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LAURA M RIDDICK
REGISTER OF DEEDS
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DECLARATION

OF

COVENANTS, CONDITIONS, RESTRICTIONS,

EASEMENTS, CHARGES AND LIENS

FOR THE

MORGAN CREEK HOMEOWNERS ASSOCIATION, INC.

Drawn by and HOLD FOR: Moore & Alphin, PLLC (Box 155)

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

DECLARATIONS OF COVENANTS, CONDITIONS, RESTRICTIONS EASEMENTS, CHARGES AND LIENS FOR THE MORGAN CREEK HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION is made on the date hereinafter set forth by **RHEIN INTERESTS OF RALEIGH, LLC**, a North Carolina limited liability company ("Declarant"). **Southland Associates, Inc.**, as "Trustee", and **Central Carolina Bank**, a division of National Bank of Commerce ("CCB"), join in this Declaration for the purpose of subordinating the lien of CCB's Deeds of Trust to this Declaration.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property located in the Town of Fuquay-Varina, Wake County, North Carolina, more particularly described on **Exhibit B** attached hereto and incorporated herein by reference (the "Property"), which Declarant is developing into a residential community known as MORGAN CREEK (herein sometimes referred to as the "Subdivision");

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area within the Subdivision, including storm water drainage facilities thereon, and to provide for enforcement of covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, including, without limitation, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a nonprofit corporation, the Morgan Creek Homeowners Association, Inc., for the purpose of exercising the foregoing functions.

NOW, THEREFORE, Declarant hereby declares that the real property described on **Exhibit A** to this Declaration, and such additions as may be hereafter made pursuant to Article II hereof, is and shall be subject to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) the same shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to such easements, covenants, conditions, restrictions, charges and liens, all of which shall run with the real property encumbered hereby, and be binding on and shall inure to the benefit of all parties having or acquiring any right, title or interest in such property or any part thereof.

ARTICLE I
DEFINITIONS

Definitions. The following terms when used in this Declaration, or any amendment or supplement hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the following meanings:

Section 1. "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F of the North Carolina Statutes.

Section 2. "Additional Covenants" shall mean and refer to any additional covenants, conditions and restrictions filed in the Office of the Register of Deeds of Wake County, North Carolina, with regard to specific Phases of the Property, as more particularly described in Section 3 of Article II hereof.

Section 3. "Annual Assessments" shall have the meaning as set forth in Article V hereof.

Section 4. "Approved Builder" shall mean and refer to one or more Persons in the business of building and selling homes to individuals and selected by Declarant to purchase Lots and construct homes for sale in the Property, so long as any such Approved Builder is in good standing with Declarant.

Section 5. "Architectural Control Committee" shall mean and refer to the committee formed pursuant to Article X hereof to oversee the development and enforcement of architectural control standards and restrictions with respect to the Subdivision and to perform certain other functions described in the Declaration.

Section 6. "Architectural Design Guidelines" shall have the meaning set forth in Article X hereof.

Section 7. "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same maybe amended from time to time.

Section 8. "Association" shall mean and refer to the Morgan Creek Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 9. "Board" shall mean and refer to the Board of Directors of the Association.

Section 10. "Bylaws" shall mean and refer to the Bylaws of the Association, as they may now or hereafter exist.

Section 11. "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

Section 12. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or easement, for the common benefit of the Owners of Lots within the Subdivision, and specifically including the area within any storm water easements and the facilities constructed therein and which serve more than one Lot and are not maintained by any governmental authority. Common Area also includes water and sewer lines which serve more than one Lot and are not located within a public utility easement or a public street right-of-way. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility as set forth herein.

Section 13. "Declarant" shall mean and refer to Rhein Interests of Raleigh, LLC, a North Carolina limited liability company, any successor or assign to which Declarant assigns its interest as Declarant hereunder, in whole or in part, by instrument recorded in the Wake County Registry, or any mortgagee of Declarant which takes control of the Property by foreclosure or trustee's deed.

Section 14. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

(a) December 31, 2011;

(b) When the total number of Lots owned by the Class A Members (defined in Article III hereof) equals seventy-five percent (75%) of the total number of the Lots which can be created within the Subdivision under the zoning classification for the Subdivision, as amended from time to time; or

(c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

Section 15. "Declaration" shall mean and refer to this Declaration Of Covenants, Conditions, Restrictions Easements, Charges And Liens For The Morgan Creek Homeowners Association, Inc., as it may be amended and/or supplemented from time to time as herein provided.

Section 16. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 17. "Member" shall mean and refer to every Person who holds membership in the Association as set forth in Article III hereof.

Section 18. "Mortgage" shall mean and refer to any mortgage or deed of trust constituting a first lien on a Lot.

Section 19. "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

Section 20. "Occupant" shall mean and refer to any Person occupying all or any portion of a Lot for any period of time, regardless of whether such person is a tenant of the Owner of such Lot.

Section 21. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property, including contract sellers and owners of an equity of redemption, but excluding those having such interest merely as security for the performance of an obligation.

Section 22. "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

Section 23. "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 24. "Plat" shall mean and refer to any plat of the Property or any part of it which has been recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 25. "Property" or "Properties" shall mean and refer to that certain real property located in the Town of Fuquay-Varina, Wake County, North Carolina and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Article II hereof.

Section 26. "Rules" shall mean and refer to, collectively, the governing documents for Morgan Creek, including, without limitation, the Articles of Incorporation and Bylaws of the Association, the Declaration, any Supplementary Declarations, the Architectural Guidelines and any rules and regulations adopted by the Board or the Members.

Section 27. "Special Assessments" shall have the meaning as set forth in Article V hereof.

Section 28. "Special Individual Assessments" shall have the meaning as set forth in Article V hereof.

Section 29. "Special Declarant Rights" shall mean the rights as defined in Section 47F-1-103(28) of the Act for the benefit of a Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising Morgan Creek; to use easements through the Common Area for the purpose of making improvements within Morgan Creek or within real estate which may be added to Morgan Creek; and to elect, appoint or remove any officer or member of the Board during any period of Declarant Control.

Section 30. "Subassociation" shall mean and refer to a North Carolina nonprofit corporation formed by Declarant or an Approved Builder for the purpose of maintaining properties and facilities located wholly within and serving only a specific area of the Subdivision.

Section 31. "Subassociation Common Property" shall mean and refer to the real property, together with any improvements thereon, owned by a Subassociation, whether in fee or easement, for the common benefit of only the owners of Lots within a particular phase(s) of Subdivision containing Lots subject to a Subassociation, and specifically including the area within any storm water easements and the facilities constructed therein and which serve more than one Lot and are not maintained by any governmental authority. Subassociation Common Property may also include water and sewer lines which serve more than one Lot and are not located within a public utility easement or a public street right-of-way. The Subassociation Common Property shall be maintained by the Subassociation or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility as set forth herein.

Section 32. "Supplementary Declaration" shall mean and refer to any Supplementary Declaration filed in the Office of the Register of Deeds of Wake County, North Carolina, to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Section 2 of Article II hereof.

ARTICLE II
PROPERTY

Section 1. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Additional Property. During the Declarant Control Period, Declarant shall have the right, at its election without the consent of any Owner or Owners, to bring within the coverage of this Declaration and the jurisdiction of the Association all or any portion of the property described on **Exhibit B** attached hereto and incorporated herein by reference and any other real property which is contiguous to the Subdivision. Such additions authorized hereby shall be made by filing of record in the Office of the Register of Deeds for Wake County, North Carolina, Supplementary Declarations with respect to such additional property. Each such Supplementary Declaration shall extend the scheme of this Declaration and the jurisdiction of the Association to such additional property and thereby subject such additional property to assessment for their just share of the Association's expenses. Such Supplementary Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character of the additional property and as are not inconsistent with the provisions of this Declaration. Nothing contained in this Section 2, however, shall be construed to obligate Declarant to bring any additional property within the coverage of this Declaration.

Section 3. Additional Covenants. In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election and without the consent of any Owner or Owners, and, with the written consent of the Declarant, an Approved Builder, at its election and without the consent of any other Owner, shall have the right to subject any Phase or portion of the Property owned by it to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing Additional Covenants in the Office of the Register of Deeds of Wake County covering only such Phase, section or portion of the Property. Such an Additional Covenants may or may not provide for the establishment of a Subassociation to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Covenants. Whether or not a Subassociation is formed pursuant to such Additional Covenants, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Covenants and any amendments thereto, whether or not such right and authority are expressly provided for in such Additional Covenants.

