Prepared by and
Return to Alison R. Cayton of Manning, Fulton & Skinner, P.A.

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PRESENTED FOR REGISTRATION
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KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

COVENANTS, CONDITIONS AND RESTRICTIONS FOR CROSS GATE SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by Bent Tree Limited Liability Company, a North Carolina limited liability company, with its principal place of business in Wake County, North Carolina hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in County of Wake, State of North Carolina, which is more particularly described as follows:
ALL of that property shown on Exhibit A attached hereto, the description of which is incorporated herein by reference.

WHEREAS, it is the intent of the Declarant hereby to cause such land to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

SECTION 1. "Association" shall mean and refer to Cross Gate Community Association, Inc., its successors and assigns.

SECTION 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 3. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

Declarant reserves the right, in its sole discretion, to convey from time to time additional property to the Association, which property may include all or any portion of the Properties, including any additional land annexed by Declarant pursuant to Article IX, Section 4 hereof and the Association shall accept any such conveyance

of additional property and thereafter such additional property shall be held and maintained by the Association as Common Area. Improvements, which may include, but shall not be limited to, roadways, retention or detention ponds or erosion control devices, a swimming pool, clubhouse, tennis courts, and playground may be located on such additional Common Area.

Declarant does contemplate the construction of a swimming pool, tennis courts and a clubhouse within the Common Area.

SECTION 5. "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association .

SECTION 6. "Declarant" shall mean and refer to Bent Tree Limited Liability Company, a North Carolina limited liability company, as well as its successors and assigns, if Declarant shall make an express conveyance of its rights as developer hereunder to such successor or assign.

SECTION 7. "Lot" shall mean and refer to any separately numbered plot of land shown upon any now or subsequently recorded subdivision map of the Properties with the exception of Common Area. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to thereby create additional Lots, eliminate existing Lots or create additional Common Area. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

SECTION 8. "Family Dwelling Unit" shall mean and refer to any improved property or any property formally classified as a Lot for which a Certificate of Occupancy has been issued by the appropriate governmental authorities, which property is located within the Properties and intended for use as a single-family dwelling.

ARTICLE II
PROPERTY RIGHTS

SECTION 1. OWNERS EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights of an Owner for

any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members.

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area ;

(e) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities thereon; and

(f) the right of the Association to convey portions of Common Area to the Declarant or to any owner for the purpose of eliminating unintentional conveyances of Common Areas or unintentional encroachments of improvements onto portions of the Common Areas or for the purpose of enhancing the utility of the Common Areas to be retained by the Association or for the purpose of correcting any setback violations or encroachments of any improvements located on any Lot.

SECTION 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

SECTION 3. LEASES OF LOTS. Any Lease Agreement between an Owner and a lessee for the lease of such Owner's Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and By-Laws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. All leases of Lots shall be in writing. Other than the foregoing there is no restriction on the right of any Owner to lease his Lot.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

SECTION 1. The voting Members of the Association shall be the Class A Members and the Class B Members defined below.

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

Class A. The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, except Declarant during the period Declarant is a Class B Member as defined below. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation. Such membership shall be appurtenant to and may not

be separated from ownership of any Lot which is subject to assessment by the Association. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. Provided however, Class A Members shall not have a vote until such time as the Class B membership shall cease as provided herein.

Class B. The Class B Member shall be the Declarant and Declarant shall be entitled to five (5) votes for each lot as may be developed within the Properties under applicable Wake County zoning ordinances and regulations, as they may be amended from time to time, if fully developed to maximum density under such ordinances and regulations. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; however, the Class B membership shall be reinstated if thereafter, additions are made to the Properties sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to five (5) votes for each lot owned) to exceed those of the Class A membership; or,

(ii) Ten (10) years from the date this Declaration is recorded in the Office of the Register of Deeds, Wake County, North Carolina.

