

Exhibit C

Form Sub Association Articles of Incorporation

ARTICLES OF INCORPORATION

OF

THE TOWNES AT STONEWATER SUB ASSOCIATION, INC.
A NON-PROFIT CORPORATION

The undersigned natural person of the age of eighteen (18) years or more does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a non-profit corporation under, and by virtue of, the laws of the State of North Carolina, Pursuant to §55A of the General Statutes of North Carolina, entitled “North Carolina Nonprofit Corporation Act,” and the several amendments thereto, and to that end does hereby set forth:

1. All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Easements and Restrictions for The Townes at StoneWater, together with all supplements or amendments thereto (the “Declaration”), which Declaration is recorded in Book _____ at Page _____, in the Wake County, North Carolina, Public Registry.

2. The name of the Corporation is **THE TOWNES AT STONEWATER SUB ASSOCIATION, INC.** (hereinafter referred to as the “Association”).

3. The period of duration of the Association shall be perpetual.

4. The purposes for which the Association is organized are:

(a) to manage, maintain, operate, care for and administer certain property, including real property, described in the Declaration;

(b) to enforce the covenants, restrictions, easements, charges and liens as provided in the Declaration and to fix, levy, assess, collect, enforce and disburse the charges and assessments created under the Declaration, all in the manner set forth in and subject to the provisions of the Declaration;

(c) to exercise all powers and privileges and perform all duties and obligations of the Association as set forth in the Declaration;

(d) to do any and all other lawful things and acts that the Association from time to time, in its discretion, may deem to be for the benefit of the Property and the Owners and inhabitants thereof or advisable, proper or convenient for the promotion of the peace, health, comfort, safety and general welfare of the Owners and inhabitants thereof; and

(e) to exercise all powers provided in Chapter 55A of the General Statutes of North Carolina in furtherance of the above-stated purposes.

5. The Association is not organized for pecuniary profit, nor shall it have any power to issue certificates of stock or pay dividends. No part of the net assets or earnings of the Association shall inure to the benefit of any private individual, firm or corporation.

6. The Association shall have members which may be divided into such classes as shall be provided in the Declaration.

All members shall be accepted, appointed, elected or designated in the manner provided in the Declaration.

7. The address of the initial registered office of the Association is 1355 Greenwood Cliff, Suite 150, Charlotte, North Carolina 28204, and the initial registered agent of the Association at such address: J. Bart Hopper.

8. The initial address of the principal office of the Association is 1355 Greenwood Cliff, Suite 150, Charlotte, North Carolina 28204.

9. The business and conduct of the Association shall be regulated by a Board of Directors who shall be elected in the manner and for the terms provided in the Bylaws. The number of directors constituting the initial Board of Directors shall be three, and the names and addresses of the persons who are to serve as the initial directors are:

<u>Name</u>	<u>Address</u>
J. Bart Hopper	1355 Greenwood Cliff, Suite 150, Charlotte, North Carolina 28204
Clay McCullough	1355 Greenwood Cliff, Suite 150, Charlotte, North Carolina 28204
Jack Thomas	1355 Greenwood Cliff, Suite 150, Charlotte, North Carolina 28204

10. The name and address of the incorporator is Jonathan P. Goldberg, 214 N. Tryon Street, 47th Floor, Charlotte, Mecklenburg County, NC 28202.

11. In the event of a dissolution and/or liquidation of the Association, all of the residual assets of the Association shall be distributed to the Members in the same proportions as their liabilities for assessments.

IN TESTIMONY WHEREOF, the undersigned has set his hand, this ____ day of _____, 2010.

Jonathan P. Goldberg, Incorporator

WAKE COUNTY, NC 529
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
06/30/2010 AT 15:46:04

BOOK:013990 PAGE:02129 - 02189

Prepared by and Return To:
K&L Gates LLP
Jonathan P. Goldberg
214 N. Tryon Street, 47th Floor
Charlotte, NC 28202

NORTH CAROLINA

WAKE COUNTY

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR THE TOWNES AT STONEWATER**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE TOWNES AT STONEWATER (this "Declaration") is made this 29th day of JUNE, 2010, by **STONEWATER CARY, LLC**, a North Carolina limited liability company (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the Town of Cary, Wake County, State of North Carolina, and more particularly described on Exhibit A attached hereto and incorporated by reference herein (the "Property");

WHEREAS, Declarant reserves the right without limitation to subject all of the real property as described on Exhibit B attached hereto and incorporated by reference herein, to the terms of this Declaration in accordance with the provisions of Article 9 of this Declaration;

WHEREAS, the Property has been subjected to the Master Covenants (as defined below); and.

WHEREAS, it is the intent of the Declarant to cause the Property to be subjected to this Declaration.

NOW, THEREFORE, Declarant hereby declares that the Property, including without limitation, every Lot (as hereinafter defined) which is a part of the Property, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, as well as the provisions of the North Carolina Planned Community Act (as hereinafter defined), which

are for the purpose of protecting the value and desirability of, and which shall run with such real property and shall be binding on all parties having any right, title or interest in the above-described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1 - DEFINITIONS

SECTION 1.01. “Additional Property” shall mean and refer to additional real estate near or contiguous to the Property, which may be made subject to the terms of this Declaration in accordance with the provisions of Article 9 of this Declaration, including, without limitation, all of the real property not already subjected to this Declaration described on Exhibit B attached hereto and incorporated by reference herein.

SECTION 1.02. “Amenities” means the improvements, if any, constructed, erected, installed or existing on the Sub Association Common Area for the common use, benefit and enjoyment of the Property by the Owners. Declarant and the Sub Association reserve the right to not construct any amenities.

SECTION 1.03. “Architectural Committee” means a committee of three individuals appointed by the Board of Directors.

SECTION 1.04. “Board of Directors” or “Board” means those persons elected or appointed and acting collectively as the Directors of the Sub Association. See also Article 2, Part A, Section 2.01.

SECTION 1.05. “Common Expenses” or “Sub Association Common Expenses” shall mean and include:

- A. Costs and expenses associated with the Sub Association's maintenance of the Sub Association Common Areas as provided in this Declaration;
- B. Maintenance of stormwater control measures located on the Property (the “Stormwater Control Measures”) and replacement contribution payments required to be paid by the Sub Association to the Town.
- C. Protection easement and access maintenance agreement, if any.
- D. Cost of the insurance required to be carried by Declarant and/or the Sub Association pursuant to Article 11 herein.
- E. Any such expenses as allowed under the Planned Community Act.

SECTION 1.06. “Declarant” shall mean and refer to Stonewater Cary, LLC, a North Carolina limited liability company, and its successors and assigns, provided that any such successor-in-title or assign shall acquire for the purpose of development and/or sale all or substantially all of the remaining undeveloped or unsold portions of the Property and, provided

further, that in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the “Declarant” hereunder by the grantor of such conveyance, which grantor shall be the Declarant hereunder at the time of such conveyance; it being understood that, in the event such successor Declarant (or its designee) accepts conveyance through a foreclosure or a deed in lieu thereof, such successor Declarant shall assume all of the rights of Declarant hereunder but none of the duties and obligations of such Declarant hereunder unless such successor Declarant files a written agreement expressly assuming all or any portion of such duties and obligations. Provided further, that upon such designation of such successor Declarant, all rights, duties, and obligations of the former Declarant in and to such status as “Declarant” hereunder shall cease, it being understood that as to all of the Property, there shall only be one person or legal entity entitled to exercise the rights and powers of the Declarant hereunder at any time.

SECTION 1.07. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Townes at Stonewater and all valid amendments hereto applicable to the Property recorded in the Office of the Register of Deeds of Wake County, North Carolina.

SECTION 1.08. Intentionally Deleted.

SECTION 1.09. Intentionally Deleted.

SECTION 1.10. “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property (provided said map has been approved by Declarant or the Sub Association), with the exception of the Sub Association Common Areas, owned in fee simple. Except where otherwise indicated by context, the term “Lot” shall also include the Improvements on such Lot.

SECTION 1.11. “Lot in Use” shall mean any Lot on which a Townhome has been fully constructed and for which a certificate of occupancy or similar certificate has been issued by the appropriate governmental agency.

SECTION 1.12. Intentionally Deleted.

SECTION 1.13. “Master Association” shall mean and refer to STONEWATER HOA, INC., its successors and assigns. Every Member of the Sub Association is also a member of the Master Association.

SECTION 1.14. “Master Covenants” shall mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Stonewater Subdivision recorded in Book 12493, Page 1860, Wake County, and all valid amendments recorded in the Office of the Register of Deeds of Wake County, North Carolina.

SECTION 1.15. “Member” shall mean and refer to every Person who or which holds membership in the Sub Association.

SECTION 1.16. “Mortgage” means any mortgage, deed of trust, and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

SECTION 1.17. “Mortgagee” shall include a beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage.

SECTION 1.18. “Organizational Documents” shall mean and refer to the Articles of Incorporation and Bylaws of the Sub Association, and all lawful amendments thereto. The Articles of Incorporation of the Sub Association and the Bylaws of the Sub Association are attached to this Declaration as Exhibits C and D, respectively. Unless required by applicable law, including but not limited to the ordinances and regulations of the Town, amendments to Organizational Documents are not required to be recorded in the Wake County Registry as an amendment to this Declaration.

SECTION 1.19. “Owner” shall mean and refer to the record owner, whether one or more Persons, of a fee simple interest (or undivided fee simple interest) in any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 1.20. “Townhome” or “Townhouse” shall mean and refer to an attached single family dwelling or place of residence constructed upon a Lot within the Property and constituting a part of a building.

SECTION 1.21. “Person” means any individual, corporation, partnership, limited liability company, Sub Association, trustee, or other legal entity.

SECTION 1.22. “Planned Community Act” or “Act” shall mean the provisions of the North Carolina Planned Community Act, as contained in Chapter 47F of the General Statutes of North Carolina applicable to the Property, as such provisions shall be amended and recodified from time to time.

SECTION 1.23. Intentionally Deleted.

SECTION 1.24. “Sub Association” shall mean and refer to The Townes at StoneWater Sub Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

SECTION 1.25. “Sub Association Common Area” or “Sub Association Common Areas” shall be defined as all real property and improvements which Declarant or the Sub Association owns and which are identified on any plat as Sub Association Common Area.

SECTION 1.26. “Supplemental Declaration” shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the office of the Register of Deeds of Wake County, to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Article 9 hereof.

SECTION 1.27. “Town” shall mean the Town of Cary, North Carolina.