Section 4. Merger or Consolidation. Upon any merger or consolidation of an Association with another Association, the properties, rights and obligations of the Association may be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may be added to the property, rights and obligations of such Association as the surviving corporation pursuant to a merger. The surviving or consolidated Association shall be considered an Association and shall administer the terms and provisions of this Declaration (to the extent they relate to the Phases of the Property over which such Association has jurisdiction) and the applicable Additional Covenants affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effectuate a revocation, change or addition to the terms and provisions of this Declaration or any Additional Covenants pertaining to the Property or any portion thereof accept as specifically provided in this Declaration.

Section 5. Changes to this Declaration, Additional Covenants or Supplemental Declarations Requiring Declarant's Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplementary Declaration and/or any Additional Covenants, or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section l. Membership. Every Owner of 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.

Section 2. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have three (3) classes of voting membership.

(a) Class A. Except as provided below, Class A Members shall be all Lot Owners except the Declarant and Approved Builders. Class A Members shall be entitled to one (1) vote for each such Lot owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the vote appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Lots owned by Class A Members shall be Class A Lots.

(b) Class B. Class B Members shall be the Declarant. Declarant shall be entitled to three (3) votes for each Lot that it owns, so long as the Class B membership continues to exist. Lots owned by a Class B Member shall be Class B Lots.

Class B membership shall cease to exist and shall be converted to Class A membership with one vote for each Lot owned (but, despite such conversion, Lots owned by the Declarant shall continue to be treated as Class B Lots for assessment purposes so long as Declarant owns any Lots), on the happening of either of the following events, whichever occurs earlier:

(i) December 31, 2011;

(ii) When the total number of Lots owned by the Class A Members (defined in Article III hereof) equals seventy-five percent (75%) of the total number of the Lots which can be created within the Subdivision under the zoning classification for the Subdivision, as amended from time to time; or

(iii) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

(c) Class C. Class C Members shall be all Approved Builders. Each Approved Builder shall be entitled to three (3) votes for each Lot that it owns, so long as the Class B membership continues to exist, at which time Class C membership shall be converted to Class A membership for voting purposes (but, despite such conversion, Lots owned by an Approved Builder shall continue to be treated as Class C Lots for assessment purposes so long as such Approved Builder owns any Lots). Lots owned by a Class C Member shall be Class C Lots.

Section 3. Vacant/Leased Dwellings. If the Owner of a Lot ceases to occupy the dwelling constructed thereon as his own personal living quarters or if any residence within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant and rental dwellings shall not be entitled to any weight greater than forty-nine percent (49%) on any matter pending before the Association.

An Owner may lease or sublet his/her dwelling; however, any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

> "Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For The Morgan Creek Homeowners Association, Inc., recorded in the Wake County Registry. Tenant

acknowledges that he has received a copy of such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Each Owner shall provide to the Association a copy of any lease or sublease of his dwelling. Notwithstanding any other provision of this Declaration, the Owner of each Lot shall be responsible for payment of all assessments and charges levied by the Association against his Lot and shall be fully responsible for ensuring that his Lot and the occupants thereof are in compliance with all of the requirements of this Declaration. The Association may pursue any remedy against the Owner without the necessity of taking any enforcement action against a tenant or other occupant.

ARTICLE IV
PROPERTY RIGHTS, EASEMENTS AND RIGHTS OF ENTRY

Section l. Owner's Right of Enjoyment. Every Owner, and in the case of rented homes, such Owner's tenants, shall have a nonexclusive right to and easement for the enjoyment of, in and to the Common Areas, and such rights and easements shall be appurtenant to and shall pass with the title to every Lot.

The Owner's nonexclusive right to and easement for the enjoyment of, in and to the Common Areas shall also be subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on the Property, and to their families, tenants, and guests as provided in Section 2 of this Article IV;

(b) The right of the Association to suspend the voting rights and rights of an Owner to the use of the facilities for any period during which any assessment against his Lot remains unpaid for a period of thirty (30) days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes of the entire membership and at least two-thirds (2/3) of the votes appurtenant to each of class of Lots (Class A and Class B) agree to such dedication or transfer and signify their agreement by a signed and recorded written document, *provided that* this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewerage, utilities, and drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements, in the opinion of said Board, are requisite for the convenient use and enjoyment of the Property. Notwithstanding the foregoing, the Association, acting through the Board without consent of the Members, shall have the right to convey or transfer small portions of the Common

Area to any party or parties for the purposes of changing any Lot lines or correcting minor errors, discrepancies or encroachments which may arise, including any corrections made necessary by the revision or modification of an existing recorded map of the Property;

(d) Except as provided in subsection (c) above, conveyance or encumbrance of Common Area shall be governed by Section 47F-3-112 of the Act which provides that portions of the Common Area may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action. Proceeds of the sale or financing of Common Area shall be an asset of the Association. The Association, on behalf of the Owners, may contract to convey Common Area or subject Common Area to a security interest, but the contract is not enforceable against the Association until approved as set forth herein. Thereafter, the Association has all powers necessary and appropriate to effect the conveyance or encumbrance, free and clear of any interest of any Owner or the Association in or to the Common Area conveyed or encumbered, including the power to execute deeds or other instruments. No conveyance or encumbrance of Common Area may deprive any Lot of its rights of access and support.

(e) The right of the Association, with the assent of members entitled to at least eighty percent (80%) of the entire membership of the Association and at least two-thirds (2/3) of the votes appurtenant to each class of Lots (Class A and B), to mortgage, pledge, deed in trust, or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(f) The right of the Association to levy Annual Assessments, Special Individual Assessments and Special Assessments;

(g) The right of Declarant, its employees, agents, contractors, subcontractors, invitees, to make any improvements that it or they may deem proper upon the Common Areas, even after their conveyance to the Association, including, without limitation, the right to construct, maintain and dedicate any additional storm water drainage easements, utility easements, and sewer or water line easements across any of the Common Areas. The rights reserved herein shall terminate five (5) years after the date on which Declarant no longer owns any property within the Subdivision, or December 31, 2011, whichever first occurs;

(h) The right of Declarant, its successors and assigns, and the Association, to erect and maintain monuments, walls, fences, ponds, signs, lighting and irrigation systems, and any other improvements and landscaping within Common Areas, median strips and right-of-way islands, as identified on any Plat of the Property; and

(i) The right of the Association to prescribe rules and regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Owners who may use such Common Area), subject to limitations established by Declarant on such right to impose such rules and regulations.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in the Town of Fuquay-Varina, Wake County, North Carolina.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Property, or a portion of said residence, as their principal residence in the Town of Fuquay-Varina, Wake County, North Carolina.

(c) Guests. Facilities located on common areas situated upon the Premises may be utilized by guests of Owners, tenants or contract purchasers subject to such rules and regulations governing said use of the Common Area as may be established by the Board of Directors.

Section 3. Title to Common Areas. Title to the Common Areas shall be conveyed to the Association free and clear of all liens and encumbrances, except easements shown on the recorded Plat containing the Common Area; provided, however, that Declarant shall have the right from time to time to reserve for the purpose of development of the Property all or any portion of the Property and any Common Areas for various easements and rights-of-way, together with the right to dedicate same where applicable and customary and the right of ingress and egress across the Common Areas in connection with the development of the Property. Declarant's rights hereunder shall not unreasonably interfere with Owner's easement for enjoyment.

The Association shall accept "as is" the conveyance of Common Areas without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements and repairs to be completed after the conveyance, including, without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion or the future economic performance or operations of, or the utilities, materials or furniture which have been or will be used in such Common Areas or repairs, except as set forth herein. By acceptance of an interest in any such Common Area or the deed to any Lot, the Association and all Owners release Declarant from any claims and warrant that no claim shall be made by the Association or any Owner relating to the condition, or completeness of such property or repairs or for incidental or consequential damages arising therefrom.

ARTICLE V
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments; (2) Special Assessments; and (3) Special

Individual Assessments levied against individual Owners; such assessments to be fixed, established and collected from time to time as hereinafter provided. The assessments described in (1), (2), and (3) of this Section 1 (the "Assessments"), together with interest thereon, late charges, attorney fees, court costs and other cost of collection, shall be a charge on the land and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon each Lot against which each such Assessment is made. The Assessment shall also be the personal or corporate obligation of the Person(s) owning such Lot at the time when the Assessment fell due, but such personal obligation shall not be imposed upon such Owners' successors in title unless expressly assumed by them. Although unpaid Assessment charges are not the personal obligation upon such Owner's successors in title unless expressly assumed by the successors in title, the unpaid Assessment charges continue to be a lien, or subsequent lien, upon the property against which the Assessment has been made.

Section 2. Purposes of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, the enforcement of these Covenants and the rules of the Association, and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation, storm water drainage facilities, and, including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) procurement and maintenance of insurance; (v) employment of attorneys, accountants and other persons or firms to represent the Association, its directors, officers and committee members, when necessary; (vi) payment of principal and interest on funds borrowed for Association purposes; and (vii) such other needs as may arise.