ARTICLE IV
COVENANT FOR MAINTENANCE AND ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay: (a) to the Association: (i) annual assessments or charges; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Area; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six (6) months. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. PURPOSE OF ASSESSMENTS.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements and additions, the cost of maintenance and expansion of the pool, tennis courts, playground, clubhouse, and any other recreational facilities owned by the Association, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area; the maintenance of water and sewer mains in and upon the Common Area; the maintenance of open spaces and streets which have not been accepted for dedication to a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way within the Properties), drives and parking areas within the Common Area; the procurement and maintenance of insurance in accordance with the By-Laws; the maintenance of dams and ponds or other bodies of water, if any, located within the Common Area; the maintenance of entrance ways, landscaping and lighting of Common Area, road medians and islands and entrance ways; the cost of operating, maintaining and repairing any street lights erected by the Association or the Declarant in the rights-of-way of streets (whether public or private) or in any other easement provided therefor within the Properties; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise.

(b) The Association shall establish and maintain a reserve fund which in its sole judgment is sufficient for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association 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 any Owner shall cease to be a member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the

Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

SECTION 3. MAXIMUM ANNUAL ASSESSMENT. Until December 31 of the year of the conveyance of the first Lot to an Owner, the maximum annual assessment shall be as set forth on Exhibit B attached hereto and incorporated herein by reference.

(a) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be automatically increased each year by the greater of the amount of ten percent (10%) of the maximum annual assessment of the previous year or a percentage equal to the percentage increase reflected by the U.S. city average, Consumer Price Index-United States (published by the U.S. Bureau of Labor Statistics, Washington, D.C., or such other index as may succeed the Consumer Price Index, for the twelve month period ending immediately preceding July 1. However, in no event, shall such increase be greater than twelve percent (12%) in any one year. In the event the Board of Directors of the Association, determines by majority vote, that the important and essential functions of the Association may be properly funded by an assessment less than the maximum regular annual assessment, the Association Board of Directors may do so, however they may not reduce the assessments below those set out on Exhibit B without the written consent of the Declarant while Declarant still owns lots, since the Declarant will be still engaged in the development of properties that are subject to the terms of this declaration. Any reduction of the maximum annual assessment for one (1) year shall not affect the right the levy an annual assessment equal to the maximum annual assessment in subsequent years.

(b) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of the Members entitled to cast at least two-thirds (2/3) of the votes of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Members entitled to cast at least two thirds (2/3) of the votes of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall

constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. WORKING CAPITAL FUND. At the time of closing of the sale of each Family Dwelling Unit from the builder to the third-party owner, a sum equal to at least two (2) months assessment for each Lot (based on the monthly portion of the maximum annual assessment in effect at the time of the sale) shall be collected from the third-party Owner and transferred to the Association to be held as a working capital fund. The purpose of said Fund is to insure that the Board of Directors of the Association will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the Fund shall not be considered advance payment of regular assessments.

SECTION 7. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments shall be fixed at a uniform rate for Lots within Cross Gate Subdivision as designated by the Declarant at the time of recording of plats. In no event shall the amount of annual or special assessment in Cross Gate Subdivision exceed the amount needed from the owners of Lots in Cross Gate Subdivision required to pay for maintenance or capital improvements for the subdivision. The assessments may be collected on a monthly, quarterly or annual basis.

SECTION 8. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the conveyance of the Lot from the Declarant to any builder. The annual assessments for any Family Dwelling Unit shall commence on the first day of the month following conveyance of the Lot from the builder to any third-party other than the Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall establish an annual budget and determine whether the annual assessments for the following year shall be less than the maximum regular annual assessment as provided in Section 3 of this Article IV. In the event the Board of Directors does not determine that the annual assessments shall be reduced, then the annual assessments shall be as provided in Section 3, Article IV. Upon adoption by the Board of the budget and annual assessments amount, the Board shall deliver copies of same to every Owner subject there to; provided, however, that failure to deliver a copy of the budget and annual assessments amount shall not affect the liability of Owners for assessments. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

SECTION 9. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The costs of any action the Association must take to obtain payment of any past due assessment, including reasonable attorney's fees, shall be added to the amount of the

assessment and paid by the Owner. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of Deeds of Trust, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

SECTION 10. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

SECTION 11. SUBORDINATION OF THE LIEN TO MORTGAGES. The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

SECTION 12. EXEMPT PROPERTY. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V
ARCHITECTURAL CONTROL

SECTION 1. PURPOSE. The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of certain objective standards relating to design, size and location of

dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of Properties and of technological advances and environmental values. In order to implement the purposes of these covenants, the Declarant shall establish and amend from time to time objective standards and guidelines, including, but not limited to, Architectural Standards and Construction Specifications, Uniform Sign Regulations, Uniform Mailbox Regulations, Landscape Guidelines, and Environmental Rules and Regulations as defined hereinafter, and which shall be binding on all Owners within the Properties.