ARTICLE 2 - PROPERTY RIGHTS

SECTION 2.01. **OWNER'S EASEMENTS OF ENJOYMENT.** Every Owner shall have a right and easement of use and enjoyment in and to the Sub Association Common Area and a right and easement over the Sub Association Common Area for access, ingress and egress to and from streets, parking areas and walkways and to and from such Owner's Lot, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. **Admission and Other Fees:** Subject to the ordinances of the Town, the right of the Sub Association to regulate the use of and to charge reasonable admission and other fees for the use of any recreation facility situated upon the Sub Association Common Area;

- B. **Suspension of Use of Sub Association Common Area:** The right of the Sub Association to suspend the right to use any Amenities, except drainage and access rights, by any Owner, his family, occupants, tenants, guests, and invitees during any period in which such Owner shall be in default in the payment of any assessment levied by the Sub Association. Such rights may be suspended, after notice and hearing, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for infraction or violation of any provision of this Declaration, the Organizational Documents or published rules and regulations of the Sub Association;

- C. **Dedication and Transfer of Sub Association Common Area:** Except as restricted by applicable law including, but not limited to, the ordinances, regulations and procedures, including variances, of the Town, the right of the Declarant or Sub Association to dedicate or transfer all or part of the Sub Association Common Area to the Master Association or to any public agency, authority or utility, or for such purposes as may be agreed to by the Members, and provided that said dedication or transfer shall be approved as provided herein. Except with respect to easements granted by the Sub Association no such dedication or transfer shall be effective unless Members entitled to cast at least 80% of the votes of the entire membership, plus at least 67% of the votes of the membership excluding the Declarant, have signed a written instrument consenting or agreeing to such dedication or transfer and unless such other agreement or consent as then required by the Planned Community Act and the ordinances, regulations and procedures, including variances, of the Town have been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Sub Association and the Owners established hereunder, including but not limited to every Owner's easement for access, ingress and egress right to such Owner's Lot and use of the Sub Association Common Areas;

- D. **Guests:** The right of the Sub Association to limit the number of guests that a Member may allow to use the Sub Association Common Area;
- E. **Borrowing for Improvements:** The right of the Sub Association, in accordance with its Organizational Documents and the Planned Community Act, to borrow money for the purpose of constructing, repairing, or improving the Sub Association Common Area, including but not limited to the Amenities (or any portion thereof) and to the Stormwater Control Measures and in aid thereof, with the assent of Members entitled to at least 80% of the votes of the entire membership, plus at least 67% of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Planned Community Act, to mortgage, pledge, encumber or hypothecate said Sub Association Common Area;
- F. **Use of Sub Association Common Area:** The right of the Sub Association, through its Board of Directors, to determine the time and manner of use of the Sub Association Common Areas and Amenities, if any, by the Members and others and to formulate, publish and enforce rules and regulations, and specifically including, but not limited to, the right to make permanent and temporary assignment of parking spaces and to make rules and regulations concerning parking;
- G. **Easements:** The right of the Declarant, during the period of Class B membership, with regard to the Property which may be owned for the purpose of development, to grant easements in and to the Sub Association Common Area to any public agency, authority, or any utility for such purposes as benefits the Property or any portion thereof. This Section 2.01(G) may not be amended or deleted, without the written consent of Declarant;
- H. Intentionally Deleted;
- I. **Exchanges:** The right of the Sub Association, as provided by and consistent with the Town Code of Cary, as the same may be amended from time to time, to exchange all or part of the Sub Association Common Area for other real property and consideration of like value and utility subject to the provisions of the Planned Community Act;
- J. **Owner's Maintenance Easement:** The right and easement of individual Owners to maintain, repair and reconstruct the Townhome on such Owner's Lot; and
- K. **Rules and Regulations:** The right of the Board to formulate, publish and enforce rules and regulations as provided in this Declaration.

SECTION 2.02. DELEGATION OF USE. Any Owner may delegate his right of use and enjoyment to the Sub Association Common Area, including but not limited to the

Amenities, to the members of his family, his tenants, contract purchasers or guests, who reside on such Owner's Lot, subject to the provisions of this Declaration.

SECTION 2.03. TITLE TO SUB ASSOCIATION COMMON AREA. The Declarant covenants for itself, its successors and assigns, that in accordance with the Planned Community Act it will convey fee simple title in the Sub Association Common Area to the Sub Association, free and clear of all monetary encumbrances and liens. The Sub Association Common Area shall be preserved for the perpetual benefit of the Owners of the Lots and the Sub Association Common Area is restricted against private or public ownership for any other purpose other than as provided by the Planned Community Act and the Cary Town Code. Sub Association Common Area shall not be subsequently subdivided or conveyed by the Sub Association except as permitted by and in accordance with this Declaration, the Planned Community Act and the ordinances, regulations and procedures, including variances, of the Town.

SECTION 2.04. EXCHANGE OF SUB ASSOCIATION COMMON AREA. Subject to the Planned Community Act, the Sub Association, acting through its Board, from time to time may exchange with the Declarant or any Member a portion of the Sub Association Common Area for a portion of the real property owned by such member within his Lot provided that the real property acquired by the Sub Association in exchange: (a) is free and clear of all monetary encumbrances; (b) is contiguous to other portions of the Sub Association Common Area; (c) has approximately the same area and utility as the portion of the Sub Association Common Area exchanged; and (d) has been approved, if required, by the Town of Cary Planning Department to assure that the provisions of the Town Code is not being violated. The real property so acquired by the Sub Association shall be a part of the Sub Association Common Area, and without further act of the Sub Association or membership, shall be released from any provisions of the Declaration except those applicable to the Sub Association Common Area. The portion of the Sub Association Common Area so acquired by Declarant or a Member, without further act of the Sub Association or membership, shall cease to be Sub Association Common Area and shall be subject to those provisions of the Declaration that were applicable to the real property conveyed to the Sub Association by the member.

SECTION 2.05. RULES AND REGULATIONS. The Board of Directors may establish reasonable rules and regulations concerning the use of the Sub Association Common Area, including but not limited to the Amenities, and the Lots. Copies of such rules and regulations and amendments thereto shall be furnished by the Sub Association to all Owners prior to their effective date. Such rules and regulations shall be binding upon the Owners (with the exception of the Class B Members), their families, tenants, guests, invitees, and agents until and unless such rule or regulation shall be specifically overruled, canceled, or modified by the Board of Directors or by the affirmative votes of a majority of the Members in a regular or special meeting. After notice, opportunity to be heard and notice of the final decision, the Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for a violation of the Sub Association's rules and regulations, including but not limited to a suspension of the Owner's rights to use the Amenities. All rules and regulations shall be enforced in a non-discriminatory manner with respect to the Lots. Notwithstanding anything to the contrary in this Declaration, the Board of Directors may not suspend an Owner's right of

ingress and egress over the Sub Association Common Areas and right to the use of parking spaces as provided in this Declaration.

SECTION 2.06. TAXES ON SUB ASSOCIATION COMMON AREA. The Sub Association shall be responsible for and shall cause to be paid out of annual assessments all ad valorem taxes, special assessments and assessments for public and private capital improvements made to or for the benefit of the Sub Association Common Area or levied against the Sub Association Common Area owned in fee simple by the Sub Association.

SECTION 2.07. TOWNHOUSE OPEN SPACE. In addition to other provisions of this Declaration, all open space, if any, is subject to the following:

(A) **Townhouse Open Space.** Townhouse open space and private streets used for the exclusive benefit of townhouse residents is Sub-Association Common Area unless otherwise conveyed to the Master Association pursuant to the Master Covenants.

(B) **Preservation.** Open space and private streets shall be preserved for the perpetual benefit of the Owners of the Lots within the Property, and shall be restricted against private or public ownership for any other purpose, except acquisition by condemnation or in lieu of condemnation and the granting of utility, drainage, conservation and greenway easements.

(C) **Exchange.** Open space shall not be subsequently subdivided or conveyed by the Association. However, nothing herein shall prevent the exchanging of open space for other properties when all of the following are met:

- (1) written notice of the exchange is given to each Member of the Sub Association;
- (2) after the notice is given, those members having the minimum percentage of votes in the Sub Association required by the Act or any greater percentage required by this Declaration gives written approval of the exchange;
- (3) the exchanged properties and other considerations are of like value and utility;
- (4) the acreage and configuration of the remaining open space (including real property to be received by the Sub Association in such exchange) equals or exceeds the requirements of the Code; and
- (5) the exchange is approved by the Planning Director of the Town, if required.

(D) **Dissolution.** If the Sub Association is dissolved, the open space shall first be offered to the Town, and if accepted, deeded to the Town.

(E) **Recreation.** Recreational uses located in open space, if any, and other Common Areas shall comply with the provisions of the Code related to recreational use related to a residential development, other than a single-family dwelling unit.

(F) **Mortgaging of Open Space.** Open space may be subjected to a security interest with the written approval by those Members having the minimum percentage of votes in the Sub Association required by the Act or any greater percentage required by this Declaration, and provided that the rights of the mortgagee are subordinate to the rights of the Owners and the Sub Association.

SECTION 2.08. COMMON PARTY WALLS. All common party walls between individual residences shall conform to the requirements of the North Carolina State Building Code. The following rules also apply to common party walls between individual residences:

(A) Each wall which is shared by residences and placed on the dividing line between the residences shall constitute a common party wall and, to the extent not inconsistent with the provisions of this Section or the North Carolina State Building Code, the general rules of law regarding common party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(B) The cost of reasonable maintenance of a common party wall shall be shared by the Owners of the residences that share the common party wall, in proportion to such use. Provided, however, each Owner is responsible for usual and routine maintenance (for example, painting) of the portion of any party wall on the inside of such Owner's residence.

(C) If a common party wall is destroyed or damaged by fire or other casualty, any Owner of a residence which shares such common party wall may restore or repair it, and the Owners of the other residences which share the restored or repaired common party wall shall, within twenty-one (21) days of the receipt of a request for payment and invoices showing the cost of such restoration or repair, contribute to the cost of the restoration or repair thereof (or reimburse the Owner who has paid such costs) in proportion to their use of the common party wall, without prejudice, however, to the right of any such Owner to demand a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions.

(D) Notwithstanding any other provision of this Section, an Owner of a residence which shares a common party wall who, by such Owner's negligent or willful act or omission, damages or causes the common party wall to be exposed to the elements shall bear the entire cost of the necessary repair or restoration.

(E) The right of any Owner to contribution from any other Owner under this Section with respect to all matters occurring prior to the transfer of title of the Lot to a subsequent Owner may be retained by the transferring Owner to the extent that the transferring Owner paid any expenses for which contribution is available; otherwise, the right of contribution shall be transferred to the subsequent Owner. The amount owed shall constitute the personal debt of the Owner from whom it is owed, and the Owner to whom the contribution is owed shall have all remedies available at law or in equity to enforce such Owner's right of contribution. An Owner's obligation for contribution is appurtenant to and shall run with title to such Owner's Lot.

(F) An Owner who desires to sell a residence, or the prospective purchaser of such residence, may request the Owners of each other residence which shares that common party wall to provide a certificate stating whether or not such certifying Owner has any right or obligation of contribution with respect to such common party wall against the Owner who desires to sell. Each certifying Owner from whom such certificate is requested, shall, within ten (10) days after receipt of a written request for certification, furnish same to the requesting Owner or purchaser, as applicable, either confirming that no right of contribution exists or stating the amount of and reasons for the contribution claimed against the requesting Owner. A certificate signed by any one or more of the Owners of a residence which shares a common party wall with the residence of the requesting Owner shall be conclusive evidence of its contents with respect to all other Owners of that residence and with respect to third parties.