Without limiting the generality of the above-described purposes, the Assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planting) and maintenance of the Common Areas and improvements thereon, and of the medians within public road rights-of-way, including the landscaping and irrigation system(s), if any, located in the Common Area, including the following:

(a) providing grass cutting, fertilizing, weed and insect treatments and maintenance of trees, shrubbery and flowers located on or within Common Areas and median strips;

(b) providing maintenance and operation of all walls, fountains, ponds, waterfalls, monuments, irrigation facilities, sidewalks, private streets and alleys, if any, paths, trails, sidewalks, pool, tennis courts, playgrounds, clubhouse, parking areas, fences, signage, lighting or other structures and facilities located on or within median strips and any of the areas identified as Common Areas;

(c) providing grass cutting, fertilization, weed and insect treatments and maintenance of trees, shrubbery and flowers within the public street right-of-way where it is adjacent to Common Areas;

(d) keeping the Common Areas clean and free from debris and to maintain the same in a clean and orderly condition;

(e) paying all ad valorem taxes levied against the Common Areas and any other property owned by the Association;

(f) paying the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;

(g) paying all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws, including all costs and expenses of the Architectural Control Committee;

(h) promoting the recreation, health, safety and welfare of the residents in the Subdivision as it relates to this Association;

(i) carrying out the powers and duties of the Board, the Association, and the Architectural Control Committee as stated in the Articles of Incorporation, Bylaws and this Declaration; and

(j) maintaining any storm water easements, Facilities and improvements therein located on portions of Common Areas to the standard required by the governmental entity or agency having jurisdiction over such areas.

Section 3. Maximum Annual Assessment. Subject to the provisions of Section 14 hereof, until December 31, 2004, the Maximum Annual Assessment shall be **$200.00** for each Class A Lot.

(a) From and after January 1, 2005, the Maximum Annual Assessment may be increased or decreased by the Board of Directors effective January 1 of each year, without a vote of the Members, but subject to the limitation that the percentage of any such increase shall not exceed ten percent (10%) of the Maximum Annual Assessment for the previous year unless such increase is approved as provided in Section 3(b) below.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum Annual Assessment may be increased or decreased without limitation if such increase or decrease is approved by no less than two-thirds (2/3) of the votes appurtenant to each class of Lots, cast in person or by proxy, at a meeting duly called for this purpose. The provisions of this subsection shall not apply to, or be a limitation upon, any change in the Maximum Annual Assessment incident to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments; Amount of Assessments; Certificate of Payment; Ratification of Budgets.

(a) Date of Commencement. Unless a different commencement date is set by the Board of Directors, the Annual Assessments provided for herein shall commence as to all Lots shown on a recorded plat of the Properties on the first day of the month following the date on which such plat is recorded in the Wake County Registry.

(b) Amount of Annual Assessments. Subject to the provisions of this Section, the Board of Directors may fix the Annual Assessment at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year; provided, however, that, except as otherwise provided in this Section, the Assessment for Approved Builders (Class C Lots) shall always be one-fourth (1/4) of the Assessment for Class A Lots, and the Assessment for Lots owned by the Declarant (Class B Lots) shall be zero, provided, however, that Declarant shall be obligated to pay such sums as are necessary to make up the difference, from time to time, in the expenses of the Association and the monies collected by the Association for Assessments as provided herein. Notwithstanding the foregoing, any Lot owned by an Approved Builder or the Declarant which contains a dwelling occupied by any Person as a residence shall be assessed at the Class A rate.

Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the Maximum Annual Assessment set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year. Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by said Board.

Except as provided herein, Annual Assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

(c) Certificate of Payment. The Association shall, upon demand and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. If such certificate states that all Assessment has been paid, such certificate shall be conclusive evidence of payment.

(d) Ratification of Budgets. The Board of Directors shall adopt a proposed budget for the Association at least annually. Within thirty (30) days after adoption of the proposed budget, the Board of Directors shall call a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than ten (10) days nor more than sixty (60) days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as provided in Section 7 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having a majority of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than ten percent (10%) larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least eighty percent (80%) of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

Section 5. Special Assessments. In addition to the Annual Assessments described in Section 3 above, the Board, with a vote of Members as provided in Section 7 hereof, may levy in any assessment year a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Association which are not paid for or payable out of funds on hand in the Association or out of the Annual Assessments collected by the Association. Such costs may include, but shall not be limited to, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon or within the Common Area, including fixtures and personal property related thereto, the cost of maintenance, repair or reconstruction of storm water facilities and devices, or for such other needs as may arise from time to time. Notwithstanding the above, all fees and costs incurred by the Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such a Special Assessment must be approved by a vote of the Members entitled to cast no less than two thirds (2/3) of all votes entitled to be cast by the Members. Any such Special Assessments shall be in the ratios set forth in Section 4(b) hereof. The due date of any Special Assessment levied pursuant to this Section 5 shall be fixed in the Board resolution authorizing such Special Assessment. Upon the establishment of a Special Assessment, the Board shall send written notice of the amount and due date of such Special Assessment to each Owner, including the Approved Builders and the Declarant, as applicable, at least thirty (30) days prior to the date such Special Assessment is due.

Section 6. Special Individual Assessments. The Board may levy Special Assessments against individual Owners ("Special Individual Assessments") (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas occasioned by the act of a Lot Owner, his family, tenants, guests or agents, and not the result of ordinary wear and tear; (ii) for payment of fines, penalties or other charges imposed against an individual or separate Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated hereunder, including, without limitation, penalties assessed pursuant to the Architectural Design Guidelines, reimbursement to the Architectural Control Committee for any sums it expends on an Owner's behalf pursuant to any enforcement of the Architectural Design Guidelines, and reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article X hereof; and (iii) for the purpose of reimbursing the Association for costs (including attorneys' fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws, the Architectural Design Guidelines or other rules and regulations adopted by the Board or the Association. Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 5 shall be fixed in the Board resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s), including Approved Builders, or the Declarant, as applicable, at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 7. Notice of Quorum for any Action Authorized Under Sections 3(b) and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3(b) and 5 of this Article shall be sent to all Members no less than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes appurtenant to Class A and B Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

Section 8. Operating Capital Contribution. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to one-half (½) of the Annual Assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such Lot and transferred to the Association as part of its operating capital. The purpose of the operating capital contribution is to ensure that the Association will have adequate cash available to pay its operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular Assessment and shall not be refunded to an Owner by the Association upon the subsequent resale of the Lot.

Section 9. Effect of Non-Payment of Assessments. Any Assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest, late charges and penalties thereon and cost of collection thereof, as hereinafter provided, including reasonable attorneys' fees, shall be continuing lien upon the Lot against which such assessment was made and shall be and remain the personal obligation of the Owner of the Lot at the time such assessment became effective, his heirs, devisees, personal representative and assigns. The personal obligation of the Owner to pay such assessment, however, shall not pass to his successors in title unless expressly assumed by them, but shall continue to be a lien against the Lot. Interest on delinquent assessments shall be charged at the lesser of one and one-half percent (1.5%) per month or the highest rate permitted by law.

Any assessment not paid within thirty (30) days after the due date shall be subject to late charges and interest at the rate established by the Board from time to time, or the highest amount permitted by laws, whichever is less; and the Association may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against the Lot as provided in Section 47F-3-116 of the Act and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Areas or by abandoning his Lot.

Section 10. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any Assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 11. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the Assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

ARTICLE VI
EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveway, walkway, water line, gas line, telephone, cable television, electric power transmission lines, sanitary sewer and storm water drainage facilities and for other public utility installations are reserved as shown on the recorded plats of the Properties. Furthermore, Declarant reserves an easement ten (10) feet in width over, under and through and along all Lot lines of all Lots for the foregoing purposes, and such temporary easements as are necessary for the construction, maintenance and repair purposes; provided; however, that the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three feet (3'), then the maximum width of the reserved easement is also three feet (3'). In the event it is determined that other and further easements are required over any Lot in locations not shown on the recorded plat and not along rear or side Lot lines, such easements may be established by the Declarant, except that if any such easements are reserved or established after the conveyance of a Lot to be affected thereby, the written assent of the Owner of such Lot and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. Within any such easements above provided for, no structure, planting or other material shall be placed such that it may interfere with the installation, delivery and maintenance of public utilities, or which may obstruct or change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements.

The Association may reserve and grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed such that it may interfere with the installation or maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements. Any improvements located within designated easements, whether approved or not, are subject to removal by the entity having jurisdiction over the easement as may be necessary for access, repairs or maintenance, and such entity shall not be required to replace any improvements removed by it.