SECTION 2. CONTROLS.

(a) No building, fence, or other structure shall be erected, placed, or altered, nor shall a building permit application for such improvement be made on any Lot in Properties until the proposed building location, specifications, exterior materials and color or finish, plot plan (showing the proposed location of such building or structure, drives, and parking areas, exterior shape, size and height) shall have been approved in writing by the Declarant, or by the Architectural Review Board of the Association if such review responsibility has been delegated to the Association by the Declarant. In addition, the Declarant may require prior written approval of a landscape plan. The Declarant further reserves the right to promulgate and amend from time to time architectural standards and construction specifications (hereinafter referred to as the "Architectural Standards and Construction Specifications") for specific neighborhoods and areas or for all Properties within the Properties and such Architectural Standards and Construction Specifications shall establish, define, and expressly limit those standards and specifications which will be approved in said neighborhoods and areas or within the Properties, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design, and construction technique. Refusal or approval of plans, location, exterior color or finish, or specifications may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant shall seem sufficient. No alteration in the exterior appearance of any building or structure, including exterior color or finish, shall be made without like prior written approval by the Declarant. One (1) copy of all plans and related data shall be furnished the Declarant for its records. In the event approval of such plans is neither granted nor denied within sixty (60) days following receipt by the Declarant of written demand for approval, the provisions of this paragraph shall be thereby waived.

(b) In order to assure that buildings and other structures will be located and staggered so that the maximum view, privacy, sunlight, and breeze will be available to each building or structure within the confines of the Lot, and to assure that structures will be located with regard to the topography of the Properties, taking into consideration the location of large trees and other aesthetic and environmental considerations, the Declarant reserves the right to control absolutely and solely to decide (subject to the provisions of the Zoning Ordinance of Wake County, North Carolina) the precise site and location of any building or structure on any Lot in the Properties for reasons which may in the sole and uncontrolled discretion and judgment of the Declarant seem sufficient. Such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site. The provisions of this paragraph shall in no way be construed as a guarantee that the

view, privacy, sunlight, or breeze available to a building or structure on a given Lot shall not be affected by the location of a building or structure on any adjacent Lot.

(c) Each Owner shall provide paved space for the parking of automobiles off public street prior to the occupancy of any building or structure constructed on said Lot in accordance with reasonable standards established by the Declarant.

(d) Except as may be required by legal proceedings, no sign shall be erected or maintained on any Lot that anyone including, but not limited to, an Owner, a tenant, a realtor, a contractor, or a subcontractor, until the proposed sign size, color, content, number of signs, and location of sign(s) shall have been approved in writing by the Declarant. Refusal or approval of size, color, content, number of signs, or location of sign(s) may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant seems sufficient. The Declarant further reserves the right to promulgate and amend from time to time uniform sign regulations (the "Uniform Sign Regulations") which shall establish standard design criteria for all signs, including, but not limited to, real estate sales signs, erected upon any Lot in the Properties.

The Declarant and its agent shall have the right, whenever there shall have been placed or constructed on any Lot in the Properties any sign which is in violation of these restrictions, to enter immediately upon such Properties where such violation exists and summarily remove the same at the expense of the Owner.

(e) It shall be the responsibility of each Owner, tenant, contractor, or subcontractor to keep the lawn or landscaped areas of a lot mowed and trimmed, and to prevent the development of any unclear, unsightly, unkempt, unhealthy, or unsafe conditions of buildings or grounds on any Lot which shall tend to substantially decrease the beauty or safety of the Properties, the neighborhood as a whole, or the specific area. The Declarant and its agents shall have the right to enter upon any Lot for the purpose of correcting such conditions, including, but not limited to, the removal of trash which has collected on the Lot, and the cost of such corrective action shall be paid by the Owner. Such entry shall not be made until thirty (30) days after the Owner of the Lot has been notified in writing of the need to take corrective action and unless such Owner fails to perform the corrective action within said thirty (30) day period; provided, however, that should such conditions pose a health or safety hazard, such entry shall not be made until the Owner has been notified in writing of the need to take immediate corrective action and unless such Owner fails to perform the corrective action immediately. The provisions of this paragraph shall not create any obligation on the part of the Declarant to take any such corrective action.

