

ARTICLES OF INCORPORATION
OF
THE GROVE AT GORDON STREET HOA, INC.
(A NONPROFIT CORPORATION)

The undersigned, being a natural person of the age of eighteen years or more, hereby makes and acknowledges these Articles of Incorporation (the "Articles") for the purpose of forming a nonprofit corporation under the Nonprofit Corporation Act contained in Chapter 55A of the North Carolina General Statutes:

ARTICLE I
NAME

The name of the corporation is THE GROVE AT GORDON STREET HOA, INC., hereinafter referred to as the "Association".

ARTICLE II
DURATION

The period of duration of the Association is perpetual.

ARTICLE III
PURPOSES AND POWERS

The purposes for which the Association is organized, and the powers conferred upon the Association, are specified in the following Sections of this Article.

Section 1. Organization. The Association specifically is organized as the "Association" pursuant to the provisions of that certain "DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE GROVE" to be recorded in the Durham County, North Carolina Registry (and including all amendments and supplemental declarations thereto, the declaration and such amendments and supplemental declarations being referred to herein as the "Declaration"), the Declaration being incorporated by reference as if fully set out herein. The definitions of terms contained in the Declaration are applicable to the Articles, unless the context clearly indicates otherwise. As referred to herein and in the Declaration, the "Act" is the North Carolina Planned Community Act, currently contained in Chapter 47F of the North Carolina General Statutes, and the "Nonprofit Corporation Act" is the North Carolina Nonprofit Corporation Act, currently contained in Chapter 55A of the North Carolina General Statutes. Except as otherwise provided herein or in other Governing Documents, the Association shall have all of the rights, powers, duties and obligations conferred upon it by the Act and the Nonprofit Corporation Act. The Association and its Members shall be subject to all of the terms of the Declaration, specifically including, without limitation, the provisions regarding membership in the Association and the obligation of Members of the Association to pay monetary assessments and other charges to the Association.

Section 2. Prohibited Powers. Subject to any limitations or requirements for executing its powers contained in the Declaration, the Act, or the Nonprofit Corporation Act, the Association shall have all powers reasonably necessary for performing its functions and carrying on its business under the Declaration and the Act, including engaging in any lawful activity for which nonprofit corporations may be organized under the Act and Nonprofit Corporation Act.

**ARTICLE IV
REGISTERED OFFICE AND AGENT**

The street and mailing address and county of the registered office of the Association is:

2235 Gateway Access Point, Suite 201
Raleigh, NC 27607

The name of the registered agent of the Association at the foregoing address is:

RUSSLAW, LLC

**ARTICLE V
PRINCIPAL OFFICE**

The principal office of the Association is located at:

1507 Barden Drive
Raleigh, NC 27605

**ARTICLE VI
MEMBERSHIP AND VOTING**

Section 1. Membership. Each and every Owner of a Lot is a Member of the Association, with classes of membership as provided herein, and, by execution of the Declaration or by acceptance of a deed conveying to such Owner title to any Lot, each Owner consents to be a Member of the Association and to be subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Lot. An Owner's membership in the Association automatically terminates whenever such Person ceases to be an Owner, and Declarant shall be the Class B Member during the Development Period. Termination of membership shall not release or relieve any such Owner from any liability or obligation incurred under the Declaration during the period of such Owner's membership in the Association, nor impair any rights or remedies which the Association or any other Owner has with respect to such former Owner.

Section 2. Classes of Voting Members. The Association shall have two (2) classes of voting Members as follows:

(a) **Class A.** Class A Members are all Owners of Lots, except for the Class B Member. With respect to Association matters on which Class A Members are eligible to vote, each Lot owned by a Class A Member or Members is allocated one (1) vote, regardless of the number of Class A Members who own the Lot. When there is more than one Owner of any Lot, all such Owners shall be Members and the voting rights allocated to their Lot shall be exercised as they, among themselves, determine (subject to any applicable provisions of the Articles or Bylaws), but fractional voting of the votes allocated to such Lot shall not be allowed.

(b) **Class B.** The Class B Member is the Declarant. During all times that the Class B membership exists, the Class B Member shall have five (5) votes for each Lot in the Properties, whether or not the Lot is owned by the Class B Member. The Class B Membership shall exist until the Declarant ceases to own any Lot or Unsubdivided Land in the Properties. After any termination of the Class B Membership, it shall be reinstated upon Declarant becoming the Owner of any Lot or Unsubdivided Land in the Properties and shall exist until the Declarant no longer owns any Lot or Unsubdivided Land in the Properties.