Declarant reserves, for a period of five (5) years after Declarant no longer owns any portion of the Properties or December 31, 2011, whichever is earlier, an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance and to make repairs and alterations to any utilities or any improvements dedicated to public use which have not been accepted for maintenance by a utility company or public entity. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection, and the delivery of mail.

Section 3. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any part of a dwelling is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Easement Over Common Area. Subject to the limitations set forth in Article IV hereof, a perpetual, nonexclusive easement over the Common Area is hereby granted to each Lot and its Owners, family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to and from the Common Area and for the use thereof.

Section 5. Easement For Encroachments. In the event that any dwelling erected on a Lot by an Approved Builder encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment.

Section 6. Association's Easement Upon Lots. The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition which, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

ARTICLE VII
INSURANCE

Section 1. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds. Sections 2 through 5 of this Article VII set forth the requirements of Section 47F-3-113 of the Act. In the event the insurance requirements set forth in the Act or any portion of the Act are changed, amended or deleted, the insurance requirements set forth in Sections 2 through 5 of this Article VII shall likewise be changed, amended or deleted to conform with the insurance provisions of the Act without the requirement of a formal amendment to this Declaration.

Section 2. Property Insurance. The Association shall maintain, to the extent reasonably available, property insurance on the Common Area insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by this property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

Section 3. Liability Insurance. The Association shall maintain, to the extent reasonably available, liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area. The liability insurance shall be for the benefit of the Owners, occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents, and employees in such amounts and with such coverage that shall be determined by the Board; provided that the liability insurance shall be for at least One Million Dollars ($1,000,000.00) per occurrence for death, bodily injury and property damage.

Section 4. Required Provisions for Property and Liability Insurance. Insurance policies carried pursuant to Sections 2 and 3 above shall provide that:

(a) Each Owner is an insured person under the policy to the extent to the Owner's insurable interest;

(b) The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household;

(c) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 5. Insurance Repairs. Any portion of the planned community for which insurance is required under Sections 2 and 3 hereinabove which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the planned community is terminated; (b) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or (c) the Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense if any portion of the planned community is not repaired or replaced, (a) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the planned community; (b) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the Owners of the Lots to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (c) the remainder of the proceeds shall be distributed to all the Lot Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the Lots. Notwithstanding the provisions of this Section 5, Section 47F-2-118 (termination of the planned community) governs the distribution of the insurance proceeds if the planned community is terminated.

ARTICLE VIII
USE RESTRICTIONS

Lots in Morgan Creek will be made subject to certain use restrictions by the filing of individual Restrictive Covenants on a Plat by Plat basis after the recordation of a Plat of a portion of the Subdivision in the Wake County Public Registry.

ARTICLE IX
INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of members or any disinterested directors or otherwise and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall make efforts to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article IX, or in the Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

ARTICLE X
ARCHITECTURAL CONTROL

Section 1. New Construction. During the Declarant Control Period, Declarant shall have sole authority to review and approve all new construction and all changes made to improvements constructed on a Lot at all times prior to issuance of a certificate of occupancy for the dwelling constructed on that Lot. Declarant shall have the right to assign such authority, in whole or in part, to any Person, including the Board of Directors. At the end of the Declarant Control Period, Declarant shall assign of all its rights and delegate all of its duties under this Article X to the Board of Directors of the Association. For purposes of this Article X, the term "Declarant" shall mean, as appropriate, Declarant, any person or entity to whom or which Declarant assigns, by written recorded assignment, any or all of its rights hereunder, and, after the end of the Declarant Control Period, the Board.

Section 2. Architectural Design Guidelines. Declarant and, after the Declarant Control Period, the Board, may develop, publish and promulgate architectural standards and guidelines ("Architectural Design Guidelines"), which shall be used by the Declarant, the Board, and/or the Architectural Control Committee ("ACC") in reviewing any proposed plans, specifications and materials submitted to them for approval. Such Guidelines may include, without limitation, standards for the design, size, location, style, structure, color, mode of architecture, mode of landscaping, and other criteria for the construction of improvements of any nature in the Property. By way of example, and not by limitation, such standards might require the use of a single, uniform mailbox design within the Subdivision or may within a particular community in the Subdivision. The purpose of such development standards will be to preserve and promote the character and orderly development of the Property. By acceptance of a deed to any Lot, each Owner thereof and his successors and assigns agrees to be bound by all provisions of such standards as may be adopted and amended from time to time.

Section 3. Establishment of Architectural Control Committee. The Declarant shall establish an Architectural Control Committee (the "ACC" or "Committee") to perform the architectural review functions set forth in this Declaration for all improvements and modifications proposed to be done on a Lot after issuance of a certificate of occupancy for the dwelling constructed on such Lot, and shall adopt the procedural rules and regulations for the performance of such duties by the Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The ACC shall have not less than three (3) nor more than five (5) members, each serving a one-year term. During the Declarant Control Period, the Declarant or its assigns shall appoint all of the members of the ACC; thereafter, the members shall be appointed by the Board. The members of the Committee need not be Members of the Association, nor are they required to possess any special qualifications of any type except such qualifications as the Declarant, in its discretion, require. However, it is recommended that at least one member of the ACC be an architect, planner, engineer, developer or other member of a profession engaged in the construction or development industry. A majority of the members of the Committee shall constitute a quorum for any properly-called meeting, and the concurrence of a majority of the regular members at a meeting shall be necessary for any decision of the ACC.

Section 4 Review by Committee. After issuance of a certificate of occupancy for a dwelling constructed on a Lot, no alteration or modification to the dwelling, no building, gazebo, storage shed, room addition, room, fence, wall, sign (including unit identification signs), canopy, statuary, awning, roof, device to be mounted on roofs, exterior lighting facility, athletic facility, change in exterior paint color, or other similar improvements or attachments shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or relandscaping or any alteration of the established drainage on a Lot shall be commence or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted (in duplicate) to and approved in writing by the ACC. Such plans and specifications shall specifically identify any requested variance from the set back lines, garage location or any other requirement set forth in this Declaration or Architectural Design Guidelines. The Committee shall exercise its best judgment (neither arbitrarily nor capriciously) to the end that all such changes, improvements and alterations requested for properties within the Property conform to and harmonize with the existing surroundings, dwellings, landscaping and structures. At such time as the plans meet the approval of the Committee one complete set will be retained by the Committee and the other set shall be marked approved on behalf of the Committee and returned to the Owner or his designated representative. If disapproved by the Committee one set of such plans shall be returned marked "disapproved" and shall be accompanied by a statement setting forth the reasons for disapproval. In no event shall the Committee give verbal approval or disapproval of any plans.

If the Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date on which detailed, full and complete plans and specifications have been received by it, approval will not be required, and the requirements of this Section shall be deemed to have been complied with, so long as the submission does not otherwise violate or fail to conform to any restrictions or requirements of this Declaration or previously established requirements of the ACC, in which event the submission shall be deemed disapproved by the Committee. An Owner submitting plans to the Committee shall have the burden of establishing the date upon which the Committee received said plans.

Section 5. Subcommittee. The Architectural Control Committee, with the advice and consent of the Board, is herein empowered to form a subcommittee of the Architectural Control Committee the ("Subcommittee") comprised of Members of the Association. The Subcommittee shall be comprised of such number of Members as the ACC deems reasonable and necessary in order to carry out its function. The ACC shall be entitled to delegate to the Subcommittee such responsibilities and activities as the ACC, in its discretion, shall determine, including but not limited to the ability to preview homeowner submittals to the ACC and make non-binding recommendations thereon and to make non-binding recommendations as to changes in the Architectural Design Guidelines. Such Subcommittee shall serve at the discretion of the ACC and the Board and may or may not be continued following transfer of control of the ACC to the Association.

Section 6. Appeal. Any Owner aggrieved by a decision of the Subcommittee shall have a right to appeal the decision to the ACC or the Board in accordance with procedures to be established by the ACC and/or the Board. Any Owner aggrieved by a decision of the ACC shall have the right to appeal the decision to the Board in accordance with procedures to be established by the Board. The decision of the Board shall be final.

Section 7. Fees and Costs. The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted. Furthermore, the ACC shall have the right, but not the obligation, to employ an independent architect, engineer or other professional to assist the Committee in reviewing any plans and specifications submitted for approval. The Owner submitting the request shall pay, in addition to the processing fee set forth in the preceding sentence, all fees and costs actually incurred and paid by the Committee or the Association to such Person.

Section 8. No Waiver. The approval or disapproval by the ACC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ACC shall not be deemed: (a) to constitute a waiver of any right to approve or withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval; or (b) to prohibit the Declarant (during the Declarant Control Period and, thereafter, the Board) from modifying and amending the Architectural Design Guidelines from time to time to specifically permit any improvement previously prohibited or to prohibit any improvement previously permitted.