(f) No mailbox shall be erected or maintained on any Lot until the proposed mailbox design, color, and location have been approved in writing by the Declarant. Refusal or approval of design, color, or location may be based by the Declarant upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Declarant seems sufficient. No alteration in the exterior appearance of any mailbox shall be made without like prior written approval by the Declarant. The Declarant further reserves the right to establish uniform mailbox regulations (the "Uniform Mailbox Regulations") which shall define standard design criteria for all mailboxes erected upon any Lot in the Properties.

(g) Prior to the occupancy of a building or structure on any Lot, proper and suitable provisions shall be made for the disposal of sewage by a septic tank or to a septic system approved by Wake County or the appropriate governmental authority.

(h) Prior to the occupancy of a building or structure on any Lot, proper and suitable provisions for water shall be made by connection with a private water system approved by Wake County or the appropriate governmental authority.

(i) The Declarant reserves unto itself, its successors and assigns, and its agent, a perpetual, alienable, and releasable easement and right, on, over and under the Properties to erect, maintain, and use electric, Community Antenna Television, and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage, or other public conveniences or utilities on, in or over those portions of such Properties as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of such Lot as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these covenants by the Declarant, or (b) such portion of the Lot as may be designated as the site for a building on a plot plan for erection of a building which has been filed with the Declarant and which has been approved in writing by said Declarant. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation to maintain reasonable standards of health, safety, and appearance. The Declarant further reserves the right to locate wells, pumping stations, siltation basins, and tanks within any Common Area or on any Lot designated for such use on the applicable plat of said Properties, or to locate same upon any Lot with the permission of the Owners of such Lot. Such rights may be exercised by any licensee of the Declarant, but this reservation shall not create any obligation on the part of the Declarant to provide or maintain any such utility or service.

(j) The Declarant reserves the right to promulgate and amend from time to time landscape guidelines (referred to hereinafter as the "Landscape Guidelines") which shall establish approved standards, methods, and procedures for landscape management on specific Properties and such authorized standards, methods, and procedures may be utilized by the Owners of such specified Properties without prior written approval by the Declarant; provided, however, no trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level may be removed without the prior written approval of the Declarant. Approval for the removal of trees located within ten (10) feet of the approved site for such building will be granted unless such removal will substantially decrease the beauty of the Properties.

SECTION 3. REVIEW BOARD. The Architectural Review Board shall be composed of at least three (3) but not more than eleven (11) Members, all of whom shall be appointed by the Board of Directors. At least one (1) Member of the Association other than the Declarant shall be a Member of the Architectural Review Board at all times. The Architectural Review Board will be formed at such time as architectural approval authority is delegated to the Association by the Declarant. The Declarant shall delegate the approval authority to the Architectural Review Board no later than the

time at which the Declarant conveys all of its interest in all of the Lots within the Properties.

ARTICLE VI
RESTRICTIONS

SECTION 1. LAND USE AND BUILDING TYPE. No Lot shall be used except for single-family residential purposes; provided, however, Declarant may use any Lot owned by Declarant as a temporary sales office and/or model for the purposes of carrying on business related to the development, improvement and sale of property in the Properties. The temporary sales office may be a trailer and shall not be required to have a foundation. No structures shall be erected or allowed to remain on any Lot except one detached single-family dwelling, an attached or detached garage and one (1) permanent accessory building incidental to the residential use of the Lot. By way of illustration and not of limitation, any such accessory building must be erected on a permanent foundation and must be constructed on the Lot (as opposed to a pre-fabricated building), and must be approved by the Architectural Committee as set out in Article V herein.

SECTION 2. DWELLING SPECIFICATIONS.

Except with prior written approval of the Architectural Committee, no dwelling shall be erected or allowed to remain on a Lot in Cross Gate Subdivision having an area of the main structure, exclusive of open or screened porches, carports, garages and decks, of less than 2,500 square feet.