(G) Each Owner of a residence which shares a common party wall with one or more other residences, and such Owner's contractors and subcontractors, shall have an easement and right of entry upon such other residences to the extent reasonably necessary to repair, restore, maintain or reconstruct the common party wall. Such repair, restoration, maintenance or reconstruction shall be done expeditiously and, promptly upon completion of the work, the Owner on whose behalf the work is being done shall restore all portions of the adjoining residences damaged as a result thereof to substantially the same condition as that which existed at the time the work commenced.

ARTICLE 3 - MEMBERSHIP AND VOTING RIGHTS

SECTION 3.01. MEMBERSHIP. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot. Following termination of the Property as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Sub Association.

SECTION 3.02. MEMBERSHIP CLASSES. The Sub Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Members, if any. Class A Members shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be a Class A Member upon the termination of Class B Membership.

Class B: The Class B Members shall be (i) the Declarant and its assigns and (ii) any Builder (*i.e.*, any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale on the Property). Builder shall be entitled to three (3) votes for each Lot owned by Builder. Declarant shall be entitled to ten (10) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership upon the occurrence of any of the following events, whichever occurs first:

- (a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, but in any event the Class B membership shall terminate when 75% of the Lots have been deeded to Owners other than the Declarant or Builder;
- (b) Until twenty (20) years from recording of this document; or
- (c) Upon the surrender of the Class B membership by the Declarant.

ARTICLE 4 - COVENANT FOR ASSESSMENTS

SECTION 4.01. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Except as provided below, 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 the Sub Association assessments.

Such assessments are to be established and collected as hereinafter provided. All annual assessments shall be fixed at a uniform rate for all Lots; provided, however, (i) as to any Lot which is owned by a Builder, the amount of the annual assessment for each such Lot shall be an amount equal to fifty (50%) of the amount of the annual assessment applicable to a Lot which is a Lot in Use, and (ii) as to any Lot which is owned by Declarant, no assessments of any kind shall be due and payable during Declarant's period of ownership of said Lot. Except as provided herein, special assessments shall be fixed at a uniform rate for all Lots without regard as to whether or not said Lot is a Lot in Use. Annual assessments shall be collected on a monthly basis. Special assessments may be collected on an annual, semi-annual, quarterly or monthly basis as determined by the Board from time to time. The annual and special assessments, together with such interest thereon, applicable late fees and the cost of collection thereof, including reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon such Lot until paid in full. Each such assessment, together with such interest, late fees and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

SECTION 4.02. RESERVE FUND. The Sub Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Sub Association Common Areas and those other portions of the Property or Lots which the Sub Association may be obligated to maintain. Such reserve fund is to be established and maintained out of regular assessments as a common expense, but if the reserve fund is inadequate, a special assessment may be made.

SECTION 4.03. ADOPTION OF BUDGET AND ANNUAL ASSESSMENTS. The following provisions shall not operate so as to restrict the Sub Association or the Board in performing the duties and obligations required of the Sub Association or the Board under the Planned Community Act, but they shall be a limitation on discretionary costs and expenses above and beyond such duties and obligations:

- A. The Board of Directors of the Sub Association shall adopt a proposed budget for the Sub Association and set the amount of the regular annual assessment against the Lots at least 90 days in advance of each annual assessment period.

- B. Until the Sub Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses to the extent required by the Planned Community Act and the Town of Cary Code. If the assessments are insufficient to pay all Common Expenses, the Declarant may advance expenses for the maintenance and operation of the Sub Association to the extent that annual assessments assessed against the Owners are inadequate for this purpose. Such advance shall be to the Sub Association and on terms generally available to Declarant from its lending institution. At such time as the majority of the total votes of the Sub Association are no longer held by the Declarant, its successors or assigns, the Declarant shall have no further obligation for maintenance and operation of the Sub Association pursuant to the terms of this section.

SECTION 4.04. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Sub Association may levy in any assessment year a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Sub Association Common Area or any other purpose permitted under the Planned Community Act. Any such special assessment shall have the assent of two-thirds (2/3) or more of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 4.05. Intentionally Deleted.

SECTION 4.06. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 4.04. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.04 shall be sent to all Members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty-seven percent (67%) of all the votes in the Sub Association shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned by a majority vote of those present in person or by proxy and the required quorum at the next meeting shall be reduced by one-half of the required quorum for the previously adjourned meeting as provided in the Planned Community Act. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

SECTION 4.07. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to a Lot on the earlier of (i) the date such Lot was conveyed by the Declarant to a third party purchaser or (ii) the date such Lot becomes a Lot In Use. The first annual assessment for such Lot shall be adjusted according to the number of months remaining in the calendar year.

SECTION 4.08. EFFECT OF NON-PAYMENT OF ASSESSMENTS/REMEDIES OF THE SUB ASSOCIATION. Any assessment which is not paid within thirty (30) days after the due date shall be delinquent. The Sub Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein.

SECTION 4.09. SUBORDINATION OF THE LIEN TO MORTGAGE. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage on a Lot. Mortgagees are not required to collect assessments and nothing in this Declaration shall require that failure to pay assessments shall constitute a default under a Mortgage insured by the U.S. Department of Housing and Urban Development ("HUD"), the U.S. Department of Veterans Affairs ("VA") or by any other governmental mortgage insurance program, such as those by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation or the Federal National Mortgage Sub Association. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any such Mortgage or deed of trust or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer, provided that the Sub Association and Declarant have been notified of said foreclosure prior to the date thereof. Such unpaid assessments extinguished by the foreclosure sale shall be deemed to be a Common Expense collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

SECTION 4.10. EXEMPT PROPERTY. The following portions of the Property, subject to this Declaration, shall be exempt from the assessment created herein A) all portions of the Property dedicated to and accepted by a local public authority, utility or Master Association; and B) the Sub Association Common Area.

SECTION 4.11. LIABILITY OF OWNER. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, tenants, invitees, contractors, employees or authorized representatives, the cost of such maintenance or repair shall be added to and become part of the assessment applicable to the Lot owned by such Owner.

SECTION 4.12. WORKING CAPITAL FUND. In addition to any other assessment provided in this Declaration, upon the closing of a Lot from Builder to a third party, a sum equal to two (2) months of the regular annual assessment applicable to such

Lot shall be collected from such purchaser, and such sum shall be paid to the general operating fund of the Sub Association to be used in the same manner specified for annual assessments. All sums paid into the working capital fund are in addition to and not in lieu of any regular or special assessments for Common Expenses.

SECTION 4.13. SUB ASSOCIATION FUNDS NOT ASSET OF OWNERS. All monies collected by the Sub Association shall be treated as the separate property of the Sub Association, and such monies may be applied by the Sub Association to the payment of any Common Expense or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration and the Organizational Documents of the Sub Association. As monies for any assessment are paid to the Sub Association by any Owner, the same may be commingled with monies paid to the Sub Association by the other Owners. Although all funds and common surplus, including other assets of the Sub Association and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member by reason of his divestment of ownership of his Lot, by whatever means, the Sub Association shall not be required to account to such Owner for any share of the fund or assets of the Sub Association, or for any assessment which may have been paid to the Sub Association by such Owner, as all monies which any Owner has paid to the Sub Association are an asset of the Sub Association which may be used in the operation and management of the Property.

ARTICLE 5 - ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

SECTION 5.01. PURPOSES. The Property is hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each Lot in the Property; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of said Property; to guard against the erection thereof of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Property; to encourage and secure the erection of attractive dwelling units thereon, with appropriate locations thereof on Lots; to secure and maintain proper set-backs from the streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said Property and thereby to enhance the values of investments made by the purchasers of Lots therein. It is specifically disclosed that different architectural styles, sizes and prices of Townhomes may be built by the Declarant to provide a variety of housing options.

SECTION 5.02. PLAN APPROVAL REQUIREMENT. For purposes of this Declaration, the term "Improvement" shall mean any hedge, mass landscape planting, building, wall, fence or other structure. Other than Improvements constructed, installed, planted or otherwise made by the Declarant, no Improvement shall be

commenced, altered, erected, maintained or permitted to remain upon any Lot, nor shall any addition, alteration, replacement, repair to the exterior or other change in exterior appearance of a Townhome or Lot be made thereto, nor shall any Improvement be rebuilt after destruction by any hazard until plans and specifications, showing the nature, kind, space, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant during the period of Class B Membership, and thereafter, the Board of Directors or the Architectural Committee, as the case may be.

The number of bedrooms in a Townhome shall not be increased either by construction of an addition or the conversion of other areas and no garage may be converted from parking of vehicles to a bedroom or other living area without the approval of the Declarant during the period of Class B Membership, and thereafter, of the Board of Directors or the Architectural Committee, as the case may be. The approval required under this Section for increasing the number of bedrooms in a Townhome or the conversion of any garage is in addition to any approval which may be required by the Town or other governmental body having jurisdiction.

In the event the Declarant, the Board of Directors or the Architectural Committee, as the case may be, fails to approve or disapprove any Improvement within thirty (30) days after all completed plans and specifications and other information reasonably requested have been properly submitted, approval will not be required and the plans and specifications will be deemed to have fully complied with this Article. To the extent not prohibited by the Planned Community Act or by regulations of HUD or VA, the Sub Association shall have the right to charge and collect a reasonable fee for review of such plans and specifications. Nothing herein contained shall be construed to require approval for any Improvement constructed, made, installed or planted by the Declarant nor to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties approved by FHA and/or VA, if any, or by the Town from time to time.

SECTION 5.03. ARCHITECTURAL COMMITTEE. During the period of Class B Membership, the Declarant shall be the Architectural Committee. Upon the expiration or termination of the Class B Membership or upon the earlier relinquishment of the right to act as the Architectural Committee by the Declarant, the Board of Directors may designate the number of and appoint the members of the Architectural Committee on an annual basis. In the event of the death or resignation of any member of the Architectural Committee, the Board of Directors shall designate and appoint a successor. Members of the Architectural Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the Board of Directors. At all times the Board of Directors fails to appoint members of the Architectural Committee pursuant to this Section, the Board of Directors shall be the Architectural Committee.

SECTION 5.04. PROCEDURES. No Improvement shall be commenced, altered, erected, maintained or permitted to remain on any Lot, except by the Declarant,

until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Committee as to:

- 1 quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
- 2 conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- 3 location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and any Improvements situated thereon and drainage arrangement; and
- 4 the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within standards promulgated by the Board of Directors from time to time.

Final plans and specifications (including a site plan showing the location of the contemplated Improvements on the Lot) for all Improvements proposed to be constructed on a Lot shall be submitted to the Architectural Committee for approval or disapproval. The Architectural Committee is authorized to request the submission of samples of proposed construction materials. Any modification or change to the plans and specifications (specifically including, but without limitation, the above described site plan) approved by the Architectural Committee must again be submitted to the Architectural Committee for its inspection and approval. The Architectural Committee's approval or disapproval as required herein shall be in writing. Once the Architectural Committee has approved the plans and specifications for the proposed Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion, and if such construction is not commenced within the time set therefor by the Architectural Committee in the written approval (but in no event later than twelve (12) months after such approval), such approval shall be deemed rescinded and before construction of Improvements can thereafter be commenced on the Lot in question, the plans and specifications therefor must again be approved by the Architectural Committee pursuant to this Article.