Section 9. Variance. The ACC may authorize variances from compliance with the Architectural Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, as determined by the ACC, and if the structure or item for which variance is sought is in full compliance with all applicable governmental requirements. Furthermore, no variance shall be effective unless in writing or nor shall any variance estop the ACC from denying a variance in other circumstances.

Section 10. Violation of Approved Plans and Right of Entry. If it is determined by the ACC that work completed on any Lot has not been completed in compliance with the final plans approved by the Committee or that unapproved improvements exist on a Lot, the Committee or the Association (or, during the Declarant Control Period, the Declarant) may notify the Owner in writing of such non-compliance, specifying in reasonable detail the particulars of non-compliance, and may, in its discretion, require the Owner to remedy the same. The Association shall have the right to enter upon the Lot of any Owner and to perform compliance or remedy non-compliance as ordered by the Committee and the cost of such performance or remedy shall be charged to the Owner of the Lot in question, which cost shall be due within ten (10) business days after receipt of written demand therefore. If the Owner fails to remedy such non-compliance or to commence and continue diligently toward achieving compliance, the Declarant or the Association may seek injunctive relief, recovery of costs incurred, and imposition of a fines, liens, penalties and other remedies allowed by law.

Section 11. Non-Liability for Approval of Plans. ACC approval of plans shall not constitute a representation, warranty or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications neither the Committee, the Members thereof, the Association, any Member thereof, the Board nor Declarant assumes or shall be deemed to have any liability or responsibility therefor, or for any defect in any improvements constructed from such plans or specifications. Neither the Committee, any Member thereof, the Association, the Board nor the Declarant shall be liable to any Member, Owner, occupant, or other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings and specifications.

Section 12. Compliance with laws. Review and approval of plans and specifications by the ACC shall not imply or infer compliance with any law, ordinance or regulation, or structural integrity or safety of any improvements described in any approved plans and specifications. Review and approval as provided in this Article is for aesthetic purposes only. It is each Owner's sole responsibility to plan and construct any and all improvements in a manner which complies with all applicable codes, statutes, laws, ordinance and regulations in compliance with any approval granted hereunder.

Section 13. Approved Builder Exemption for Pre-Approved Plans. The ACC shall have no authority, power or jurisdiction over improvements or structures built pursuant to plans which have been previously approved in writing by Declarant as provided in Section 1 hereof.

Section 14. Duty to Complete Improvements. An Owner shall complete all approved improvements, subject to unforeseen circumstances and causes beyond the reasonable control of such Owner, as reasonably determined by the ACC within twelve (12) months following commencement of construction of such approved improvements. All improvements included and approved with any submittal shall be completed as one continuous project. Sequencing, phasing or deletion of approved improvements must be approved by the ACC.

ARTICLE XI
COMMON AREA AND LOT MAINTENANCE

Section 1. Common Area Easements. It is the intent of the Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners. To that end, Declarant will, prior to the conveyance of the first Lot in any Phase to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot on which a Common Area easement lies.

Section 2. Maintenance by the Association. The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners; (ii) procure and maintain adequate liability insurance covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

Section 3. Maintenance by Owners. Each Owner shall, at all times, maintain, repair and otherwise be responsible for his Lot and all structures, parking areas and other improvements thereon. Owners of Lots fronting on public streets within the Property shall maintain driveways serving their respective Lots and shall maintain landscaping (including required street trees), sidewalks and private mail boxes located within the public street right-of-way between the Lot boundary line and the nearest curb or pavement edge. An Owner shall be responsible for replacement and reconstruction of improvements on his Lot required because of damage or destruction by fire or other casualty or loss.

Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to such Common Area easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within any Common Area easement; (2) erect gates, fences, buildings or other structures on any Common Area easement; (3) place any garbage receptacles on or in any Common Area easement; (4) fill or excavate any Common Area easement or any part thereof; or (5) plant vegetation or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area easement.

It is the intent of the Declarant that a Common Area easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner or, in the case of subsequent improvements, in the same state as when improvements within the Common Area easement are completed. If an Owner of a Lot on which a Common Area easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs shall be a Special Individual Assessment against the Lot. The Association may elect to maintain improvements within Common Area easements as part of the Common Area maintenance obligations of the Association.

Each Owner shall maintain, repair and replace the surface and subsurface drainage facilities, swales and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the City or other governmental entity. Such work shall conform to all applicable governmental construction standards and requirements. If an Owner, after notice and an opportunity for a hearing, fails to maintain, repair and replace such drainage facilities, swales and appurtenances as required herein, the Association shall maintain, repair and replace such drainage facilities, swales and appurtenances at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a Special Individual Assessment against such Owner to obtain reimbursement therefor as provided in Section 6 of Article V hereof.

No structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of such drainage facilities, swales and appurtenances and no Owner shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area as established in connection with the approval of the subdivision map or maps applicable to the Subdivision, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Control Committee and all public authorities having jurisdiction. All such drainage facilities, swales and appurtenances shall at all times be accessible to Declarant until Morgan Creek is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities, swales and appurtenances. Declarant may from time to time present for recordation in the official records of Wake County instruments showing approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities. Any improvements placed within maintenance easements are subject to removal by the entity having jurisdiction over the easement, and such entity shall not be obligated to replace any improvements so removed.

Section 4. Wetlands Ordinances and Regulations. Portions of the Property may have been designated as "Wetlands" by the U. S. Army Corps of Engineers and may be shown as Wetlands on the recorded maps of the Property. The areas designated as Wetlands must be maintained as Wetlands in compliance with any applicable laws, ordinances and regulations governing Wetlands until such time as changes to such laws, ordinances and regulations allow these areas to be maintained or developed in a condition or state other than as previously required of areas designated as Wetlands.

Section 5. Impervious Surfaces and Storm Water Management. The Subdivision is subject to the rules and regulations of Wake County, the Town of Fuquay-Varina, and the North Carolina Department of Environmental Health and Natural Resources concerning impervious surfaces, soil erosion and storm water drainage. The Owners of all portions of the Property, including Lots, streets and Common Areas are subject to and must comply with these regulations.

Section 6. Negligence. The cost of repair or replacement by the Association of any improvement intended to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, shall be the responsibility of and paid for by such Owner.

Section 7. Right to Enter. The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement, and any other portion of the Lot to the extent necessary to gain access to the Common Area easement, for the purposes of: (i) installing and maintaining community walls, fencing, landscaping and signage; (ii) making such improvements to the Common Area easement as have been approved by the Association; and (iii) maintaining the Common Area easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use. No such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral or written notice to the Owner or occupant of such Lot.

Section 8. Failure to Maintain by Owner. All maintenance required by Owners under this Article XI shall be performed in a manner consistent with the Declaration, Bylaws, Architectural Design Guidelines and all other applicable rules and regulations. If any Owner of a Lot fails properly to perform his or her maintenance responsibilities or removes trees, shrubs or any other vegetation without ACC's approval, the Association shall have the right, but not the obligation, to enter such Owner's Lot to maintain said Lot and, pursuant to procedures set forth in the Bylaws, assess all costs incurred by the Association against the Lot and the Owner thereof as a Special Individual Assessment as provided in Section 6 of Article V.

ARTICLE XII
RIGHTS OF LENDERS

Section 1. Books and Records. Any holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, Bylaws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

(a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan.

(b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

Section 3. Approval of Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes nor the exchange of real property as provided in Section 1(c) of Article IV hereof shall be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Fuquay-Varina or to another nonprofit corporation for the aforementioned purposes.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

Section 4. Payment of Taxes and Insurance Premiums. The holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

ARTICLE XIII
EMINENT DOMAIN (CONDEMNATION)

In the event of a taking of all or any portion of a Lot or all any portion of the Common Area by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act.

ARTICLE XIV
TERMINATION OF PLANNED COMMUNITY

Morgan Creek, a planned community under the Act, may be terminated only in strict compliance with Section 47F-2-118 of the Act.

ARTICLE XV
GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, condition, covenant, reservation, lien and charge now or hereafter imposed by the provisions of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure or forbearance by the Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Neither the Association, a committee of the Association, nor any Person managing the Association shall be obligated to inspect or perform searches for any non-complying improvements or violations. However, it shall be the responsibility of the Association, committee or such Person to inspect and take such action as it or they deem appropriate as to any violation or non-compliance reported to or otherwise formally brought to the attention of proper party(ies).

Section 2. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Section 3. Term; Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of seventy-five (75%) percent of a vote of the Owners after the expiration of said twenty-five (25) year period.

