel Properties, LLC, 721 Mount Carmel Church Road, Chapel Hill, NC 27514, Attention: David Daniel (919) 967-9811**. If mailed, the notice shall be by certified mail, return receipt requested. These addresses may be changed by sending a notice of the new address attached to a copy of this Agreement.

10. No Waiver of Breach. If the City waives any breach of any obligation or covenant in this Agreement, that waiver shall not constitute a waiver of any other or future breach of the same or any other obligation or covenant. The City's failure to exercise any right under this Agreement shall not constitute a waiver of that right.

11a. Agreement Binding until City Waives Agreement. This Agreement and all the covenants in it shall bind Permittee until the City releases Permittee in writing, signed by the Director of Public Works, from the obligations of this Agreement. The City shall release Permittee from the obligations of this Agreement when a responsible and financially capable successor has signed an Agreement with the City. The responsibility and financial capacity of any successor shall be determined solely by the City in its reasonable discretion.

11b. Covenants Herein to Run with the Land. The obligations of this Agreement run with the Property and with the Site and shall bind all owners of any interest in the Property and the Site. However, where the City has, by written release described in 11a above, accepted an owner of the Site as being responsible and financially capable, and such successor owner owns the Site, but not the Property, then this Agreement shall thereafter run solely with the Site and not with the Property. By way of example and not limitation, all owners of any interest in the Site shall be jointly and severally liable to fulfill the Permittee's obligations under this Agreement as if each of them were the Permittee. Unless the context otherwise requires, the term "Permittee" in this Agreement includes all such owners.

12. Benefit of this Agreement.

a. The approval by the City or any employee of the City of any plans or of any work referred to in this Agreement shall not create any liability in the City or its officers, officials, or employees for the plans or the work; but nothing herein is intended to release any other Person for any liability for those plans or work.

b. The performance by the City or any employee of the City of any work referred to in this Agreement shall not create any liability in the City or its officers, officials, or employees for the work; but nothing herein is intended to release any other Person for any liability for that work.

c. Except to the extent otherwise explicitly provided in this Agreement, this Agreement is not intended to be for the benefit of any Person other than the parties hereto and their heirs, successors, and assigns.

13. Interpretation of this Agreement. Unless the context requires otherwise, the singular includes the plural, the plural includes the singular, and the neuter includes the masculine and feminine. The captions and titles are for convenience only, and are not to be used to interpret the Agreement. The words "include" and "including" mean, respectively, "include but not limited to", and "including but not limited to".

14. Nondiscrimination Policy. The City of Durham opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.

15. Severability. Invalidation of any term or provision in this Agreement by a court of competent jurisdiction shall not invalidate the remaining terms and provisions.

IN WITNESS WHEREOF, the parties hereto have respectively set their hands and seals, or if corporate, have executed this under seal by their proper officers, the date first above written.

Old Chapel Properties, LLC

Manager: David H. Daniel

Printed Name: DAVID H. DANIEL

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Susan E. Many, a notary public for said County and State, certify that David H. Daniel personally appeared before me this day, (1) stated that he or she is a manager of **Old Chapel Properties, LLC**, a limited liability company organized and existing under the laws of North Carolina, (2) acknowledged that the foregoing instrument carries on in the usual way the business of the LLC and (3) acknowledged execution of the foregoing contract/deed under seal with the City of Durham on behalf of said company.

This the 4th day of April, 2006

Susan E. Many
Notary Public

My commission expires:

11/24/2008

ATTEST:

By: Linda E. Bratcher

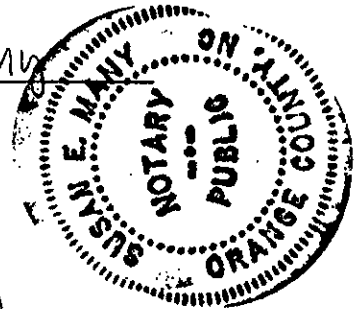
City Clerk

[Affix Municipal Seal]



[Signature]
CITY OF DURHAM

City Manager



STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Tonette Amos, a notary public in and for the County of Durham, North Carolina certify that Linda E. Bratcher personally appeared before me this day and acknowledged that he/she is City Clerk of the **CITY OF DURHAM**, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its name by its City Manager and attested by himself/herself as its said City Clerk or Deputy City Clerk.