The Board of Directors may from time to time publish and promulgate architectural standards which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. Such standards shall supplement this Declaration. Current copies of the architectural standards shall be available to interested persons at the principal office of the Sub Association for a reasonable cost.

It is the responsibility of the Owner of a Lot to consult with a licensed and qualified architect and/or engineer to prepare or review the plans and specifications for compliance with applicable laws and building codes and to cause the construction,

erection and/or installation of Improvements on a Lot to be performed by a licensed and qualified contractor.

SECTION 5.05. CONDITIONS. As a condition to the granting of approval of any request made under this Article, the Architectural Committee may require that the Owner requesting such change be liable for any cost of maintaining or repairing the approved project. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Architectural Committee. Thereafter, the Owner, and any subsequent Owner of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that any cost of maintenance and repair of such Improvement shall be added to and become a part of the annual assessment or charge applicable to such Lot, and subject to the lien rights provided in this Declaration.

SECTION 5.06. GROUNDS FOR DISAPPROVAL/DEFECTS. Refusal of approval of such plans, locations or specifications may be based upon any grounds, including purely aesthetic and environmental, which the Architectural Committee, in its sole discretion, shall deem sufficient.

SECTION 5.07. VERIFICATION OF COMPLIANCE WITH PLANS. The Architectural Committee, or its appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Lot during site preparation or construction, erection or installation of Improvements, to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

SECTION 5.08. ENFORCEMENT. The Architectural Committee shall have the specific, nonexclusive right, but shall not be required, to enforce the provisions contained in this Article and to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained herein.

SECTION 5.09. LIMITATION OF LIABILITY. Neither the Architectural Committee nor any of the members thereof shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of services performed pursuant to this Declaration. **NEITHER THE APPROVAL OF PLANS AND SPECIFICATIONS NOR ANY INSPECTION OF IMPROVEMENTS BY THE ARCHITECTURAL COMMITTEE OR ANY OF ITS MEMBERS IS A CERTIFICATION THAT THE PLANS AND SPECIFICATIONS AND/OR THE IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH COMPLY WITH APPLICABLE LAWS AND BUILDING CODES. NEITHER THE ARCHITECTURAL COMMITTEE NOR ANY OF THE MEMBERS THEREOF SHALL BE LIABLE OR RESPONSIBLE FOR ANY DEFICIENCIES OR DEFECTS IN THE PLANS AND SPECIFICATIONS SUBMITTED TO IT OR IN ANY STRUCTURE ERECTED ACCORDING TO SUCH PLANS AND SPECIFICATIONS.**

SECTION 5.10. COMPENSATION. No member of the Architectural Committee shall be entitled to compensation arising out of services performed pursuant to this Article. With prior approval of the Board of Directors, the Sub Association shall reimburse members of the Architectural Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Architectural Committee.

ARTICLE 6 – EXTERIOR MAINTENANCE

SECTION 6.01. MAINTENANCE BY SUB ASSOCIATION. Except as specifically provided in this Declaration, the Sub Association shall maintain and repair all portions of the Sub Association Common Area, including but not limited to grass, plants, shrubs, trees, landscaping, sidewalks, private streets, the Stormwater Control Measures, if any, and recreation and other facilities, if any. In addition to the operation and maintenance of the Sub Association Common Areas, the Sub Association shall provide exterior maintenance upon each Townhome on a Lot which is subject to assessment hereunder, only as follows: Stain and/or paint the exterior surfaces of Townhomes; replace roofs; and normal and routine repair, replacement and care for gutters, down spouts, walks, water and sewer lines lying outside the foundations of Townhomes. Such exterior maintenance shall not include any glass panes, screens, driveways serving a single Lot, failure of glass surfaces nor maintenance and repair required to be performed by any Owner. The Owner shall promptly notify the Sub Association of the need for exterior maintenance. In addition, the Sub Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the “Yard Improvements”) installed by the Declarant, the Sub Association or the Builder who constructed the initial Improvements on a Lot, and any Yard Improvements installed by an Owner with the prior written consent of the Sub Association. The Sub Association maintenance of the Yard Improvements shall include the following: (i) the mowing of grass, edging where appropriate, and necessary blowing; (ii) fertilization of grass, bushes and shrubs; (iii) application of weed controls; (iv) yard insect control measures; (v) pruning of shrubs and bushes as appropriate; and (vi) application of pine straw, or other similar material, twice annually in appropriate areas. No Owner or occupant shall install any fence or similar structure on his Lot or plant any vegetation on his Lot except with the prior written approval of the Sub Association. The Sub Association shall have no responsibility or obligation to maintain any Lot or Townhome except as specifically provided in this Declaration.

SECTION 6.02. OWNER'S MAINTENANCE OBLIGATIONS. In addition to each Owner's responsibility and obligation to maintain such Owner's Lot and Townhome pursuant to this Declaration, each Owner shall maintain those portions of such Owner's Lot and the Townhome thereon as are not specifically to be maintained by the Sub Association under Section 6.01 above, including but not limited to: the, deck, porch, siding, brick, shutters, exterior trim, glass panes, screens, garage doors, doors and windows. The Owner of a Lot improved with a garage and/or served by a driveway shall repair and maintain the garage door and driveway in good order, condition and

appearance and shall repair and correct any unsafe or unsightly condition thereon. Each Owner shall be responsible for all repair and maintenance of his Lot except such maintenance and repair specifically required to be provided by the Sub Association under this Declaration or the Organizational Documents. Any Owner who fences, encloses or screens, by plants or structures, the rear portion of his Lot (which fence, enclosure or screen shall require the prior written approval under Article 5), may plant trees, shrubs, flowers and grass in the fenced or enclosed portion at his own expense, provided that such enclosure, planting and maintenance does not hinder the Sub Association in performing its maintenance duties under this Declaration. No such maintenance by an Owner shall reduce any assessment payable by him to the Sub Association. If, in the opinion of the Sub Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Sub Association may revoke the Owner's maintenance rights for a period not to exceed one (1) year. The Sub Association may perform maintenance during the revocation period and any other repair or maintenance not performed by an Owner as required in this Declaration. Any additional maintenance costs incurred by the Sub Association as a result of an Owner's failure to maintain or repair as provided in this Declaration shall be added to and become a part of the assessment to which such Owner's Lot is subject.

SECTION 6.03. NEGLIGENCE, ETC.. In the event that the need for maintenance or repair of any Lot or Sub Association Common Area is caused through the willful or negligent acts or omissions of an Owner, or such Owner's family, tenants, contract purchasers, guests, invitees, contractors, employees, or authorized representatives, such Owner shall be responsible for the cost of such maintenance and repair, which shall be added to and become a part of the assessment applicable to the Lot owned by such Owner. The Sub Association shall have the right, but not the obligation, to enter onto an Owner's Lot and to perform any maintenance or repair required to be performed by an Owner under this Declaration in the event that an Owner fails to commence any such maintenance or repair within 30 days after written notice from the Sub Association to such Owner specifying the need for such maintenance and repair or such Owner, after commencing such maintenance and repair, fails to diligently pursue to completion such maintenance and repair within a reasonable period of time not exceeding an additional forty-five (45) days; provided, however, no notice or waiting period shall be required with respect to an emergency condition existing on an Owner's Lot.

ARTICLE 7 - USE RESTRICTIONS

SECTION 7.01. MAINTENANCE OF LOTS. Each Owner shall keep his Lot in an orderly condition and shall keep the Improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. Except to the extent of any maintenance by the Sub Association, each Owner shall maintain and replace the Yard Improvements on his Lot in a clean and neat condition and shall keep his landscaping trimmed so as not to be unsightly. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever nor for the storage of any property or thing which will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots, and no trash,

rubbish, stored materials, wrecked or inoperable vehicles, vehicles unlicensed for more than thirty (30) days, or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, or other debris for collection by governmental or other similar garage and trash removal units. In the event that any Owner fails or refuses to comply with any of the foregoing, the Declarant or Sub Association may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contract to purchase such Lot or by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant or Sub Association may enter and correct the same at Owner's expense. Each Owner, by acquiring a Lot subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant or the Sub Association. No such entry as provided herein shall be deemed a trespass.

SECTION 7.02. NUISANCES. No immoral, improper, offensive or unlawful use shall be made of the Property, or any part thereof, and all valid laws, orders, rules, requirements, ordinances and regulations of all governmental agencies having jurisdiction thereof relating to any portion of the Property shall be observed. No noxious or unreasonably offensive activities shall be carried on upon any Lot or other portion of the Property, nor shall anything be done thereon which may be or become a nuisance or an unreasonable annoyance to the neighborhood. Activities associated with the development of the Property and the construction of Townhomes on the Property shall not be deemed offensive nor an annoyance or nuisance if conducted in accordance with the ordinances of the Town. Other than in connection with the development of the Property or the construction and sale of Lots and Townhomes, no trade materials or inventories may be stored upon a Lot.

SECTION 7.03. RULES AND REGULATIONS. The Board of Directors shall have the power to formulate, adopt, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the yard spaces of each Lot and the Sub Association Common Area. All rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the Owners and available to them for reasonable inspection during normal business hours.

SECTION 7.04. DEVELOPMENT RIGHTS RESERVED. Declarant reserves and shall have the right to exercise, without any consent, approval or authorization of any other Owner or the Board of Directors, all special declarant rights as provided in this Declaration and/or as permitted in the Planned Community Act, including but not limited to, any right (i) to complete Improvements indicated on plats and plans filed of record; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the Property, and models; (iv) to use easements through the Sub Association Common Areas for the purpose of making Improvements within the Property; (v) to make the Property subject to a master Sub Association; and (vi) to appoint or remove any officer or member of the Board of Directors of the Sub Association during the period of Class B membership. Notwithstanding any provisions or restrictions contained in this Declaration, and rules

and regulations adopted hereunder or any amendments to the foregoing, it shall be expressly permissible for the Declarant, and its respective agents, employees and Builder during the period of Class B membership to maintain such facilities and carry out such construction activities as may be reasonably required, convenient or incidental to the development, improvement, completion and sale of any portion of the Property, including without limitation, the installation and operation of sales and construction trailers and offices, sales models and appropriate signs; provided, however, that in the event a sales office has been maintained in any portion of a Lot such sales office must be removed and the original intended and approved use of such structure must be restored prior to conveyance from the Declarant or its assigns to any third party purchaser.

SECTION 7.05. NO IMPERVIOUS SURFACE IMPROVEMENTS. Notwithstanding anything set forth herein to the contrary, in no event shall any Owner (other than Declarant or Builder) make any impervious surface improvements to any Lot without the express written consent of Declarant, which consent may be withheld by Declarant in its sole discretion.

ARTICLE 8 - EASEMENTS/BUFFERS

SECTION 8.01. UTILITIES. Easements for the installation and maintenance of utilities (including, but not limited to water, sewer, gas, electricity, telephones, telecommunications, cable television and other utilities, such as a master antenna system) and drainage facilities are reserved as indicated on the recorded plats of the Property. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Sub Association shall have the power and authority to grant and establish upon, over and across the Sub Association Common Areas such additional easements as are necessary or desirable for the providing of service or utilities to the Sub Association Common Areas or Lots.

