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DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS

FOR

HOMEOWNERS ASSOCIATION OF STONEGATE

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DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS FOR HOMEOWNERS ASSOCIATION OF STONE GATE

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS (this "Declaration") is made this _____ day of April, 2005, by **STONEGATE PARTNERS, LLC,** a Florida limited liability company (the "Developer"), and by those parties who own or hold a mortgage or deed of trust upon all or a portion of the real property described on Exhibit A attached hereto and made a part hereof (the "Property"), all of whom hereby declare that the Property and all parts thereof, including, without limitation, all Lots and other subdivisions thereof, shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, liens, and all other matters set forth in this Declaration which shall be deemed to be covenants running with the title to the Property and shall be binding upon the Developer and all parties having or acquiring any right, title or interest in the Property or any part thereof.

ARTICLE I

MUTUALITY OF BENEFIT AND OBLIGATION

Section 1.1 **Mutuality**. The covenants, restrictions, and agreements set forth in this Declaration are made for the mutual and reciprocal benefit of every parcel within the Property, and are intended to create mutual equitable servitudes upon each such parcel in favor of the other parcels, to create reciprocal rights among the respective Owners, and to create privity of contract and an estate between the grantees of each and every parcel within the Property, their heirs, successors and assigns.

Section 1.2 **Benefits and Burdens**. Every person who is an Owner does by reason of taking title to land located within the Property agree to all the terms and provisions of this Declaration and shall be entitled to its benefits and subject to its burdens.

ARTICLE II
DEFINITIONS

The following words, when used in this Declaration shall have the following meanings:

Section 2.1 **Association**. The Homeowners Association of Stonegate, Inc., a North Carolina non-profit corporation. This is the Declaration to which the Articles of Incorporation (the "Articles") and Bylaws (the "Bylaws") of the Association make reference. The Articles will be filed with the North Carolina Secretary of State and the incorporator will hold the organizational meeting of the Association before any improved Lot is sold.

Section 2.2 **Benefited Neighbor** A Lot Owner who enjoys easement rights for a Courtyard Area as is further defined below.

Section 2.3 **Board**. The Board of Directors of the Association.

Section 2.4 **Common Area**. All real property (including easements, licenses and rights to use real property) and personal property located within or adjacent to the Property, if any, which is owned by the Developer, or by the Association, and which the Developer has designated for the common use of the Owners by reference to this Section 2.4, or by recording a Supplementary Declaration, pursuant to the terms of Section 5.3 hereof, together with all improvements constructed therein by Developer, but not owned or maintained by a public or private utility company. A portion of the Common Area may also constitute Permanent Open Space or Limited Common Areas.

Section 2.5 **Courtyard Area** The fenced yard area adjoining and accessed through a Lot Owner's home, the boundaries of which shall be established only by the Developer or an authorized Builder and may not be changed thereafter without the mutual consent of both affected Lot Owners.

Section 2.6 **Deck** The wooden deck, if any, that is constructed as part of the original construction of each Improved Townhome Lot.

Section 2.7 **Developer**. Stonegate Partners, LLC and its successors and such of its assigns as to which the rights of the Developer hereunder are specifically assigned. Developer may assign all or only a portion of such rights in connection with portions of the Property. In the event of such a partial assignment, the assignee may exercise such rights of the Developer as are specifically assigned to it. Any such assignment may be made on a non-exclusive basis. Reference in this Declaration to Stonegate Partners, LLC as the Developer of the Property is not intended and shall not be construed, to impose upon Stonegate Partners, LLC any obligations, legal or otherwise, for the acts or omissions of third parties who purchase lots or parcels within the Property from Stonegate Partners, LLC and develop and resell the same.

Section 2.8 **Limited Common Areas** Those portions of the Common Areas primarily benefiting one or more, but less than all, Neighborhoods or Lots, and which are designated as Limited Common Areas by the Association, or, if during the Development Period, by the Developer, as more particularly described in Article III.

Section 2.9 **Lot**. Any platted Lot or any other parcel of real property located within the Property that is intended for development, use and occupancy as an attached or detached residence for a single family.