This Declaration may be amended only in strict compliance with this Section and the Act, including, without limitation, Section 47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant. This Declaration may be amended by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be properly recorded and shall take effect only upon recording. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof correct shall not constitute an "amendment".

Notwithstanding the foregoing, Declarant, without the consent or joinder of any Person, may amend this Declaration during the Declarant Control Period for the limited purposes of correcting clerical or typographical errors or complying with any statute, ordinance, rule, regulation or interpretation of any governmental entity.

Section 4. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

Section 5. Captions. The Captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

Section 6. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

Section 7. Notices. Any notice required to be sent to any Member of Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, post paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or the By Laws of the Association, the Declaration shall control.

Section 9. Condemnation. Subject to the provisions of Article XIII hereof, in the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

Section 10. Disclaimer. Notwithstanding anything contained herein or in the Articles of Incorporation, Bylaws, Rules or Regulations or any other document governing or binding the Association (collectively the "Association Documents"), the Association and the Declarant shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Member, occupant or user of any portion of the Property, including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The Association and the Declarant are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual's or entity's compliance with the laws of the United States, State of North Carolina or any other jurisdiction or the prevention of criminal, tortious or like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association and the Declarant, and their respective directors, trustees, officers, agents, parties and affiliates from and against all claims of any kind whatsoever by an invitee, licensee, family member, employee or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership or occupancy of any portion of the Property.

Section 11. Non-Liability of Governmental Entities. Neither the Town of Fuquay-Varina nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.

Section 12. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant and, if required, by the Town of Fuquay-Varina.

Section 13. Declarant's Right To Change Development. With the approval of the Town of Fuquay-Varina, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types and reallocate units within, and withdraw real property from or add real property to the development.

Section 14. Rules and Regulations. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective. Any violation of such rules shall be punishable by fine and/or suspension of voting rights or other remedies as provided in this Declaration. The Board may, by resolution, delegate all or any portion of the authority granted herein to a committee appointed by the Board including, without limitation, the Architectural Control Committee or as otherwise allowed by law.

All rules and regulations adopted by the Board or a delegated committee shall be enforceable to the same extent as if such rules and regulations were specifically set forth in this Declaration. In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations of the Association, or Restrictive Covenants or Architectural Design Guidelines applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area; provided, however, that the Association shall not have the right to suspend the right to use private streets providing access to an Owner's Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any open space and recreational facility within the Properties if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association.

The Association shall at all times have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the Architectural Design Guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

IN WITNESS WHEREOF, Declarant, Trustee and CCB have each caused this instrument to be executed as of the latest date set forth in the notary acknowledgments below.

RHEIN INTERESTS OF RALEIGH, LLC, (Seal)
a North Carolina limited liability company

By: Richard M. Westmoreland
VICE President

STATE OF NORTH CAROLINA -- COUNTY OF WAKE:

I, the undersigned, a notary public of the County and State aforesaid, hereby certify that **Richard M. Westmoreland, Jr.**, Vice President of **Rhein Interests of Raleigh, LLC**, a North Carolina Limited Liability Company, personally appeared before me and acknowledged the execution of the foregoing instrument for and on behalf of the Company, by its authority duly given.

Witness my hand and official stamp or seal, this the 30th day of June, 2004.

[Stamp or Seal]

Notary Public
My commission expires: 6/17/09

RICHARD W. MOORE
NOTARY PUBLIC
WAKE COUNTY, N.C.

SOUTHLAND ASSOCIATES, INC., (Seal)
Trustee

By: ______________________
Vice, President

CENTRAL CAROLINA BANK, a division of National Bank of Commerce (Seal)

By: ______________________
1st Vice President

STATE OF NORTH CAROLINA - COUNTY OF WAKE:

I, the undersigned, a Notary Public in and for the aforesaid County and State aforesaid, certify that M. Bridget Falco personally came before me this day and acknowledged that he/she is Vice President of **Southland Associates, Inc.**, a North Carolina corporation, Trustee, and that he/she being authorized to do so, executed the foregoing instrument on behalf of the corporation as Trustee.

Witness my hand and notarial stamp or seal, this 30TH day of June, 2004.

TERRI S. CARRAWAY NOTARY *** PUBLIC JOHNSTON COUNTY, N.C.

____
Notary Public
Commission Expires: 11/16/08

STATE OF NORTH CAROLINA - COUNTY OF WAKE:

I, the undersigned, a Notary Public in and for the aforesaid County and State aforesaid, certify that M. Bridget Falco personally came before me this day and acknowledged that he/she is 1st Vice President of **Central Carolina Bank, a division of National Bank of Commerce**, and that he/she being authorized to do so, executed the foregoing instrument on behalf of the Bank.

Witness my hand and notarial stamp or seal, this 30TH day of June, 2004.

TERRI S. CARRAWAY NOTARY *** PUBLIC JOHNSTON COUNTY, N.C.

____
Notary Public
Commission Expires: 11/16/08

EXHIBIT A

Lying and being in the Town of Fuquay-Varina, Middle Creek Township, Wake County, North Carolina, and being more particularly described as follows:

Phase One

All of the real property, containing 6.63 acres, more or less, shown and described on that certain map entitled "Subdivision Plat - MORGAN CREEK - PHASE ONE", recorded in Book of Maps 2004, Page 1172, Wake County Registry, excepting therefrom the rights-of-way of the public streets and roads shown thereon.

Phase Four

All of the real property, containing 10.85 acres, more or less, shown and described on that certain map entitled "Subdivision Plat - MORGAN CREEK - PHASE FOUR", recorded in Book of Maps 2004, Page 1173, Wake County Registry, excepting therefrom the rights-of-way of the public streets and roads shown thereon.

Phase Five

All of the real property, containing 7.42 acres, more or less, shown and described on that certain map entitled "Subdivision Plat - MORGAN CREEK - PHASE FIVE", recorded in Book of Maps 2004, Page 1171, Wake County Registry, excepting therefrom the rights-of-way of the public streets and roads shown thereon.

EXHIBIT B

Lying and being in the Town of Fuquay-Varina, Middle Creek Township, Wake County, North Carolina, and being more particularly described as follows:

All of the real property, containing 77.78 acres, more or less, identified and described in the deeds recorded in Book 10290, Page 940, Wake County Registry, and Book10290, Page 944, Wake County Registry, to which deeds reference is hereby made for a more particular description, saving and excepting therefrom the property identified on Exhibit A hereto.

BOOK:010902 PAGE:00234 - 00274

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.

WAKE COUNTY
NORTH CAROLINA

Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina – Wake County

The foregoing certificate___ of Richard W Moore
Terri S Carraway

__________ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds
By: Janet Morgan
Assistant/Deputy Register of Deeds

This Customer Group
________ # of Time Stamps Needed

This Document
________ New Time Stamp
41 # of Pages

22.004–7/11/03

BYLAWS
OF THE
MORGAN CREEK HOMEOWNERS ASSOCIATION, INC.

ARTICLE I
NAME AND LOCATION

The name of the corporation is **MORGAN CREEK HOMEOWNERS ASSOCIATION, INC.** (hereinafter the "Association"). The principal office of the Association shall be located at 4000 Westchase Boulevard, Suite 310, Raleigh, Wake County, North Carolina 27607. The location of the principal office of the Association may be changed by the Board of Directors. Meetings of Members and directors may be held in such places within Wake County, North Carolina, as may be designated by the Board of Directors.

ARTICLE II
DEFINITIONS

All terms defined in the Declaration Of Covenants, Conditions, Restrictions, Easements, Charges And Liens For The Morgan Creek Homeowners Association, Inc., recorded, or to be recorded in office of the Register of Deeds of Wake County, North Carolina (as from time to time amended, said documents, together with all amendments thereto, if any, being hereinafter referred to as the "Declaration"), shall have the same meanings when used herein.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Membership and voting rights of the Members shall be as provided in Article III of the Declaration.

ARTICLE IV
MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within eighteen (18) months from the date of incorporation of the Association. Each subsequent regular annual meeting of the Members shall be held in the same month of each year thereafter on the day, at the hour, and at the place specified in the notice to the Members of the meeting.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or a majority of the members of the Board of Directors. Special meetings of the Members shall be called upon the written request of the Members entitled to one-tenth (1/10) of the votes appurtenant to the Class A Lots (as defined in Article III of the Declaration).

Section 3. Place of Meetings. Meetings of the Members shall be held at such place within Wake County, North Carolina, as may be determined by the Board of Directors.