Provided, however, and notwithstanding anything to the contrary in the Declaration or any other Governing Document, with respect to the dedication, conveyance, or exchange of Common Elements (but not with respect to the mortgage and pledge of Common Elements), at all times during the Development Period the Class B Member is deemed to have the number of votes required under applicable provisions of the Act or the Governing Documents to authorize and require the Association to dedicate, convey, or exchange Common Elements

Section 3. Exercise of Voting Rights. The exercise of voting rights shall be governed by the Articles and/or Bylaws of the Association, as applicable, including quorum requirements and exercise of voting rights by written consent or other method allowed in the Articles and/or Bylaws instead of a vote at a meeting of the Association, or by any combination of voting at a meeting and other method of voting as allowed in the Articles and/or Bylaws. Any provision of the Declaration or other Governing Documents that refers to a vote of the membership of the Association shall not preclude the exercise of voting rights by such other methods.

Section 4. Period of Declarant Control. During the Development Period, the Declarant shall be entitled to appoint, remove, and replace all of directors of the Board, and, with respect to quorum requirements at any meeting of the Association, Declarant's right to appoint directors is also Declarant's right to elect directors under the Act.

Section 5. Cumulative Voting. There shall be no cumulative voting.

ARTICLE VII EXECUTIVE BOARD

The business of the Association shall be managed by an Executive Board (also referred to herein and in the Bylaws as the “Board of Directors” or the “Board”). The qualifications for serving as a director, the number of directors, and the method of electing or appointing and removing directors, shall be as provided in the Bylaws, subject to any period of Declarant control of the Board reserved by or for the Declarant in the Governing Documents.

ARTICLE VIII EARNINGS; COMPENSATION

No part of the earnings of the Association shall inure to the benefit of any director, officer, Architectural Review Committee member, other Board committee member, employee or agent of the Association (other than as a Member of the Association in the same manner as all other Members are benefitted), except that, unless prohibited or limited by the Act, the Nonprofit Corporation Act or Governing Documents: (i) reasonable compensation may be paid for services rendered to or for the Association by its employees and agents; (ii) payments and indemnifications may be made to and on behalf of directors, officers, Architectural Review Committee members, other Board committee members, employees and agents of the Association as allowed in one or more of the Act, the Nonprofit Corporation Act, or other Governing Documents; and (iii) any officer, director, Architectural Review Committee member, other Board committee member, employee or agent of the Association who also is an Owner as defined in the Declaration, shall have all of the rights, powers, privileges and obligations of an Owner.

ARTICLE IX EXCULPATION, IMMUNITY AND INDEMNIFICATION

Section 1. Exculpation of Directors. To the fullest extent permitted by the Nonprofit Corporation Act as it currently or hereafter exists, no person who is serving or who has served as a director of the corporation shall be liable personally for monetary damages for breach of any duty as a director. No amendment or repeal of this Section, nor the adoption of any amendment to the Articles inconsistent with this Section, shall eliminate or reduce the protection granted herein with respect to any act or matter that occurred prior to such amendment, repeal, or adoption.

Section 2. Immunity. To the fullest extent permitted by the Nonprofit Corporation Act as it currently or hereafter exists, each director and officer of the Association shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of such director or officer’s service as a director or officer of the Association. No amendment or repeal of this Section, nor the adoption of any amendment to the Articles inconsistent with this Section, shall eliminate or reduce the protection granted herein with respect to any act or matter that occurred prior to such amendment, repeal, or adoption.

Section 3. Indemnification. To the fullest extent permitted by the Nonprofit Corporation Act as it currently or hereafter exists, the Association shall indemnify each Association director, officer, Architectural Review Committee member and other Board committee member (each of whom is referred to hereinafter as an “Indemnitee”), including the following:

(a) The Association shall indemnify and hold harmless each Indemnitee in the event the Indemnitee is made, or threatened to be made, a party to any pending, threatened, or completed civil, criminal, administrative, investigative, or arbitrative action, suit, or proceeding, including any appeal therein and any inquiry or investigation that could lead to such action, suit or proceeding, by reason of the fact that such Indemnitee is or was a director, officer, or Architectural Review Committee member or other Board committee member.

(b) The indemnification shall include liabilities and expenses, including without limitation all reasonable attorney’s fees and expenses, judgments, fines, excise taxes, and amounts paid in settlement, and other reasonable expenses incurred by the Indemnitee in enforcing the Indemnitee’s rights hereunder.

(c) The Association shall pay, in advance of the final disposition of such action, suit or proceeding, each Indemnitee’s reasonable expenses, including attorney’s fees, incurred in defending any such action, suit, or proceeding.