SECTION 8.02. ENCROACHMENTS. In the event that any Improvements on a Lot shall encroach upon any Sub Association Common Areas or upon any other Lot as a result of the initial Improvements constructed by Declarant or Builder, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Sub Association Common Areas or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Sub Association Common Areas shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Sub Association Common Areas into any such Lot for so long as such encroachment shall naturally exist.

SECTION 8.03. STRUCTURAL SUPPORT. Every portion of a Townhome on a Lot which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the building.

SECTION 8.04. WALKS, DRIVES, PARKING AREAS AND UTILITIES. All of the Property, including Lots and Sub Association Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, cable television lines, and other public utilities as shall be established prior to the conveyance of such Lots or the Sub Association Common Area by the Declarant, and the Sub Association shall have the power and authority to grant and to establish in, over, upon, and across the Sub Association Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property without the assent of the membership except where the assent of the membership is required by applicable law. If a Lot is served by a driveway as indicated on a recorded plat of the Property (provided such plat was approved by the Declarant or the Sub Association), there is created an appurtenant easement over the Sub Association Common Areas in favor of such Lot for the construction, reconstruction, repair and maintenance of such driveway and for the exclusive use of such driveway for ingress, egress, regress and parking purposes. Such driveway easement is subject to water, sewer, cable and utility lines lying under such driveway and the repair and maintenance of such lines. The Sub Association and the other Owners shall not obstruct or interfere with the use of such driveway except as is incident to the repair and maintenance of Sub Association Common Areas and water, sewer, cable and utility lines. If the Sub Association obstructs or interferes with the permitted uses of such driveway, the Sub Association shall make reasonable efforts to provide alternative parking for such Lot during the period of obstruction or interference.

SECTION 8.05. EASEMENTS APPURTENANT TO LOTS. All private streets and driveway areas in the Sub Association Common Areas shall be subject to an easement in favor of every Lot to which they are adjacent or which they are intended to serve and shall be deemed appurtenant to each such Lot, whereby the Owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

SECTION 8.06. EMERGENCIES, ETC.. Every Lot and Townhome shall be subject to an easement for entry by the Sub Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome on any Lot and that endangers any Lot or portion of the Sub Association Common Areas, or as necessary to correct any grading for drainage purposes.

SECTION 8.07. EASEMENTS TO SUB ASSOCIATION. An easement is hereby granted to the Sub Association, its officers, agents, employees, and authorized representatives, including but not limited to management companies, to enter in or to cross over the Sub Association Common Area in connection with the exercise of any right, duty or obligation of the Sub Association under this Declaration or its Organizational Documents.

SECTION 8.08. EASEMENT AND RIGHT OF ENTRY FOR REPAIR, MAINTENANCE AND RECONSTRUCTION. Each Owner of a Lot shall have shall

have a perpetual access easement over the adjoining Lots and/or Sub Association Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of the Townhome on such Owner's Lot. Such repair, maintenance or reconstruction shall be done expeditiously, in good and workmanlike manner and in compliance with all applicable laws, ordinances and regulations, and upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

SECTION 8.09. ACCESS EASEMENT. Each Owner shall have the right to ingress and egress over, upon and across the Sub Association Common Area as necessary for access to his Lot and shall have the right to lateral support for his Lot.

SECTION 8.10. EASEMENT RESERVED BY DECLARANT FOR DEVELOPMENT. Until twenty (20) years from the date of this recording, notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns including, but not limited to Persons constructing dwellings and other Improvements on the Sub Association Common Area or Lots, a nonexclusive, right, privilege and easement over, under, in, and/or on the Sub Association Common Area, without obligation and without charge, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Property, including but not limited to construction of the Amenities and installation of utilities. The reserved easement shall constitute a burden on the title to the Property and specifically includes, but is not limited to:

- A. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on and through the Sub Association Common Area; and the right to construct the Amenities; and the right to tie into any portion of the Property with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities, constructed or installed in, on, under, and/or over the Property any damage caused by the exercise of such rights shall be repaired and the damaged property shall be restored to as near the same condition, as reasonable and practical, as that which existed prior to the exercise of such rights;
- B. The right to construct, install, replace, relocate, maintain, authorize, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, desirable, or incidental to the construction and sale of residences on the Lots;
- C. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any portion of the Property, including, without

limitation, Lots or Sub Association Common Areas conveyed to the Sub Association, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto; and

- D. This section may not be amended without the written consent of Declarant.

SECTION 8.11. DRAINAGE. The Declarant reserves for itself and its assignees and designees, including but not limited to the Sub Association and any Builder, the right and easement to enter upon any Lot or the Sub Association Common Area for the purpose of altering the flow of surface water in, on or across such Lot or Sub Association Common Area in order to correct surface water drainage problems existing on any Lot or the Sub Association Common Area and for the purpose of installing, repairing, replacing and maintaining Stormwater Control Measures. Any alterations made pursuant to the foregoing easement shall not unreasonably interfere with the Owner's use and enjoyment of his Lot. Declarant hereby agrees that in exercising the rights reserved above, all debris, materials, excess soil and rock from an affected Lot shall be removed, all excavations shall be filled, all topsoil and grass on all disturbed earth shall be replaced and reseeded. Declarant may give its written consent to an Owner to alter the flow of surface water in, on or across such Owner's Lot in order to correct surface water drainage problems existing on such Lot; provided, however, that the Declarant during the period of the Class B membership, and thereafter the Board of Directors must give its written approval to the Owner's plan to alter the flow of surface water on such Owner's Lot.

ARTICLE 9 – ADDITIONS TO THE PROPERTIES

SECTION 9.01. BY DECLARANT.

- (A) Declarant may cause Additional Property (including Sub Association Common Areas), including without limitation all or a portion of the Additional Property described on Exhibit B attached hereto, to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the office of the Register of Deeds of Wake County, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Any such Supplemental Declaration need only be executed by Declarant and the owner of the Additional Property being subjected to this Declaration, and shall not require the execution, joinder, or consent of any other party whatsoever. The rights set forth in this subsection (A) may be exercised by Declarant at any time and from time to time until December 31, 2027.

- (B) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein and may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property.
- (C) 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 Supplemental Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Properties.

ARTICLE 10 - RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 10.01. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan Sub Associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 10.02. OBLIGATION OF SUB ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights, upon following written request to the Sub Association:

- A. To inspect the books and records of the Sub Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Sub Association prepared by an accountant designated by the Board of Directors of the Sub Association, such financial statement or report to be furnished by May 15th of each calendar year;
- B. To be given notice by the Sub Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions, the Organizational Documents of the Sub Association or of any proposed abandonment or termination of the Sub Association or the effectuation of any decision to terminate professional management of the Sub Association and assume self management by the Sub Association;
- C. To receive notice of any condemnation or casualty loss affecting the Sub Association Common Area or any portion thereof;

- D. To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Sub Association;
- E. To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Sub Association Common Area, other than those specific rights vested in the Sub Association under Article II hereof; and
- F. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such institutional Lender, or to the place which it may designate in writing.

SECTION 10.03. REQUIREMENTS OF INSTITUTIONAL LENDER.

Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Sub Association by certified mail at the address of the Sub Association's registered agent identifying the Lot or Lots upon which any such Institutional Lender holds any first mortgage together with sufficient pertinent facts to identify such mortgage, or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Sub Association to such Institutional Lender.

ARTICLE 11 - GENERAL PROVISIONS

SECTION 11.01. UTILITY CHARGES. The Declarant reserves the right to subject a Lot (prior to the conveyance of such Lot to a third party) and any other portion of the Property, to contracts with public utility companies for the installation of underground utility service and the installation of street lighting. Declarant further reserves the right to connect to each Lot necessary water and sewer service which may require a continuous monthly charge to the Owner of the Lot. Upon acceptance of a deed to the Lot each Owner agrees to pay said continuing monthly charges, if any.

SECTION 11.02. ENFORCEMENT. The Sub Association and each Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration and the Organizational Documents. Failure by the Sub Association or by any Owner to enforce any such restriction, condition, covenant, reservation, lien or charge shall in no event be deemed a waiver of the right to enforce any such restriction, condition, covenant, reservation, lien or charge at any other time or in connection with the same or any other event, nor shall it be deemed a waiver of the right to request that law enforcement, public safety and animal control officers come on the Property to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

SECTION 11.03. INSURANCE. The Sub Association shall have the duty and the authority to maintain fire and extended coverage casualty insurance on the Sub Association Common Areas and on the Townhomes in an amount not less than the full insurable value thereof (based upon current replacement cost), and liability insurance regarding the Sub Association Common Areas with limits in and amounts adequate, under standards in the insurance industry existing from time to time, to protect the Sub Association and the Owners in the event of property damage, personal injury or death occurring in or about the Property. The Board shall have the authority to settle or enforce on behalf of the Sub Association and on behalf of the Owners, by legal action or otherwise, any claim arising under any insurance carried by the Sub Association. Subject to the Sub Association's obligation to maintain casualty insurance on the Townhomes as described above, each Owner of a Lot shall maintain casualty and personal liability insurance pertaining to his Lot or such dwelling such form and in such amounts as is customarily required by mortgage lenders. All policies of insurance carried by the Sub Association or the Owners shall include a waiver of subrogation if such waiver can be obtained.

The proceeds of casualty insurance carried by the Sub Association shall be paid to and held by the Sub Association as trustee for the Owners, Declarant and Mortgagees for disbursement in accordance with the provisions of this Declaration. Except as otherwise provided herein, casualty insurance proceeds shall be used for repair, replacement or reconstruction to the extent required to effectuate repair, replacement or reconstruction.

The Board of Directors shall also procure and maintain public liability and property damage insurance, insuring: each member of the Board of Directors; the manager, if any; and the Sub Association against any liability to the public or to the Owners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use of the Sub Association Common Areas, or such other areas for which the Sub Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board of Directors, but in no event shall it be less than \$1,000,000.00 per occurrence with regard to the Sub Association and each individual director.

There shall also be obtained such other insurance coverage as the Board of Directors shall determine from time to time to be desirable and necessary. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Sub Association and the Board of Directors as a Common Expense of the Sub Association.

SECTION 11.04. FIDELITY BONDS. The Sub Association shall maintain blanket fidelity bonds or other similar insurance coverage for all officers, directors, trustees and employees of the Sub Association and for all other persons handling or responsible for funds of or administered by the Sub Association. Where the Sub Association has delegated some or all of the responsibility for the handling of funds to a management agent, fidelity bonds or other similar insurance coverage shall be required

for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Sub Association.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Sub Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three months' aggregate assessments on all Lots plus reserve funds.

Fidelity bonds required herein shall:

- A. name the Sub Association as an obligee;
- B. contain waivers by the issuers of the fidelity bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and
- C. to the extent available without the payment of an additional premium, provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days prior written notice to the Sub Association, to any such agent as the Sub Association shall designate to negotiate settlement of insurance claims on behalf of the Sub Association, and to any institutional lender servicing on behalf of the Federal National Mortgage Association any loan secured by any Lot.