SECTION 3. NUISANCE. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood including, without limitation, the storing or parking of inoperative motor vehicles or the maintenance of or repair to motor vehicles except within completely enclosed garages constructed in conformity with these covenants and applicable laws and ordinances. The operation of guns and hunting equipment of any type on any portion of the Property is prohibited.

SECTION 4. OUTSIDE ANTENNAS. No outside radio or television antennas or discs and no free standing transmission or receiving towers or satellite dishes or disks ("Equipment") shall be erected on the Common Area or on any Lot or dwelling within the Properties without the prior written permission for the same has been granted by the Board of Directors of the Association and by the Declarant if Declarant owns any Lots. Any approval granted shall include approval of the type of equipment and the location of the equipment on the lot.

SECTION 5. BUILDING SETBACK. No building shall be located on any Lot nearer to the front or rear Lot line, or to any side Lot line, than shall be permitted under the applicable subdivision ordinances of the Wake County or any other governmental entity in effect at the time such building is to be constructed.

REFER TO BUILDER/DEVELOPER AGREEMENT

SECTION 6. MOBILE HOMES, MANUFACTURED HOMES, ETC. No mobile home, manufactured home, modular home, trailer, or other like structure shall be located or

installed on any Lot. As used in this Section 6, mobile home, manufactured home or modular home shall mean a structure, assembled in whole or in part in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. Notwithstanding the preceding, a temporary sales trailer without foundation may be used any Lot during the development and marketing of the Properties.

SECTION 7. WAIVER OF MINOR VIOLATIONS. Both the Declarant and the Board of Directors of the Association shall have the right to waive a minor violation of, and allow a minor variance from, the restrictions contained in Sections 2 and 5 of this Article, where the same resulted unintentionally or without gross carelessness on the part of any Owner (including, without limitation, Declarant) and/or is not materially harmful to the Properties. For the purpose of this Section 7, a minor variance shall be deemed to be any variance of ten percent (10%) or less. If such waiver is granted in writing, then thereafter any matter so waived shall no longer be deemed a violation of these covenants. To be effective, a waiver hereunder shall be recorded in the Wake County Register of Deeds office, shall be executed on behalf of the Association or Declarant, as applicable, and shall refer specifically to this Declaration.

SECTION 8. PARKING. No automobile, truck or vehicle of any kind shall be parked on any public street abutting the Properties after receiving notification from the Declarant or from the Town of Cary to remove the automobile, truck or vehicle. No boats, recreational vehicles or trailers may be parked on any Lot without the prior approval of the Declarant or the Architectural Review Committee.

SECTION 9. USE OF COMMON AREA. The Association shall promulgate rules and regulations regarding use and enjoyment of the Common Area by all persons.

SECTION 10. VARIANCES. The Declarant or the Board of Directors of the Association in their discretion may allow reasonable variances and adjustments of the restrictions set forth in this Article VI in order to alleviate practical difficulties and hardship in the enforcement and operation of these restrictions. Any such variances shall not violate the spirit or the intent of this Declaration to create a subdivision of lots owned in fee by various persons with each such Owner having an easement upon common areas owned by the Association. To be effective, a variance hereunder shall be recorded in the Wake County Register of Deeds office, shall be executed on behalf of the Association or Declarant, as applicable, and shall refer specifically to this Declaration.

ARTICLE VII
EASEMENTS

SECTION 1. UTILITIES. Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on recorded plats. In addition, Declarant reserves an additional easement and right-of-way for installation and maintenance of utilities (including cable television

service) and drainage facilities over the rear five (5) feet of any Lot and over each side five (5) feet of any Lot. 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. An easement is hereby established for the benefit of Wake County (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots.

SECTION 2. SIGNS BY THE ASSOCIATION. The Association may maintain within the Common Area subdivision signs and landscaping and lighting surrounding same. The costs of all such maintenance, repair and replacement of such signs, landscaping and lighting shall be part of the common expenses of the Association, payable by the Owners as set out in Article IV hereof.