Section 4. Notice of Meetings. Except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws, written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, to each Member entitled to vote at such meeting, by hand delivery or by mailing a copy of such notice, postage prepaid, addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Notice shall be mailed or delivered not less than ten (10) days nor more than sixty (60) days before the date of the meeting. Such notice shall specify the place, day and hour of the meeting, contain an agenda of matters to be discussed and/or voted upon at the meeting, including without limitation, the nature of any proposed amendment to the Articles Of Incorporation or these Bylaws, any budget changes, any proposal to remove a Director, and, if applicable, notice of Declarant's intent to appoint Directors as provided in Section 8 of Article V of these Bylaws, and, in case of a special meeting, the exact purpose of the meeting, including the text of any proposals to be voted on at such special meeting. Waiver by a Member in writing of the notice required herein, signed by him before or after such meeting, shall be equivalent to the giving of such notice.

Section 5. Quorum. Except as otherwise provided in the Articles of Incorporation, the Declaration (including, specifically, Section 6 of Article V thereof) or these Bylaws, the presence at a meeting of Members or their proxies entitled to cast one-tenth (1/10) of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum for any action. If, however, a quorum is not present or represented at any meeting, the Members or their proxies present and entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or be represented.

Section 6. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable by written notice of revocation signed by the person whose proxy is given and delivered to the Secretary of the Association prior to determination of a quorum at the meeting of Members. A Member's proxy shall be automatically revoked by and upon conveyance by such Member of his Lot. A proxy shall also automatically terminate on the earlier of the date specified in the proxy for termination or the date that is 11 months after its date.

Section 7. Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the minute book of the Association; provided, however, that such consent shall only be valid if all persons who must sign such consent do so within forty-five (45) days after the first such person signs.

ARTICLE V
BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Association shall be managed by a Board of Directors.

Section 2. Number, Term and Qualification. The number of Directors of the Association shall be one (1) until the first annual meeting after the end of the Declarant Control Period (as defined in the Declaration), at which time the number of Directors shall be increased to a minimum of three (3). At such meeting, the Members shall elect at least one Director to serve a term of one year, at least one (1) Director to serve a term of two years, and at least one (1) Director to serve a term of three years.

At each annual meeting thereafter, the Members shall elect the number of Directors needed to fill the vacancy or vacancies created by the Director(s) whose term(s) is(are) expiring, to serve for a term of three years (except in the case of the initial election of a Director, in which case the term of that Director may be shortened to provide for the staggering set forth in this Article, or in the case of the filling of a vacancy, in which case the Director elected to fill the vacancy shall be elected for the unexpired term of the Director whose vacancy is being filled).

The term of office of the Directors shall be staggered so that, except for an election to fill a vacancy or to fill a newly-created directorship, the terms of not less than one (1) Director shall expire at each annual meeting. Each Director shall hold office until his death, resignation, retirement, removal or disqualification, or until his successor is elected and qualified. Directors need not be Members of the Association.

The Members of the Association may, by a majority of the votes cast at any duly called annual or special meeting of the Members at which a quorum is present, increase or decrease the number of Directors of the Association; provided, however, that the number of Directors shall not be increased to more than nine (9) or decreased to less than three (3) without amendment of these Bylaws of the Association.

Section 3. Nomination. Nomination for election to the Board of Directors may be made by a Nominating Committee appointed by the Board of Directors; nominations may also be made by any Member at the annual meeting of the Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or nonmember.

Section 4. Election. Except as provided in Sections 6 and 8 of this Article, the Directors shall be elected at the annual meeting of the Members by secret written ballot. In such election, the Members or their proxies may cast, with respect to each vacancy, as many votes as they are entitled under the provisions of Article III of the Declaration. The person(s) receiving the highest number of votes shall be elected. Neither cumulative nor fractional voting is permitted.

Section 5. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members present and entitled to vote at any meeting of the Members called for that purpose; provided, however, that the Members may not remove a Director appointed by the Declarant as provided in Section 8 of this Article V.

Section 6. Vacancies. A vacancy occurring in the Board of Directors may be filled by the selection by the remaining Directors of a successor, who shall serve for the unexpired term of his predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the Directors.

Section 7. Compensation. No Director shall receive compensation for any service he may render to the Association in the capacity of Director. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 8. Declarant's Right to Appoint Directors. Notwithstanding any other provision of these Bylaws, until the expiration of the Declarant Control Period, Declarant may, in its discretion, appoint and remove all of the Directors of the Association. Declarant's intent to exercise or continue to exercise that right shall be set forth in the notice of each annual meeting of the Members.

ARTICLE VI
MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least annually, without notice, and at such place and hour as may be fixed from time to time by resolution of the Board. Should the date of such meeting fall on a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two Directors, after not less than three (3) days' notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly-held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Any action which may be taken at a meeting of the Board of Directors may be taken without a meeting if written consent to the action so taken is signed by all the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the Directors and shall preside over all Board meetings until the President of the Association is elected.

Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the President, a Chairman shall be elected by the Board of Directors to serve until a new President is elected.

ARTICLE VII
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and the personal conduct of the Members and their guests thereon and establishing penalties for infractions thereof, and adopt and publish rules and regulations interpreting the restrictions and covenants applicable to the Properties and the enforcement thereof;

(b) after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of 30 days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association;

(c) exercise for the Association all powers, duties and authority vested in or delegated to the Association by the Articles Of Incorporation, these Bylaws, the Declaration or the Act, including, without limitation, Section 47F-3-102 thereof, and not reserved to the Members by other provisions of the same;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors without good cause;

(e) employ a manager and such other employees or independent contractors as it deems necessary and prescribe their duties, and contract with a management company to manage the operation of the Association. In the event that a contract is entered into with a management company, such contract must be terminable by the Board of Directors without cause or penalty on not more than ninety (90) days notice and any management contract made with the Declarant shall be for a period not to exceed three (3) years;

(f) employ attorneys, accountants and other persons or firms to represent the Association when deemed necessary;

(g) grant easements to any private or public agency, authority or utility for the installation and maintenance of sewage, utility or drainage facilities upon, over, under and across the property owned by the Association without the assent of the Members when such easements are necessary for the convenient use and enjoyment of the Properties; and

(h) appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient.

The Board of Directors may, in its discretion, delegate any of its powers to a subcommittee of the Board, an officer of the Association, or a manager, agent or attorney employed by the Association, provided, however, that such delegation shall not relieve the Board of its obligation to ensure that the duties set forth in this Article VII are faithfully carried out or that the powers so delegated are appropriately exercised by such delegate.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing at least five (5) working days before such meeting by Members entitled to at least one-fourth (1/4) of the votes appurtenant to the Class A Lots;

(b) supervise all officers, agents and employees of the Association and see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) as provided in Section 4 of Article V of the Declaration, fix the amount of the annual assessment against each Lot at least twenty (20) days before January 1 of each year;

(2) send written notice of such assessment to every Owner subject thereto at least ten (10) days before January 1 of each year; and

(3) establish and enforce procedures for collection of assessments and for filing and enforcement of liens for unpaid dues as provided in the Act.

(d) issue, or cause an appropriate officer of the Association to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be established by the Board of Directors for the issuance of such certificate. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment;

(e) procure and maintain adequate liability insurance covering the Association in an amount not less than $1,000,000.00 and adequate hazard insurance on the real and personal property owned by the Association;

(f) procure and maintain directors' and officers' liability insurance;

(g) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(h) cause the Common Area and all facilities erected thereon to be maintained;

(i) if it deems necessary or if directed by the Members to do so, establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of the improvements constructed on the Common Area;

(j) provide such notices to and obtain such consents from the owners and holders of first deeds of trust on Lots within the Properties as is required by the Declaration or these Bylaws;

(k) pay all *ad valorem* taxes and public assessments levied against the real and personal property owned in fee by the Association;

(l) hold annual and special meetings and elections for the Board of Directors; and

(m) prepare annual budgets and financial statements for the Association and make same available for inspection by the Members at all reasonable times.

Section 3. Enforcement Rights. In addition to such other rights as are granted in the Act, the Articles of Incorporation, the Declaration or these Bylaws, the Board of Directors shall have the power, pursuant to the procedures set forth in this Section, to impose sanctions for violations by an Owner, a member of his family, or any occupant, tenant, employee, guest or invitee of the Owner, of the Declaration, these Bylaws, Architectural Guidelines, rules and regulations adopted Association or the Restrictive Covenants applicable to the Properties (hereinafter individually and collectively referred to as the "Rules"), which sanctions may include, but are not limited to, reasonable monetary fines, not to exceed the greater of the costs actually incurred by the Association in abating such violation including, without limitation, attorneys' fees, or $50.00 per day, or part thereof, in which the violation continues to exist for a first violation, $100.00 per day for a second violation of the same rules or regulations, and $150.00 per day for a third or subsequent violation, and which fines shall constitute a lien upon the Lot of the Owner, and suspension of the right to vote and the right to use the Recreational Amenities. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Lot if the Owner is delinquent in paying any assessment or other charges owed to the Association. The failure of the Board to enforce any of the Rules shall not be deemed a waiver of the right to do so thereafter.