Witness my hand and notarial seal, the 8 day of May, 2006

My commission expires:

07-17-07

Tonette Amos
Notary Public



This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature]
FINANCE OFFICER

4/29/06
DATE



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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Book: RE 5211 Page: 570-578

Document No.: 2006021916

AGMT 9 PGS \$35.00

Recorder: JENNIFER H SMITH



2006021916



FOR REGISTRATION REGISTER OF DEEDS
Willis L. Covington
DURHAM COUNTY, NC
2007 SEP 25 09:58:53 AM
BK:5751 PG:957-961 FEE:\$23.00

INSTRUMENT # 2007044159

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

MAIL to:
Walker Lambie
P.O. Box 51549
Durham NC 27717

**THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR THE EVERWOOD HOME OWNERS ASSOCIATION, INC.**

THIS THIRD AMENDMENT is made and entered this the 30th day of August, 2007, by OLD CHAPEL PROPERTIES, LLC., a North Carolina limited liability company (the "Declarant") owner of the property described in Schedule A of that Declaration of Covenants, Conditions and Restrictions for the Everwood Home Owners Association, Inc., dated June 22, 2006 and filed June 30, 2006 in Book 5267, Page 868-907, in the Durham County North Carolina Public Registry (the "Declaration").

WITNESSETH

WHEREAS, said Declaration was first amended to replace all references made therein to the "EVERWOOD PROPERTY OWNERS ASSOCIATION, INC." with the actual name of the association, namely the "EVERWOOD HOME OWNERS ASSOCIATION, INC.", dated September 27, 2006 and filed October 4, 2006 in Book 5379, Page 626-629, in the Durham County North Carolina Public Registry; and

WHEREAS, said Declaration was amended a second time, dated April 26, 2007 and filed April 27, 2007 in Book 5586, Page 84, in the Durham County Public Registry to 1) include the transfer provisions in Paragraph 3 of the Stormwater Facility Agreement and Covenant Version 082203 dated April 4, 2006 and filed May 17, 2006 in Book 5211, Pages 552-560, 561-569, and 570-578 in the Durham County North Carolina Public Registry; 2) institute an initial assessment equal to One Thousand Five Hundred Dollars (\$1,500.00) at the first closing on each Lot to be used as working capital for the Association and to increase the annual assessment per Lot for the initial year of operation of the Association from a maximum of One Hundred Dollars (\$100.00) per year to a maximum of Five Hundred Forty Dollars (\$540.00) per year, payable quarterly at the rate of One Hundred Thirty Five Dollars (\$135); and 3) provide for a Class B rate equal to 25% of that of the Class A rate; and

NOW, THEREFORE, pursuant to Article IX, Section 10 of the Declaration, the Declarant hereby declares that the Declaration and all subsequent amendments thereto be amended as follows:


1. Amend Article VI, "Section 3(a) Initial Assessment." of the Declaration by revising the first sentence in the paragraph (as initially revised by the Second Amendment to the Declaration) to read as follows, "An initial assessment equal to One Thousand Five Hundred Dollars (\$1,500.00) will be collected at the first closing on all Lots and set aside in a separate fund maintained by the Association for the reconstruction and repair of the Facility (as defined in Article XI), and any amount collected above that which the Director of Public Works for the City of Durham reasonably determines to be adequate to pay for the probable reconstruction and repair costs for a three-year period shall be used as working capital by the Association."

2. The Declarant desires to amend the Declaration only as set forth above. In all other respects, the Declaration shall remain unchanged and in full force and effect.

IN TESTIMONY WHEREOF, the said parties have hereunto set their hands and seals the day and year first above written.

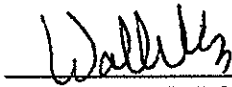
OLD CHAPEL PROPERTIES, LLC

BY:



DAVID H. DANIEL, Manager

BY:



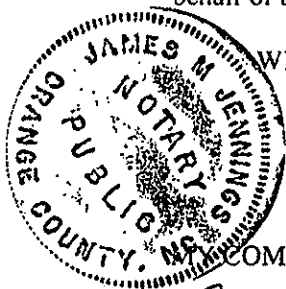
WALKER HARRIS, Manager

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF ORANGE

I, JAMES M. JENNINGS a notary public of the county and state aforesaid, certify that DAVID H. DANIEL, Manager of OLD CHAPEL PROPERTIES, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Company.



WITNESS my hand and official stamp or seal this, the 30th day of August, 2007.

James M. Jennings
NOTARY PUBLIC

My COMMISSION EXPIRES:

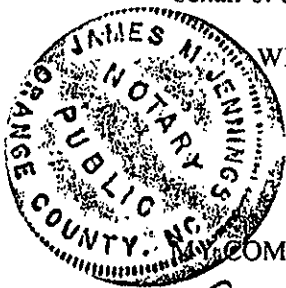
August 7, 2012

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF ORANGE

I, JAMES M. JENNINGS a notary public of the county and state aforesaid, certify that WALKER HARRIS, Manager of OLD CHAPEL PROPERTIES, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the Company.



WITNESS my hand and official stamp or seal this, the 30th day of August, 2007.

James M. Jennings
NOTARY PUBLIC

My COMMISSION EXPIRES:

August 7, 2012



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

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AMD 5 PGS \$23.00

Recorder: APRIL J WILLIAMS



2007044159