The premiums on all such fidelity bonds for the Sub Association (including premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Sub Association as a Common Expense.

Notwithstanding anything to the contrary, in lieu of fidelity bonds, insurance providing similar coverage or protection may be provided and references to "fidelity bonds" shall include such insurance.

SECTION 11.05. AMENDMENTS. During any period in which a two-class voting structure is in effect, Declarant may amend this Declaration without the approval of any Owner or Mortgagee provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or the Sub Association Common Area as set forth in this Declaration and the amendment does not adversely affect the title to any Lot.

Also, notwithstanding anything contained herein to the contrary, Declarant may amend this Declaration without the approval of any Owner or Mortgagee in order to address and incorporate herein the applicable requirements of the Federal National Mortgage Association, Government National Mortgage Association, Veterans' Administration, Department of Housing and Urban Development and/or Federal Home Loan Mortgage Corporation, as applicable; and should the Federal National Mortgage

Association, Government National Mortgage Association, Veterans' Administration, Department of Housing and Urban Development and/or Federal Home Loan Mortgage Corporation, as applicable, subsequently delete any of their respective requirements which necessitate certain provisions of this Declaration or make such requirements less stringent, Declarant, without approval of the Owners or any Mortgagees, may cause an amendment to this Declaration to be recorded to reflect such changes.

Any other amendments of this Declaration shall require (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the votes of the Members of the Sub Association as such classes are set forth in this Declaration; or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the votes of the Members; provided, however, that the percentage of the votes necessary to amend a specific provision of this Declaration (as may be set forth in other sections of this Declaration) shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that specific provision; provided further, such amendment shall require the prior written consent of HUD and VA, if at the time of such amendment the Class B membership exists and HUD or VA are insurers or guarantors of any loan secured by a Mortgage.

Any instrument amending this Declaration must be recorded in the official records of Wake County. Any such amendment shall be effective upon the date of recordation. Declarant and the Sub Association are authorized to execute and record any such amendment on behalf of the Members and/or Mortgagees, as applicable, once the requisite consents of said Members and/or Mortgagees to such amendment have been obtained.

SECTION 11.06. VA/HUD APPROVAL. As long as there is a Class B membership, the following actions may require prior approval of the VA and/or HUD: mergers, consolidations and dissolution of the Sub Association, mortgaging of Sub Association Common Areas, withdrawal of or dedication of or other transfer of Sub Association Common Areas to persons other than the Sub Association, and amendment of this Declaration.

SECTION 11.07. TOWN APPROVAL REQUIRED FOR CERTAIN AMENDMENTS. No amendment to the Declaration affecting Stormwater Control Measures shall be made without the prior written consent of the Town Attorney of the Town, if required.

SECTION 11.08. Intentionally Deleted.

SECTION 11.09. VOTING. Voting by Members of the Sub Association shall be in accordance with the applicable provisions set forth in the Sub Association's By-Laws.

SECTION 11.10. SEVERABILITY. Invalidity of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

SECTION 11.11. GENDER AND GRAMMAR. The singular, wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make provisions hereby apply to either corporations or individuals, man or woman, shall in all cases be assumed as though in each case fully expressed.

SECTION 11.12. LIABILITY EXEMPTIONS. In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to the Sub Association Common Area or the Lots or to their occupants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Sub Association, the Owners or their occupants. In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the Sub Association and Owners in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

SECTION 11.13. NOTICES. Notices shall be in writing and shall be addressed as follows: (i) if to an Owner: to the address of his Lot; (ii) if to Declarant, to Stonewater Cary, LLC, 1355 Greenwood Cliff, Suite 150 Charlotte, NC 28204; and (iii) if to the Sub Association, initially, to the address of Declarant. The Sub Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to the Sub Association. Any Owner may designate a different address for notices by giving written notice of such change to the Sub Association and to Declarant.

SECTION 11.14 DISPUTE RESOLUTION.

A. Consensus for Sub Association Action.

(1) Except as provided in this Section, the Sub Association may not commence a legal proceeding or an action under this Article without the approval of at least two-thirds of the Members. This Section shall not apply, however, to (i) actions brought by the Sub Association to enforce this Declaration or the Organizational Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Sub Association in proceedings instituted against it.

(2) Prior to the Sub Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any Improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

B. **Alternative Method for Resolving Disputes.** Declarant, its officers, directors, employees and agents; the Sub Association, its officers, directors and committee members; all Persons subject to this Declaration; any Builder, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 11.14(C) (collectively, "Claims") to the procedures set forth in Section 11.14(D).

C. **Claims.** Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (a) arising out of or relating to the interpretation, application or enforcement of the Declaration or the Organizational Documents or the rights, obligations and duties of any Bound Party under the Declaration or the Organizational Documents, (b) relating to the design or construction of Improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 11.14(D).

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 11.14 (D):

- (1) any suit by the Sub Association against any Bound Party to enforce the provisions of Article 4 (Covenant For Assessments);
- (2) any suit by the Sub Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Sub Association's ability to act under and enforce the provisions of Article 5 (Architectural Control and Building Restrictions), provisions of Article 6 (Maintenance) or Article 7 (Use Restrictions);
- (3) any suit between or among Owners, which does not include Declarant, a Builder or the Sub Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration or the Organizational Documents; and
- (4) any suit in which any indispensable party is not a Bound Party. With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 11.14 (D).

D. **Mandatory Procedures.**

(1) **Notice.** Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”) (the Claimant and the Respondent referred to herein being individually, as a “Party,” or, collectively, as the “Parties”) shall notify each Respondent in writing (the “Notice”), stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
- (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (c) the proposed remedy; and
- (d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(2) **Negotiation and Mediation.**

- (a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (b) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), Claimant shall have 30 days to submit the Claim to mediation under the auspices of the American Arbitration Sub Association (“AAA”) in accordance with the AAA’s Supplemental Mediation Procedures for Residential Construction.
- (c) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
- (d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the

mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 11.14 (D) and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 11.14 (D). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

(3) **Binding Arbitration.**

- (a) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Supplemental Arbitration Procedures for Residential Construction. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000.00, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.
- (b) Unless provided otherwise by AAA's Supplemental Arbitration Procedures for Residential Construction, each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).
- (c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or

results of any arbitration hereunder without the prior written consent of both parties.

E. **Amendment of Article.** Notwithstanding any other provision to the contrary, without the express prior written consent of Declarant, this Article may not be amended for a period of twenty years from the effective date of this Declaration.

SECTION 11.16. PROHIBITION AGAINST SUB ASSOCIATION ENTERING INTO LONG TERM CONTRACT WHILE DECLARANT IN CONTROL OF BOARD OF DIRECTORS. Any contract or agreement entered into by the Sub Association during any period of Class B membership shall be subject to the right of the Sub Association to terminate such contract or agreement, without cause, which is exercisable without penalty at any time upon not more than 180 days notice to the other party.

SECTION 11.17. CONFLICTS. In the case of any conflict between the Declaration and the Articles of Incorporation or By-Laws of the Sub Association, the Declaration shall control, and in the case of any conflict between the Articles of Incorporation and the Bylaws of the Sub Association, the Articles shall control.

SECTION 11.18. CONSENT OF MORTGAGEES. The Property is currently encumbered by the lien of a Deed of Trust, Assignment, Security Agreement and Fixture Filing (Future Advances) dated July __, 2009, executed and delivered by Declarant to Steven L. Kennedy, as initial trustee ("Primary Trustee") for Grosvenor Residential Holdings I LLC, a Delaware limited liability company, as recorded at Book 13656, Page 526 of the Wake County Public Registry ("Primary Deed of Trust"). The Property is also encumbered by the lien of a Deed of Trust dated August 1, 2009, executed and delivered by Declarant to Jeff Cargnel and Woodard E. Farmer, Jr., collectively as trustees ("Secondary Trustees") for NVR, Inc. (the "Secondary Beneficiary"), as recorded at Book 13656, Page 555 of the Wake County Public Registry ("Secondary Deed of Trust"). Consents of Mortgagee executed by Primary Beneficiary, Primary Trustee, Secondary Beneficiary and Secondary Trustees, consenting to the execution and recordation of this Declaration, are attached to and made a part of this Declaration.

SECTION 11.19. CONTROL BY DECLARANT. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Sub Association, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors and any officer or officers of the Sub Association until ninety (90) days after the first to occur of the following: (i) when seventy-five percent (75%) of the total number of Lots approved by the Town for the Property have been conveyed by Declarant or Builder to unrelated parties other than Builder, (ii) on December 31, 2030 or (iii) upon the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by Declarant (and which such amendment shall not require the approval of any Builder or Owner). Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Sub

Association pursuant to the provisions of this Section 11.09, such right shall automatically pass to the Owners, including, without limitation, Declarant and Builder if they then own one or more Lots; and a special meeting of the Sub Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Sub Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Sub Association as well as any agreements or contracts executed by or on behalf of the Sub Association as well as agreements or contracts executed by or on behalf of the Sub Association which may still be in effect or operation. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Sub Association as provided in this Section.

SECTION 11.20. CASUALTY. Restoration and repair of damage to any Lot and all improvements thereon (not to include, however, restoration, repair or replacement of any personal property) caused by any casualty event shall be made by and at the expense of the Sub Association. If damage occurs, the Sub Association shall promptly contract for the repair, restoration or reconstruction of the Common Area or improvements which have been damaged or destroyed and apply any proceeds of insurance as received toward cost of such repair, restoration or reconstruction. May be recovered by one or more special assessments levied by the Board against the Owners as provided herein.

[The rest of this page is intentionally left blank. Signature page to follow.]

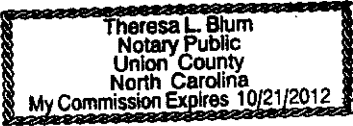
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

STONEWATER CARY, LLC, a
North Carolina limited liability company
By: [Signature]
Printed Name: J. Bart Hopper
Its: Manager

STATE OF NORTH CAROLINA
COUNTY OF UNION

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: J. Bart Hopper

Date: 6-29-10
[Signature]
Signature of Notary Public
Printed Name: TERESA L. BLUM
My commission expires: 10/21/2012



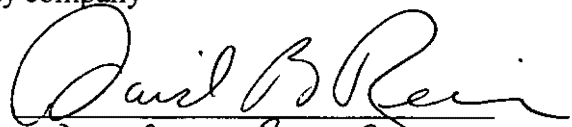
CONSENT OF MORTGAGEE

GROSVENOR RESIDENTIAL HOLDINGS I LLC, a Delaware limited liability company ("Mortgagee"), owner and holder of a note secured by that certain Deed of Trust, Assignment, Security Agreement and Fixture Filing (Future Advance) recorded on August 6, 2009 in Book 13656 at Page 526 in the Wake County Public Registry ("Deed of Trust") and Steven L. Kennedy, Initial Trustee under said Deed of Trust ("Trustee"), hereby agree that they have consented to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions for The Townes at Stonewater (hereinafter called the "Declaration"); that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish this Declaration but shall merely vest in Mortgagee the rights and duties set forth herein, provided, however, that should Mortgagee acquire title to the property secured by this Deed of Trust, any liability Mortgagee shall have for the duties set forth in the Declaration shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the Declaration shall be entitled to the full rights and easements to the extent the same are granted herein; and that upon payment of the loan secured by the Deed of Trust, the rights of Mortgagee and Trustee (or such successor trustees as permitted by the Deed of Trust) set forth in this Declaration shall terminate.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 25th day of June, 2010.