(d) The indemnification provided for herein shall inure to the benefit of the Indemnitee with respect to matters indemnified, whether or not the Indemnitee is a director, officer, Architectural Review Committee member or other Board committee member at the time such liabilities or expenses are imposed or incurred, and in the event of the Indemnitee’s death shall extend to the Indemnitee’s heirs and legal representative.

(e) The indemnification provided for herein is in addition to and not exclusive of any other indemnities to which the Indemnitee may be entitled under any Legal Requirement, agreement, insurance policy, or otherwise.

(f) To the extent reasonably possible, prior to expending any funds of the Association for an indemnity, the Association first shall obtain and apply all available insurance proceeds toward such indemnity.

(g) No amendment or repeal of this Section, nor the adoption of any amendment to the Articles inconsistent with this Section, shall eliminate or reduce the protection granted herein with respect to any act or matter that occurred prior to such amendment, repeal, or adoption.

Section 4. Limitations. The foregoing provisions for exculpation, immunity and indemnification are for directors, officers, Architectural Review Committee members and other Association committee members acting in their capacities as such, and with respect to any such Persons who also are Owners of any part of the Properties, such provisions are not intended to and

shall not exculpate, provide immunity or indemnify any of such Persons from their liabilities as Owners under the Declaration and other Governing Documents.

ARTICLE X AMENDMENT

Section 1. Amendment by Declarant. During the Development Period, Declarant may unilaterally, and in its sole discretion, without the joinder or approval of the Association, any Member, or any other Person and without the necessity of a meeting of the Association, amend the Articles for any purpose, and, as required by Legal Requirements, shall file any such amendment or an amended and restated version of the Articles that incorporates any such amendment. Any amendment to the Articles adopted by the Declarant shall be effective upon the later of the effective date contained therein or the date of its filing as required by Legal Requirements.

Section 2. Amendment by the Members. Unless amended as allowed under Section 1 or required under Section 3 of this Article, the Articles may be amended only as follows:

(a) Unless a higher percentage or different voting requirement is specified herein or by Legal Requirements, the Articles may be amended only by (i) the written agreement or consent of those Members who have, or the affirmative vote at a meeting of the Association of those Members who have, sixty-seven percent (67%) or more of the total number of votes allocated to the Members, and (ii) during the Development Period, with the written consent of Declarant.

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to the Articles is to be voted on, together with at least a summary description of the proposed amendment, shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of the date of such meeting. If the meeting for which notice has been given is adjourned, notice of the subsequent meeting shall be given as required by the Bylaws.

(c) Upon adoption of any amendment to the Articles, the Board shall cause such amendment to be executed in proper form and, as required by Legal Requirements, shall file any such amendment or an amended and restated version of the Articles that incorporates any such amendment.

Section 3. Amendment of Declaration. Upon amendment of the Declaration, the Articles shall be deemed amended as necessary to conform to the amended Declaration, and the directors and officers of the Association shall file such documents with the office of the North Carolina Secretary of State as may be reasonably required to conform the Articles to the amended Declaration.

Section 4. Prohibited Effects of Amendment. Notwithstanding the provisions of Sections 1 and 2 of this Article allowing amendments to the Articles, no amendment to the Articles, whether adopted by the Declarant, by the Association, or by the Members or any

applicable group of Members of the Association, shall be effective to do or result in anything prohibited by any "Prohibited Effects of Amendment" section in the Declaration.

ARTICLE XI
DISSOLUTION OF ASSOCIATION;
DISTRIBUTION OF ASSETS UPON DISSOLUTION

Section 1. Duration. As provided in the Declaration, unless sooner terminated as required by Legal Requirements, the Declaration shall run with and bind the Properties and each Owner, and shall inure to the benefit of the Association, and each Owner of any portion of the Properties, and their respective heirs, successors, and assigns, from and after the recording of the Declaration in the Registry until such time as it is terminated by a written termination agreement, executed or ratified in the same manner as a deed, by those Members to whom eighty percent (80%) or more of the total number of votes in the Association are allocated, and also with the written consent of Declarant during the Development Period. Execution or ratification by any one of multiple Owners of a Lot is sufficient for that Lot unless, prior to the time the termination agreement is recorded in the Registry, any other Owner of that Lot files with the Association a written objection to the termination of the Declaration (in which event the vote allocated to that Lot shall be considered as not having been exercised). The termination agreement shall specify a date after which it will be void unless it is recorded in the Registry before that date. The termination agreement may not be recorded in the Registry unless and until the requisite number of signatures have been obtained as provided herein, and it shall be effective only upon recording. If, pursuant to the termination agreement, any real estate in the Properties is to be sold following termination of the Declaration, the minimum terms of the sale shall be set forth therein.