SECTION 3. EASEMENT RESERVED BY DECLARANT. Declarant hereby reserves such easements on, across and over the Common Area as shall be reasonably necessary for the exercise by Declarant of any right herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex the Additional Property, as hereinafter defined.

SECTION 4. DRAINAGE EASEMENTS. In order to implement effective and adequate erosion control, the Association shall have the right to enter upon any portion of the Properties before and after improvements have been constructed thereon for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices; provided, however, no such activities shall interfere with any permanent improvements constructed on the Properties. If the need for erosion control results from the construction of improvements on any portion of the Properties or any excavation, grading, removal, reduction, addition or clearing of any portion of the Properties (the "Catalyst Site"), the cost of any such work performed by the Association for the purpose of implementing effective and adequate erosion control shall be assessed against the Owner or Owners of the Catalyst Site. Provided, however, if, in the sole discretion of the Association, the Association determines that the appropriate corrective action is to occur on the Catalyst Site, prior to exercising its right to enter upon the Catalyst Site for the purpose of performing any grading or landscaping work or constructing or maintaining erosion prevention devices, the Association shall give the Owner or Owners of the Catalyst Site written notice of and the opportunity to take the corrective action identified by the Association. If the Owner of the Catalyst Site fails to take the corrective action specified promptly, the Association may then exercise its right to enter upon the Catalyst Site to take the necessary corrective.

ARTICLE VIII
RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 2. OBLIGATION OF 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:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by April 15 of each calendar year.

(b) To be given notice by the 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 or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association.

(c) To receive notice of any condemnation or casualty loss affecting the Common Areas 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 Association.

(e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association under Article II hereof.

(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 3. 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 Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien 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 Association to such Institutional Lender.

ARTICLE IX
GENERAL PROVISIONS

SECTION 1. ENFORCEMENT. The Association, or any 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, the Articles of Incorporation or By-Laws of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

SECTION 2. SEVERABILITY. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

SECTION 3. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than seventy five percent (75%) of the Lots, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded. So long as the Declarant, as the class "B" member is entitled to elect the majority of the Members of the Board of Directors of the Association, no amendment of this Declaration shall be made without the consent of the Declarant; and until the end of the period of development no amendment of this Declaration shall be made without the consent of the Declarant which would have the effect of creating a disproportionate increase in the maximum annual assessment, the actual assessment levied, or any special assessment of any class of Owners. Notwithstanding the foregoing, the Declarant, for so long as it shall retain control of the Board of Directors of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, with the consent and approval of VA or HUD, and FNMA and without the consent of any Owner, in order to qualify the Association for tax exempt status, and to correct obvious errors and omissions herein.

SECTION 4. ANNEXATION.

(a) Except as provided in Subsection (b) of this Section 4, Article IX, additional residential property and Common Area may be annexed to the Properties only with the consent of (a) The Board of Directors so long as Class B Membership is in existence and (b) the Members entitled to cast two-thirds (2/3) of the votes of each class, after Class B membership is terminated.

(b) Additional land which is located within a one mile radius of the boundary of the Properties (the "Additional Property") may be annexed by the Declarant without the consent of members within ten (10) years from the date of this instrument. Declarant shall have no obligation of any kind to annex any Additional Property and,

should Declarant elect to annex any Additional Property, Declarant shall have no obligation of any kind to annex Additional Property in any particular sequential order. Should Declarant elect to annex any Additional Property and accordingly to subject such property to the terms and conditions of this Declaration, Declarant reserves the right to alter the restrictions contained in Sections 2 and 5 of Article VI of this Declaration with regard to any Additional Property annexed by Declarant. The addition of property authorized under this paragraph may increase the cumulative maximum number of Lots authorized in the Properties, and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

The addition authorized under this Section 4(b) and under Section 4(a) may be made by recording a Supplementary Declaration of Covenants and Restrictions with respect to the Additional Property which shall extend the operation and effect of this Declaration to such Additional Property. The Supplementary Declaration may contain such complementary additions and/or modifications as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the difference in character, if any, of the Additional Property and as are not inconsistent with the plan of this Declaration, but such modification shall have no effect upon the Properties described herein

IN WITNESS WHEREOF, the undersigned, Wachovia Bank of North Carolina, N.A. and Christopher C. Pearce, IV, Trustee joins in the execution of this document to give consent to this instrument and, the undersigned, being the Declarant herein, has caused this instrument to be executed in its name and its seal hereto affixed as of the 9th day of DECEMBER, 1994.