MORTGAGEE:

GROSVENOR RESIDENTIAL
HOLDINGS I LLC, a Delaware limited
liability company

By: 
Name: David B. Reiner
Title: Vice President

TRUSTEE:

Name: Steven L. Kennedy

STATE OF DISTRICT OF COLUMBIA

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: David B. Reiner, Vice President

Date: June 25, 2010

Nina C. Latimer
Official Signature of notary

[NOTARY SEAL]

NINA C. LATIMER
Notary's printed or typed name, Notary
Public
Nina C. Latimer
Notary Public, District of Columbia
My Commission Expires 2/14/2014

STATE OF _____

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____.

Date: _____

Official Signature of notary

[NOTARY SEAL]

Notary's printed or typed name, Notary
Public

CONSENT OF MORTGAGEE

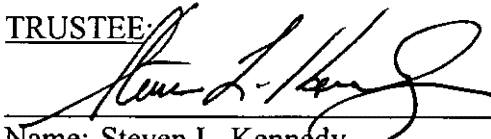
GROSVENOR RESIDENTIAL HOLDINGS I LLC, a Delaware limited liability company ("Mortgagee"), owner and holder of a note secured by that certain Deed of Trust, Assignment, Security Agreement and Fixture Filing (Future Advance) recorded on August 6, 2009 in Book 13656 at Page 526 in the Wake County Public Registry ("Deed of Trust") and Steven L. Kennedy, Initial Trustee under said Deed of Trust ("Trustee"), hereby agree that they have consented to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions for The Townes at Stonewater (hereinafter called the "Declaration"); that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish this Declaration but shall merely vest in Mortgagee the rights and duties set forth herein, provided, however, that should Mortgagee acquire title to the property secured by this Deed of Trust, any liability Mortgagee shall have for the duties set forth in the Declaration shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the Declaration shall be entitled to the full rights and easements to the extent the same are granted herein; and that upon payment of the loan secured by the Deed of Trust, the rights of Mortgagee and Trustee (or such successor trustees as permitted by the Deed of Trust) set forth in this Declaration shall terminate.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 25th day of June, 2010.

MORTGAGEE:

GROSVENOR RESIDENTIAL
HOLDINGS I LLC, a Delaware limited
liability company

By: _____
Name: _____
Title: _____

TRUSTEE:

Name: Steven L. Kennedy

STATE OF _____

COUNTY OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____.

Date: _____

[NOTARY SEAL]

Official Signature of notary

Notary's printed or typed name, Notary
Public

STATE OF GEORGIA

COUNTY OF FULTON

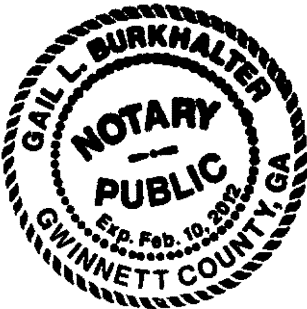
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Steven L. Kennedy.

Date: June 25, 2010

[NOTARY SEAL]

Gail L. Burkhalter
Official Signature of notary

Gail L. Burkhalter
Notary's printed or typed name, Notary
Public



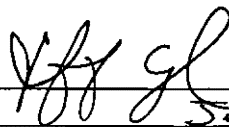
CONSENT OF MORTGAGEE

NVR, INC., a Delaware limited liability company ("Mortgagee"), the beneficiary under that certain Deed of Trust recorded on August 6, 2009 in Book 13656 at Page 555 in the Wake County Public Registry ("Deed of Trust") and Jeff Cargnel and Woodard E. Farmer, Jr., Trustees under said Deed of Trust (whether one or more hereinafter referred to as "Trustee") either of whom may act alone, hereby agree that they have consented to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions for The Townes at Stonewater (hereinafter called the "Declaration"); that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish this Declaration but shall merely vest in Mortgagee the rights and duties set forth herein, provided, however, that should Mortgagee acquire title to the property secured by this Deed of Trust, any liability Mortgagee shall have for the duties set forth in the Declaration shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the Declaration shall be entitled to the full rights and easements to the extent the same are granted herein; and that upon payment of the loan secured by the Deed of Trust, the rights of Mortgagee and Trustee (or such successor trustee as permitted by the Deed of Trust) set forth in this Declaration shall terminate.

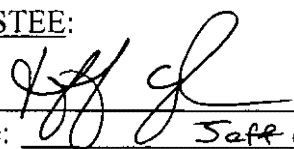
IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 22 day of MAY, 2010.

MORTGAGEE:

NVR, INC, a Virginia corporation

By: 
Name: Jeff Cargnel
Title: VP

TRUSTEE:


Name: Jeff Cargnel

STATE OF North Carolina

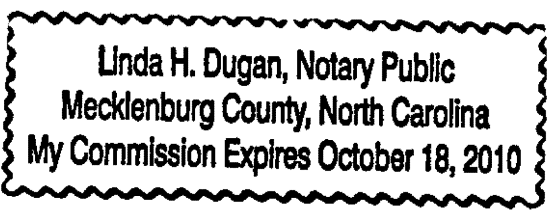
COUNTY OF Mecklenburg

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: VP

Date: 3/22/10

Linda H. Dugan
Official Signature of notary

[NOTARY SEAL]



LINDA H. DUGAN
Notary's printed or typed name, Notary Public

STATE OF North Carolina

COUNTY OF Mecklenburg

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: TRUSTEE

Date: 03/22/10

Linda H. Dugan
Official Signature of notary

LINDA H. DUGAN
Notary's printed or typed name, Notary Public

[NOTARY SEAL]

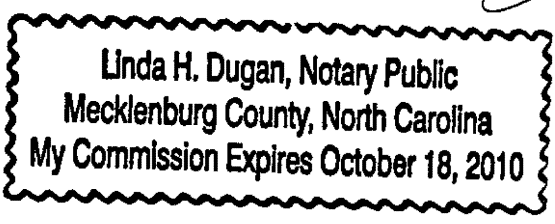


Exhibit A

Property Initially Submitted

Being all of **Block 1 (Lots 1 – 6), Block 5 (Lots 21-27), Block 6 (Lots 28-33), Block 7 (Lots 34-40), Block 17 (Lots 90-95), C.O.S #1 containing 6.12 acres, C.O.S #1 containing 4.22 acres, C.O.S. #2 containing 1.44 acres, and C.O.S. #3 containing 1.68 acres** as shown on Subdivision Plat of The Townes at Stonewater Subdivision, Blocks 1, 5, 6, 7 and 17 (Stonewater MF-2), recorded in Book of Maps 2010 at Pages 434 – 437 in the Wake County, North Carolina, Public Registry.

Exhibit B

Reserved

**WAKE COUNTY
REGISTER OF DEEDS
ADDED FOR SCANNING
PURPOSES ONLY**

Exhibit D
BYLAWS
OF
THE TOWNES AT STONEWATER SUB ASSOCIATION, INC.

ARTICLE 1

Section 1.1 Name. The name of the non-profit corporation is THE TOWNES AT STONEWATER SUB ASSOCIATION, INC. (hereinafter referred to as the "Association").

Section 1.2 Location. The principal office of the Association shall initially be located in Mecklenburg County, North Carolina at 1355 Greenwood Cliff, Suite 150, Charlotte, North Carolina 28204. The registered office of the Association may be, but need not be, identical with the principal office.

ARTICLE 2

DEFINITIONS

All capitalized terms, when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for The Townes at StoneWater executed by Stonewater Cary, LLC, and duly recorded in the Office of Register of Deeds of Wake County, North Carolina (as supplemented and amended from time to time, the "Declaration").

ARTICLE 3

MEETINGS OF MEMBERS

Section 3.1 Annual Meetings. The first annual meeting of the Members shall be held on a date determined by a vote of the Board of Directors, and each subsequent regular annual meeting of the Members shall be held on the anniversary date of the first annual meeting thereafter, at the hour of 7:00 o'clock, p.m. If the day for the annual meeting of the Members is on the weekend or on a legal holiday, the meeting will be held at the same hour on the first day following which is not on the weekend or on a legal holiday.

Section 3.2 Special Meetings. Special meetings of the Members may be called

at any time by the President of the Association, by the Board of Directors, or upon the written request of the Members who are entitled to vote at least ten percent (10%) of all of the votes appurtenant to the Lots.

Section 3.3 Place of Meetings. All meetings of the Members shall be held at such place within Mecklenburg County or Wake County, North Carolina as shall be determined by the Board of Directors.

Section 3.4 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of the Secretary of the Association or other person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote at such meeting, 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. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.5 Classes of Lots and Voting Rights. The Sub Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be all Owners of Lots with the exception of the Class B Members, if any. Class A Members shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be a Class A Member upon the termination of Class B Membership.

(b) Class B. The Class B Members shall be (i) the Declarant and its assigns and (ii) any Builder (i.e., any person or firm in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale on the Property). Builder shall be entitled to three (3) votes for each Lot owned by Builder. Declarant shall be entitled to ten (10) votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership upon the occurrence of any of the following events, whichever occurs first:

(1) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (2) below, but in any event the Class B membership shall terminate when 75% of the Lots have been deeded to Owners other than Declarant or Builder; or

(2) Until twenty (20) years from recording of the Declaration; or

(3) Upon the surrender of the Class B membership by the

Declarant.

Section 3.6 Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not commence until the first assessment against that interest has been levied by the Association as provided in Article 3 of the Declaration; provided, however, that voting rights shall immediately commence with respect to amendments to the Declaration pursuant to Section 11.05 of the Declaration.

Section 3.7 Declarant's and Builder's Voting Rights. If and to the extent applicable, no requirement for the approval of a prescribed majority of the Voting Power of Members of the Association other than Declarant or Builder for action to be taken by the Association is intended to preclude Declarant or Builder from casting votes attributable to Lots owned by Declarant or Builder.

Section 3.8 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, sixty-seven percent (67%) of the votes in the Sub Association shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned by a majority vote of those present in person or by proxy and the required quorum at the next meeting shall be reduced by one-half of the required quorum for the previously adjourned meeting as provided in the Planned Community Act. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.9 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 of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance of the applicable Member's Lot.

Section 3.10 Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a vote of a majority of all votes entitled to be cast by all classes of Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be regarded as the act of the Members. Notwithstanding any term or provision herein, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by all classes of Members shall be required in order for the Sub Association to (1) file a complaint on account of an act or omission of Declarant with any governmental agency which has regulatory or judicial authority over the Project or any part thereof, or (2) assert a claim against or sue Declarant.

Section 3.11 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by such Member of the time and place thereof except where such Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all of the Members are present at any meeting of the Members, no notice shall be required and any business may

be transacted at such meeting.

Section 3.13. 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, shall be 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 Association's minute book.