Section 2.10 **Neighborhood** A group of Lots designated as a separate Neighborhood pursuant to Article II for purposes of sharing one or more Limited Common Areas and/or receiving other benefits or services from the Association which may be common to those Lots and not provided to all Lots. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property. Neighborhood boundaries may be established and modified as provided in Article III hereof.

Section 2.11 **Neighborhood Assessments** Assessments levied against Lots in a particular Neighborhood to fund Neighborhood expenses, as described in Article VI.

Section 2.12 **Owner**. The record owner or owners of any Lot.

Section 2.13 **Patio Area** The poured concrete area extending from the rear of the Townhomes as part of the original construction of each such Improved Townhome Lot.

Section 2.14 **Permanent Open Space**. The Common Area maintained for forestry, agriculture, or active recreational uses or passive recreational uses. Permanent Open Space shall not include public or private roads within the Property. The Permanent Open Space and the uses permitted thereof shall be designated on a plat or plats of the Property. All Permanent Open Space may be subjected to easements for utilities installation and maintenance and for ingress and egress.

Section 2.15 **Property or Subdivision**. The real property described on the attached Exhibit A and such additions and deletions thereto as may be made in accordance with the provisions of Sections 3.2 and 3.3 of this Declaration.

Section 2.16 **Stoop** The front stoop that is constructed as part of the original construction of each Improved Townhome Lot.

Section 2.17 **Supplemental Declaration** An instrument filed with the Register of Deeds which designates a Neighborhood and/or imposes additional restrictions and/or obligations on the land described in such instrument.

Section 2.18 **Surface Water or Stormwater Management System.** A system which is designed and constructed or implemented within the Property to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system, as permitted pursuant to applicable laws, rules, and regulations. For purposes of this Declaration, the Surface Water or Stormwater Management System shall be deemed to be a part of the Common Area and shall include any drainage swales located within the Property and any drainage easements set forth on any recorded plat of the Property.

Section 2.19 **Townhome Lot** A Lot which is intended for development, use, and occupancy as a townhome or a single-family attached residence, as shown on the Plat, but are distinguished from the single family homes which may share a common courtyard.

ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS AND DELETIONS

Section 3.1 **No Implied Extension of Covenants**. Each Owner and each tenant of any improvements constructed on any Lot, by becoming an Owner or tenant, shall be deemed to have agreed that (a) the Property described on Exhibit A and such additional property as may be annexed pursuant to Section 3.2 hereof shall be the only Property subject to this Declaration, (b) that nothing contained in this Declaration or in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development, shall be construed as subjecting, or requiring the Developer to subject any other property now or hereafter owned by the Developer to this Declaration, and (c) that the only manner in which additional land may be subjected to this Declaration is by the procedure set forth in Section 3.2 hereof.

Section 3.2 **Additional Lands**. Developer may, but shall not be obligated to, subject additional land to this Declaration (or to the assessment provisions of this Declaration) from time to time provided only that (a) any additional land subjected to this Declaration (or its assessment provisions) shall be contiguous to the Property then subject to this Declaration (for purposes of this Section 3.2, property separated only by public or private roads, water bodies, golf courses, or open space shall be deemed contiguous), and (b) the Owners of property within additional lands made subject to this Declaration (or its assessment provisions) shall be and become subject to this Declaration (or its assessment provisions), and shall be responsible for their pro rata share of common expenses for which assessments may be levied pursuant to the terms of Article VII of the Declaration. Addition of lands to this Declaration shall be made and evidenced by filing in the

public records of Wake County, North Carolina, a Supplementary Declaration executed by the Developer with respect to the lands to be added. Developer reserves the right to supplement this Declaration to add land to the scheme of this Declaration (or its assessment provisions) pursuant to the foregoing provisions without the consent or joinder of any Owner or deed of trust holder with respect to land within the Property.

Section 3.3 **Withdrawal of Lands**. With the consent and joinder of Owners holding a majority of the votes in the Association, the Developer may, but shall have no obligation to, withdraw at any time, or from time to time, portions of the Property from the terms and effect of this Declaration. Upon the Developer's request, the consent and joinder of each and every Owner to such withdrawal shall not be unreasonably withheld. The withdrawal of lands as aforesaid shall be made and evidenced by filing in the public records of Wake County, North Carolina, a Supplementary Declaration executed by the Developer with respect to the lands to be withdrawn.