Section 2. Dissolution of the Association. The Association shall be dissolved upon the termination of the Declaration. Provided, however, until any sale of the Common Elements authorized by the termination agreement or approved by the Owners in the same manner as required for approval of the termination agreement is completed and the sale proceeds distributed, the Association shall continue in existence with all of the powers it had before termination. The Association, on behalf of the Owners, may contract for the sale of the Common Elements, but the contract is not binding unless such sale has been authorized in the termination agreement or it has been approved by the Owners in the same manner as required for approval of the termination agreement. Proceeds of the sale of Common Elements shall be distributed to the Owners and lienholders as their interests may appear, as provided in the termination agreement or other agreement approved by the Owners in the same manner as required for approval of the termination agreement. If the Common Elements are not to be sold following termination of the Declaration, title to the Common Elements vests in the Owners upon termination, as tenants in common in proportion to their respective interests as provided in the termination agreement. Assets of the Association other than Common Elements may be liquidated in accordance with Legal Requirements.

Upon dissolution of the Association or upon loss of ownership of all of the Common Elements by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Elements as allowed by the Declaration, or by reason

of merger and/or consolidation with any other association as allowed by the Declaration), except as otherwise provided in the termination agreement, other agreement approved by the Owners in the same manner as required for approval of the termination agreement, or Legal Requirements (in particular, Section 47F-2-118 of the Act, or any successor Section of the Act), any portion of the Common Elements not under the jurisdiction of and being maintained by another association substantially similar to the Association, together with all other assets of the Association, first shall be offered to the City of Durham (or, if the City of Durham refuses such offer, then to some other appropriate Governmental Entity or public agency as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Elements and such assets were required to be devoted by the Association. If the City of Durham or other Governmental Entity or public agency accepts the offer of dedication, such portion of the Common Elements and assets shall be conveyed by the Association to such Governmental Entity or public agency, subject to the superior right of an Owner to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which that Lot is located, subject to all other applicable rights of way and easements, and subject to ad valorem property taxes subsequent to the date of such conveyance.

If the City of Durham or other appropriate Governmental Entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Elements and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Elements was required to be devoted by the Declaration, such transfer and conveyance to be made subject to the rights of Owners and the other matters set forth in the immediately preceding paragraph of this Section. If there is no nonprofit corporation, association, trust or other entity who will accept such transfer and conveyance of the Common Elements and assets of the Association, then such Common Elements and assets shall be distributed as provided in the plan of termination/dissolution adopted by the Association.

ARTICLE XII MISCELLANEOUS

Section 1. Titles. The titles, headings and captions which have been used throughout the Articles are for convenience only and are not to be used in construing the Articles or any part hereof, except as necessary with respect to any cross-referencing of any provisions of the Articles.

Section 2. Number and Gender. Whenever the context of the Articles requires, the singular shall include the plural and one gender shall include all.

Section 3. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of the Articles shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases hereof shall continue in full force and effect and shall not be affected thereby. To the extent that any provision of the Articles is determined to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such

provision without destroying its intent, then the narrower or partially enforceable provision shall be applied and, to the extent lawful, shall be enforced. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 4. Conflicts. Whenever there exists a conflict among the Governing Documents of the Association, the provisions of the Declaration and thereafter, any applicable Supplemental Declaration or Subdivision Declaration shall control, except as to matters of compliance with the Nonprofit Corporation Act, in which event the Articles shall control. Whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control. The provisions of the Bylaws shall control over any conflicting provision of any Restrictions and Rules, Board resolutions, or Architectural Guidelines. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act, the Nonprofit Corporation Act and other Legal Requirements shall in all cases control over any construction inconsistent therewith. The provisions of the Act and Nonprofit Corporation Act shall in all cases control over any conflicting provisions of the Code. The Governing Documents shall be construed together with the construction that avoids, insofar as possible, conflicts among them.

For the purposes of this Article and any other references in the Governing Documents to similar conflicts, a "conflict" is a situation in which the provisions in question cannot be reconciled or where enforcement of one provision necessarily would prohibit enforcement of another provision - for example, where one provision allows a certain action and the other provision prohibits the same action. Two provisions that are different, but not mutually exclusive or prohibitive of each other do not constitute a conflict for the purposes of this Article.

ARTICLE XIII INCORPORATOR

The name and address of the incorporator is as follows:

David E. Miller, III
2235 Gateway Access Point, Suite 201
Raleigh, North Carolina 27607

Wake County

This, the ____ day of _____ 2018.

David E. Miller, III, Incorporator