(a) Notice. Before imposition of any sanction, the Board or its delegate shall give the Owner written notice describing: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than 10 days within which the Owner may present a written request for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received by the Board before the end of the period set forth in such notice (the "Notice Period"). Such notice may be hand delivered by any person or sent by certified mail, return receipt requested. Any notice hand delivered shall be deemed received when received by the Owner or by any person more than 18-years old who is present at the address of the Owner as shown on the records of the Association. Notice sent by certified mail shall be deemed received on the third business day after same is deposited in the United States Mail. The Board shall include in its minutes evidence of the giving of such notice, including a copy of the notice and a statement of the date and manner of delivery signed by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting, unless the appearance is made to protest the lack of notice.

If a request for a hearing is not received before the end of the Notice Period, the sanction stated in the notice shall be imposed; provided, however, that the Board may waive any proposed sanction if the violation is cured before the end of the Notice Period. Such waiver shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

(b) Hearing. If a hearing is timely requested, the hearing shall be held by the Board in executive session or by a committee of not less than three (3) Members (who may or may not be Directors of the Association) appointed by the Board for the purpose of hearing such appeals. The Owner shall be afforded a reasonable opportunity to be heard. A written statement of the results of the hearing and the sanctions, if any, imposed, shall be placed in the minutes of the Board and a copy of such statement shall be provided to the Owner in the same manner as the notice required by subsection (a) of this Section 3.

If the hearing was held before a subcommittee appointed by the Board, the Owner shall have the right to appeal the decision to the Board by giving a written notice of appeal to the President or Secretary of the Association within ten (10) days after receiving a copy of the written statement of the results of the hearing. If such notice of appeal is given, the Board shall schedule and notify the Owner of the date of the appeal hearing, which shall be not less than five (5) nor more than fifteen (15) days after notice of appeal is given, and which must be attended by not less than two-thirds (2/3) of the members of the Board. The Owner shall be afforded a reasonable opportunity to be heard. The Board may, by majority vote of the Directors present at such appeal hearing, affirm, modify or reverse the decision of the subcommittee. A written statement of the results of the appeal hearing and the sanctions, if any, imposed, shall be placed in the minutes of the Board and a copy of same shall be provided to the Owner in the same manner as the notice required by subsection (a) of this Section 3.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Rules, without the necessity of compliance with the notice and hearing procedures set forth herein, by self-help remedy methods (specifically including, but not limited to, the removal of a non-conforming or unapproved improvement on the Lot and towing of Owner and tenant vehicles parked in violation of parking rules) or by action at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Association shall be entitled to recover all costs or such action, including reasonable attorney's fees incurred. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

ARTICLE VIII
OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of the Association shall be a President, who shall at all times be a member of the Board of Directors, a Secretary, a Treasurer, and such Vice President(s) and other officers as the Board may from time to time by resolution appoint.

Section 2. Election of Officers. After the end of the Declarant Control Period, the election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, be removed, or be otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

Section 5. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by the Board. The person appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President. The President shall: preside at all meetings of the Board of Directors and of the Members; see that orders and resolutions of the Board are carried out; sign all leases, promissory notes, mortgages, deeds and other written instruments; and, if so authorized by the Board, sign checks.

(b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary. The Secretary shall: record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the

Association and affix it on all papers requiring a seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association and their addresses; and perform such other duties as required by the Board.

(d) Treasurer. The Treasurer shall: receive and deposit in appropriate bank accounts all funds of the Association and disburse such funds as directed by resolution of the Board of Directors; keep proper books of account; issue, or cause to be issued, all requested certificates setting forth whether the assessments applicable to a specific Lot have been paid; cause an annual audit of the Association books to be made by an independent public accountant at the completion of each fiscal year; prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the Members; and, if directed by resolution of the Board of Directors, sign checks of the Association.

ARTICLE IX
COMMITTEES

The Board of Directors of the Association may appoint a Nominating Committee as provided in Section 3 of Article V of these Bylaws. The Board of Directors may appoint such other committees as it deems necessary to carry out the affairs of the Association.

ARTICLE X
BOOKS AND RECORDS

The books, records and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any Member or his agent. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI
ASSESSMENTS

As more fully provided in Article V of the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made.

ARTICLE XII
MISCELLANEOUS

Section 1. Corporate Seal. The Association shall have a seal in a circular form having within its circumference the words: Morgan Creek Homeowners Association, Inc.; and such seal is hereby adopted as the corporate seal of the Association.

Section 2. Amendments. Except as otherwise provided herein, these Bylaws may be amended or repealed and new bylaws adopted at any regular or special meeting of the Board of Directors by the affirmative vote of a majority of the Directors then holding office.

These Bylaws may also be amended or repealed and new bylaws adopted at any regular or special meeting of the Members, by the affirmative vote of two-thirds (2/3) of the votes cast at such meeting, subject to normal quorum requirements.

No bylaw adopted or amended by the Members shall be amended or repealed by the Board of Directors, except to such extent that such bylaw expressly authorizes its amendment or repeal by the Board of Directors.

Section 3. Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

Section 4. Indemnification.

(a) Any person who at any time is serving or has served as a Director, officer, employee or agent of the Association, or who is serving or has served in any such capacity at the request of the Association in any other corporation, partnership, joint venture, trust or other enterprise or, at the request of the Association, as a trustee or administrator under any employee benefit plan, shall be indemnified by the Association to the fullest extent permitted by law, including specifically the indemnification provided by the provisions of the North Carolina Nonprofit Corporation Act, including but not limited to indemnification against (i) reasonable expenses, including attorneys' fees actually and necessarily incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Association, seeking to hold him liable by reason of the fact that he is or was acting in such capacity, and (ii) reasonable payments made by him in satisfaction of any judgment, money decree, fine penalty or settlement for which he may become liable in any such action, suit or proceeding.

The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by the provisions of this Section 4(a), including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him and if required, giving notice to, and obtaining approval by, the Members of the Association.

Any person who at any time serves or has served in any of the aforesaid capacities for, on behalf of, or at the request of the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided under this Section 4(a). Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provisions of this Section.

If the North Carolina Nonprofit Corporation Act is subsequently amended to eliminate or further limit the personal liability of directors or to authorize corporate action to eliminate or further limit such liability, then the liability of the Directors of this Association shall, without any further action of the Board of Directors or the Members of the Association, be eliminated or limited to the fullest extent permitted by the North Carolina Nonprofit Corporation Act as so amended.

(b) The Association shall have the power to purchase and maintain insurance on behalf of any person who is serving or has served as a Director, officer, employee or agent of the Association, or who is serving or has served in any such capacity at the request of the Association in any other corporation, partnership, joint venture, trust or other enterprise or, at the request of the Association, as a trustee or administrator under any employee benefit plan against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would otherwise have the power to indemnify him against such liability.

(c) In addition to the indemnification authorized under the provisions of Sections 4(a) and four(b) of this Article XII and under the provision of the North Carolina Nonprofit Corporation Act, the Association, acting pursuant to a resolution adopted by its Board of Directors, may by contract agree to indemnify any person who at any time is serving or has served as a Director, officer, employee or agent of the Association, or in any such capacity at the request of the Association in any other corporation, partnership, joint venture, trust or other enterprises or, at the request of the Association, as a trustee or administrator under any employee benefit plan, against liability and reasonable litigation expenses, including attorneys' fees, arising out of his status As such or his activities in any of the foregoing capacities before or after the date on which the contract is executed; PROVIDED HOWEVER, that the Association may not agree under any such contract to indemnify any such person against any liability or litigation expense he may incur in relation to matters as to which he shall have been adjudged in such action, suit or proceeding to have acted in bad faith or to have been liable or guilty by reason of willful misconduct in the performance of duty.

(d) Any repeal or modification of the foregoing provisions of this Section 4 shall not affect any rights or obligations then existing with respect to any state of facts then or therefore or thereafter brought based in whole or in part on any such state of facts.

(e) This Section is intended to provide indemnification solely for actions taken by a person in his/her capacity as an officer or Director of the Association. Nothing herein shall be deemed to provide indemnification to any person for any liability that may result from that person's ownership of property within the Properties.

Section 5. Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 6. Gender. Any use of the masculine gender in these Bylaws shall be construed to include the feminine gender. Any use of the singular shall be construed, as appropriate, to include the plural.

The undersigned hereby certifies that he is the President of Morgan Creek Homeowners Association, Inc. (the "Association"), and that the foregoing Bylaws Of Morgan Creek Homeowners Association, Inc., have been duly adopted as the Bylaws of the Association as of the 30th day of June, 2004.

Samuel G. Squires

Samuel G. Squires, President