Section 3.4. **Townhome Boundaries.** The boundaries of each Townhome constructed on the Property shall be as shown on the recorded plat or plats; provided, however, that the side boundary of each Townhome shall be a line consistent with and along the center of all firewalls separating a Townhome from another Townhome. In the event of any discrepancy between the boundaries of a Townhome, as described herein and the boundaries of such Townhome when shown on the recorded Plats, the description of the boundaries of the Townhome set forth herein shall control. All of the area within the boundaries of each of the Townhomes, as herein described, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

Section 3.5. **Neighborhoods.** The Developer hereby establishes two Neighborhoods within the Property. Lots intended for detached single family residences are designated as one Neighborhood called the Single Family Overall Neighborhood and all remaining Lots are hereby designated as one Neighborhood called the Townhome Neighborhood. The Developer, in its sole discretion, may establish additional Neighborhoods within the Property by amendment to the Declaration and/or Plats in order to subject such Lots to additional covenants and restrictions or to benefit said Lots differently from other Lots on the Property. During the Development Period, the Developer may unilaterally amend this Declaration and any plat from time to time to assign property to a specific Neighborhood, to redesignate Neighborhood boundaries, or to remove property from a specific Neighborhood.

Following the Development Period, the Owner(s) of a majority of the total number of Lots within a Neighborhood may at any time petition the Board of Directors to divide the property comprising their Neighborhood into two (2) or more Neighborhoods. Such petition shall be in writing and shall include a survey of the entire parcel which indicates the proposed boundaries of the new Neighborhoods or otherwise identifies the Lots to be included within the proposed Neighborhoods. Such petition shall be deemed granted thirty (30) days following the filing of all required documents with the Board unless the Board denies such application in writing within such thirty (30) day period. The Board may deny any application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. The Owners requesting the division shall be responsible for any expenses incurred

with respect to implementing a division of a Neighborhood, including but not limited to a revised plat, if the application is approved.

Any Neighborhood may, but shall not be required to, elect a Neighborhood committee to represent the interests of the Owners in such Neighborhood. No Neighborhood committee shall be formed, however without the prior submission to and written approval of the Board of Directors.

Any Neighborhood may request that the Association provide a higher level of service or special services for the benefit of Lots in such Neighborhood and upon written consent of a majority of Owners of the Lots within the Neighborhood, the Association may, in its sole discretion, provide the requested services. The cost of such service, which may include a reasonable administrative charge in such amount as the Board may deem appropriate (provided such administrative charge shall apply at a uniform rate per Lot to all Neighborhoods receiving the same service), shall be assessed against the Lots within such Neighborhood as a Neighborhood Assessment pursuant to Article V herein.

No action may be taken by a Neighborhood which is adverse to the interests of the Association or its Members or that is inconsistent with the Community Wide Standards. If the Neighborhood fails to comply with such requirements of the Association as specified by the Association in writing the Association may assess the Lots within such Neighborhood for any expense incurred by the Association to correct the inconsistency or deficiency.

ARTICLE IV
THE ASSOCIATION

Section 4.1 **Membership**. Each Owner, including the Developer (at all times so long as it owns any part of the Property), shall be a member of the Association, provided that any such person or entity who holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot.

Section 4.2 **Classes and Voting**. The Association shall have two classes of membership:

(a) **Class A Members**. The Class A Members shall be all Owners, with the exception of the Developer, who 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 of the Association. However, the vote for any such Lot shall be exercised as the Owner's thereof shall determine, but in no event shall more than one vote be cast with respect to any Lot.

(b) **Class B Members**. The Class B Member shall be the Developer who shall be entitled to five (5) votes for each Lot owned by the Developer. 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 equals the total votes outstanding in the Class B Membership;

(ii) July 7, 2012;

(iii) Three (3) months after ninety percent (90%) of the Lots have been conveyed to members of the Association other than the Developer; or

(iv) Such earlier date as the Developer may choose to terminate the Class B Membership upon notice to the Association.