ARTICLE 4

BOARD OF DIRECTORS

Section 4.1 Number. The business and affairs of the Association shall be managed by a Board of three (3) directors, who shall be appointed by Declarant until the expiration of Declarant's right to appoint and remove directors and officers of the corporation, all in accordance with Section 4.2 of these Bylaws.

Section 4.2 Control by Declarant. Notwithstanding any other language or provision to the contrary in these Bylaws, in the Declaration or in the Articles of Incorporation, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first to occur of the following: (i) when seventy-five percent (75%) of the total number of Lots approved by the Town for the Property have been conveyed by Declarant or Builder to unrelated parties other than Builder, (ii) on December 31, 2030 or (iii) upon the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to the Declaration executed and recorded by Declarant (and which such amendment shall not require the approval of any Builder or Owner). Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Sub Association pursuant to the provisions of Section 11.19 of the Declaration, such right shall automatically pass to the Owners, including, without limitation, Declarant and Builder if they then own one or more Lots; and a special meeting of the Sub Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Sub Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Sub Association as well as any agreements or contracts executed by or on behalf of the Sub Association which may still be in effect or operation. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Sub Association as provided in this Section 4.2.

Section 4.3 Initial Directors. The initial Board of Directors shall be appointed by Declarant in accordance with Section 4.2 herein. The names of the persons who shall serve on the initial Board of Directors are as follows:

<u>Name</u>	<u>Address</u>
J. Bart Hopper	1355 Greenwood Cliff, Suite 150, Charlotte, North Carolina 28204
Clay McCullough	1355 Greenwood Cliff, Suite 150, Charlotte, North Carolina 28204
Jack Thomas	1355 Greenwood Cliff, Suite 150, Charlotte, North Carolina 28204

Section 4.4 Nomination. Subject to Sections 4.1 and 4.2, nominations for the first election of the Board of Directors (after the expiration of Declarant’s right to appoint and remove directors in accordance with Section 4.2 of these Bylaws) and every election thereafter shall be made from the floor at a meeting of the Members.

Section 4.5 Election. Except as otherwise provided herein, and except during the period of Declarant’s right to appoint and remove directors in accordance with Section 4.2 of these Bylaws, the Board of Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation, these Bylaws and the Declaration. Subject to the terms of this Article 4, the persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4.6 Term of Office. Each director shall hold office for the term for which such director was elected, or until his death resignation, retirement, removal, disqualification or until his successor is elected and qualified. Subject to Sections 4.1 and 4.2, at the first election of directors by the Members following the expiration of the Declarant’s right to appoint and remove directors, the Members shall elect one (1) Lot Owner as a member of the Board of Directors for a term of three (3) years, who shall be the Lot Owner receiving the largest number of votes. The Members shall also elect one (1) Lot Owner as a member of the Board of Directors for a term of two (2) years, who shall be the Lot Owner receiving the second largest number of votes. Finally, the Members shall elect one (1) Lot Owner as a member of the Board of Directors for a term of one (1) year, who shall be the Owner receiving the next largest number of votes. At all annual elections thereafter, director(s) shall be elected for three (3) year term(s) to succeed any director(s) whose terms then expire(s). Nothing herein contained shall be construed to prevent the election of a director to succeed himself. Votes shall be tallied at the meeting where they are so cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting.

Section 4.7 Removal. Subject to Sections 4.1 and 4.2, following the expiration of the period of Declarant’s right to appoint and remove directors, any director may be removed from the Board, with or without cause, by the same percentage vote of the Members of the Association as voted to elect such Board Member. In the event of death,

resignation or removal of a director, such director's successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. The Members may elect a director at any time, following the expiration of the period of Declarant's right to appoint and remove directors, to fill any vacancy not filled by the remaining members of the Board. Should any Board member miss more than three (3) Board meetings in any calendar year, the majority of the Board may remove such Board member and appoint a replacement Board member until the next meeting of the Members to elect Board members.

Section 4.8 Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

ARTICLE 5

MEETINGS OF DIRECTORS

Section 5.1 Regular Meetings. Meetings of the Board of Directors shall be held on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon the weekend or a legal holiday, then that meeting shall be held at the same time on the next business day which is not on the weekend or on a legal holiday.

Section 5.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 5.3 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 5.4 Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.5 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 Presidency, a Chairman shall be elected by the Board of Directors and serve until a new President is elected.

Section 5.6 Liability of the Board. The members of the Board of Directors shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise

except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are Owner(s).

ARTICLE 6

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1 Powers. The Board of Directors, for the benefit of the Members, shall have the following specific powers and rights (without limitation of other powers and rights the Board may have):

- (a) To adopt and publish rules and regulations governing the use of the Common Area and facilities, including, but not limited to, the Recreational Common Area, and the personal conduct of the Members and their families, guests and invitees thereon, and to establish penalties for the infraction thereof;
- (b) To suspend any Member's voting rights and right to use the Common Area during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended (after notice and hearing) for a period not to exceed ninety (90) days for infraction of published rules and regulations;
- (c) To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- (d) To 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;
- (e) To employ managers, independent contractors, or such other employees as they deem necessary, and prescribe their duties;
- (f) To grant all necessary easements and rights-of-way upon, over, under and across the Common Area when it deems such action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sanitary sewer and other utilities or drainage facilities; provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;

(g) To appoint and remove 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;

(h) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Area;

(i) To retain the services of legal, accounting and other professional firms;

(j) To employ or retain the services of architects or other qualified persons to serve on or advise the Architectural Review Committee;

(k) To maintain contingency reserves for the purposes set forth in the Declaration;

(l) To enforce the provisions of the Declaration and any Supplemental Declaration and any rules or regulations made hereunder or thereunder;

(m) To levy assessments as more particularly set forth in the Declaration; and

(n) To take any and all other actions, and to enter into any and all other agreements, as may be necessary for the fulfillment of its obligations under the Declaration or these Bylaws.

Section 6.2 Duties. The Board, for the benefit of the Members, shall have the following specific duties (without limitation of other duties the Board may have):

(a) To maintain current copies of the Declaration, these Bylaws, the rules and regulations concerning the Project, as well as Association books, records and financial statements, available for inspection upon reasonable notice and during normal business hours by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots;

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

(c) As more fully provided in the Declaration:

(1) To fix the amount of the assessments;

(2) To send written notice of each assessment to every Owner subject thereto before its due date; and

(3) At the Board’s discretion, to foreclose the lien against any Lot for which assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same;

(d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. (If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.);

(e) To procure and maintain adequate liability insurance covering the Association and the directors and officers thereof and adequate hazard insurance on the property owned by the Association, all in accordance with the Declaration;

(f) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, all in accordance with the Declaration;

(g) To maintain or cause to be maintained the Common Area (including the upkeep and maintenance of associated utilities, facilities and improvements utilized therefor) and perform or cause to be performed all other maintenance responsibilities of the Association under the terms of the Declaration in accordance with Article 6 of the Declaration;

ARTICLE 7

OFFICERS AND THEIR DUTIES

Section 7.1 Officers. The officers of the Association shall be a President, a Vice-President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create.

Section 7.2 Election of Officers. Subject to Section 4.2 herein, the election of officers (after the expiration of Declarant’s right to appoint and remove officers in accordance with Section 4.2 of these Bylaws), shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 7.3 Term. Following the expiration of Declarant’s right to appoint and remove officers in accordance with Section 4.2 herein, each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 7.4 Special Appointments. Following the expiration of the Declarant’s right to appoint and remove officers in accordance with Section 4.2 herein, 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 7.5 Resignation and Removal. Following the expiration of the Declarant's right to appoint and remove officers in accordance with Section 4.2 herein, 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 7.6 Vacancies. Following the expiration of the Declarant's right to appoint and remove officers in accordance with Section 4.2 herein, a vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the-remainder of the term of the officer he replaces.

Section 7.7 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 7.4.

Section 7.8 Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 7.9 Duties. The duties of the officers are as follows:

President

(a) The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

Vice-President

(b) 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.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the members of the Association together with their addresses; and shall perform such other duties as required by the Board.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account; shall cause an audit of the Association books to be made by a public accountant at the completion of each fiscal year, if the Board shall so elect or if a majority of the Members vote to require such audit, and shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at their regular annual meeting.

ARTICLE 8

COMMITTEES

The Board shall appoint committees as deemed appropriate in carrying out its purpose.

ARTICLE 9

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, upon reasonable notice and during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and these Bylaws shall be available for inspection by any member at the principal office of the Association.

ARTICLE 10

ASSESSMENTS

As more particularly described in, and subject in all respects to, the Declaration, each Member is obligated to pay to the Association assessments. Any assessments which are not paid when due shall be delinquent. If an assessment is not paid by its due date as set forth in the Declaration, the assessment shall bear interest as provided therein. Any late charges, costs of collection and reasonable attorneys' fees related to any such delinquent assessment may be added to the amount of such assessment. No Member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Property.

ARTICLE 11

AMENDMENTS

Section 11.1 Subject to the limitations hereinafter contained, the Articles of

Incorporation and/or these Bylaws may be amended or modified at any time by a vote of no less than sixty-seven percent (67%) or more of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if sixty-seven percent (67%) or more of all votes entitled to be cast by the Members cannot be obtained at such a meeting, then the Articles of Incorporation and/or these Bylaws may be amended by obtaining the vote of sixty-seven percent (67%) or more of all votes present at a duly held meeting of the Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Members holding a sufficient number of votes to comprise, along with such voting Members, sixty-seven percent (67%) or more of all votes entitled to be cast by the Members. Further provided, that any amendment or modification to the Articles of Incorporation and/or these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Further provided, the U.S. Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") shall consent to such amendment, if at the time of such amendment HUD and VA are insurers or guarantors of any loan secured by a mortgage on any portion of the property and a Class B Membership exists. In addition, Declarant, without obtaining the approval of any other Member, any other Owner or Owners or HUD or the VA, may make amendments or modifications to the Articles of Incorporation and/or these Bylaws which either: (a) are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein or therein or (b) apply only to the portions of the Property then owned by Declarant. Any amendment or modification effected pursuant to this Section 11.1, in lieu of being executed by all the Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Members, as provided in this Section 11.1. No such modification or amendment of the Articles of Incorporation shall be effective until filed of record in the Office of the North Carolina Secretary of State.

Notwithstanding anything in this Section 11.1 to the contrary, Declarant may at its option amend the Articles of Incorporation and/or these Bylaws without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause these Bylaws or the Articles of Incorporation to comply with the requirements of the FHA, VA, Federal National Mortgage Association or any other governmental agency.

Section 11.2 In the case of any conflict between the Articles of Incorporation and these Bylaws, the Bylaws shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE 12

MISCELLANEOUS

The fiscal year of the Association shall be the calendar year and 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.

ARTICLE 13

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 or she 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.

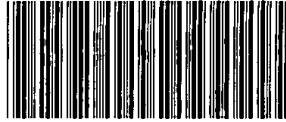
The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of

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 13, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

[END OF BYLAWS]



BOOK:013990 PAGE:02129 - 02189

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



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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages **JP** 22.004-1/20/06