BENT TREE LIMITED LIABILITY COMPANY
a North Carolina limited liability company (SEAL)

By: Friendly Associates Limited Partnership IX,
a North Carolina limited partnership (SEAL)
Member

By: _____ (SEAL)
Ronald L. Wilson, Representative

By: TJF LLC, a North Carolina limited liability company (SEAL), Member

By: _____ (SEAL)
Thomas L. Fonville, Representative

WACHOVIA BANK OF NORTH CAROLINA, N.A.

(CORPORATE SEAL)

By: _____
Vice President

ATTEST: _____
Asst. Secretary

_____(SEAL)
Christopher C. Pearce, IV, Substitute Trustee

STATE OF NORTH CAROLINA)
)
COUNTY OF GUILFORD)

I VICKIE J PASCHAL, a Notary Public, certify that Ronald L. Wilson personally came before me this day and acknowledged the execution of the foregoing instrument, acting in his own name and for and on behalf of Friendly Associates Limited Partnership IX, a North Carolina limited partnership, as Member of BENT TREE LIMITED LIABILITY COMPANY, a North Carolina limited liability company.

Witness my hand and notarial stamp or seal, this 12th day of December, 1994.

My commission expires:

Oct. 1, 1999

_____
Notary Public

VICKIE J. PASCHAL NOTARY PUBLIC GUILFORD COUNTY

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE)

WILLIAM V. HESS NOTARY PUBLIC WAKE COUNTY, N.C.

I William V. Hess, a Notary Public, certify that Thomas L. Fonville personally came before me this day and acknowledged the execution of the foregoing instrument, acting in his own name and for and on behalf of TJF LLC, a North Carolina limited liability company, as Member of BENT TREE LIMITED LIABILITY COMPANY, a North Carolina limited liability company.

Witness my hand and notarial stamp or seal, this 29 day of DECEMBER, 1994.

My commission expires:

Notary Public

JANUARY 6, 1996

STATE OF NORTH CAROLINA :

COUNTY OF Guilford :

I, the undersigned Notary Public of the County and State aforesaid, certify that Robert L Morey personally came before me this day and acknowledged that he is Assistant Secretary of Wachovia Bank of North Carolina, N.A., a Banking corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by Robert L Morey as its Assistant Secretary.

Witness my hand and official stamp or seal, this 15th day of December, 1994.

Ginger L. Hudson
Notary Public

My commission expires:

July 8, 1998

GINGER L. HUDSON
NOTARY PUBLIC
GUILFORD COUNTY, NC
My Commission Expires 7/8/98

STATE OF NORTH CAROLINA :

COUNTY OF Guilford :

I, the undersigned Notary Public, certify that Christopher C. Pearce, IV, Substitute Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and Notarial Stamp/Seal this 15th day of December, 1994.

Ginger L Hudson
Notary Public

My Commission Expires:

July 8, 1998

GINGER L. HUDSON
NOTARY PUBLIC
GUILFORD COUNTY, NC
My Commission Expires 7/8/98

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate(s) of Vickie J. Roach, William V. Hess, Ginger L. Hudson

Notar(y)(ies) Public is

EXHIBIT A

TRACT I: BEING all of that tract shown on that map entitled "Subdivision Plat Cross Gate Subdivision Phase One" recorded in Book of Maps 1994, pages 1815 and 1818 Wake County Registry.

TRACT II: BEING all of that tract shown on that map entitled "Subdivision Plat Cross Gate Subdivision Phase One" recorded in Book of Maps 1994, pages 1816 and 1818 Wake County Registry.

TRACT III: BEING all of that tract shown on that map entitled "Subdivision Plat Cross Gate Subdivision Phase One" recorded in Book of Maps 1994, pages 1817 and 1818 Wake County Registry.

EXHIBIT B

MAXIMUM ANNUAL ASSESSMENTS

The Maximum Annual Assessment shall be as follows:

$75.00 per month for any Family Dwelling Unit

$37.50 per month for any Lot