Section 4.3 **Dissolution or Insolvency of the Association**. The Association shall be dissolved upon the termination of this Declaration, or upon the written assent given in writing and signed by not less than Two-Thirds (2/3) of the Members of each class of members, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association, or upon loss of ownership of the Common Area (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Area as allowed by this Declaration or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Area not under the jurisdiction and being maintained by the Association, shall be offered to the Town of Wake Forest, North Carolina, or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Area and such assets were required to be devoted by the Association. If the Town of Wake Forest or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Area and assets shall be conveyed by the Association to the Town of Wake Forest or such other appropriate governmental entity or public agency, subject to the superior right of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located, and subject to all other applicable rights of way and easements and subject to ad valorem property taxes subsequent to the date of such conveyance.

In the event that the Town of Wake Forest or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Area and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Area was required to be devoted by this Declaration, such conveyance to be made subject to the rights of Owners and other matters set forth in the immediately preceding paragraph.

ARTICLE V
COMMON AREA RIGHTS

Section 5.1 **Conveyance of Common Area**. Developer agrees that all of the Common Area owned by Developer shall be conveyed or assigned to the Association, subject to covenants,

easements, restrictions and other matters of record, on or before ninety (90) days following the conveyance of the last Lot owned by the Developer to any party. Upon the recordation of any deed or deeds conveying Common Area to the Association, the Association shall be conclusively deemed to have accepted the conveyance evidenced by such deed or deeds.

Section 5.2 **Owners' Easement of Enjoyment**. Except for Limited Common Areas, each Owner shall have a right and easement of enjoyment in and to the Common Area for its intended purpose, which shall be appurtenant to, and shall pass with, the title to the land of such Owner, subject to the following:

(a) The right of the owner of the Common Area, with the consent of the Developer (if different from such owner) to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility; provided however, the Common Area may not be mortgaged or conveyed free and clear of the provisions of this Declaration without the approval of Members holding two-thirds (2/3) of the total votes that are allocated to the Association's members;

(b) All provisions of this Declaration;

(c) any plat of all or any parts of the Property;

(d) governmental restrictions;

(c) Reasonable rules and regulations governing use and enjoyment of the Common Area adopted by the Developer or the Association;

(d) The rights of the Developer under Section 5.4 to add to or withdraw land from the Common Area;

(e) Easements, restrictions, agreements and other matters of record.

The foregoing easement of enjoyment in favor of the Owners shall not be construed to create or imply any other easements or rights not expressly created by this Declaration, it being the intent hereof to limit the Owners' rights of use of specific portions of the Common Area to only the intended purposes of such portions of the Common Area. For example, the creation of each Owner's right to drain such Owner's Lot into the portions of the Common Area included within the Surface Water or Stormwater Management System, does not create any right of access by any Owner to such portions of the Common Area over any other Owner's Lot or other privately owned portions of the Subdivision.

Section 5.3 **Owner's Easement of Enjoyment – Limited Common Areas.** Where Common Areas are designated as Limited Common Areas, only the Owners of Lots benefited by the Limited Common Areas will have the right and easement of enjoyment and use in and to said Limited Common Areas, which such right and easement Owners shall exercise in accordance with, and subject to, the limitations of Section 5.2.

Section 5.4 **Right of the Developer to Designate Property as Common Area or to Withdraw Property from the Common Area**. Notwithstanding anything to the contrary contained in this Declaration, the Developer shall have the right, in its sole discretion, to designate land, easements, use rights and personal property owned by the Developer as Common Area, provided only that such land shall be located within the Property or contiguous to the Property (for purposes of this Section 5.4, property separated only by public or private roads, water bodies, commercial properties, or open space shall be deemed contiguous). For so long as the Developer shall own any Lot, the Developer may, at any time, withdraw, or cause to be withdrawn, land from the Common Area in the Developer's sole discretion without the consent of or notice to any Owner. The prior sentence notwithstanding, in the event such withdrawal of Common Area shall materially and adversely affect any Lot, or materially and adversely affect access, visibility, or drainage to or from any Lot, the Developer shall not have the right to withdraw such Common Area without the consent and joinder of the Owner of the Lot which is so affected. Addition of land to and withdrawal of land from the Common Area shall be evidenced by recording a Supplementary Declaration in the public records of Wake County, North Carolina, which shall specifically reference such addition or withdrawal. Withdrawal of land from the Common Area by the Developer shall terminate any and all easements and rights of use of the Owners in such land. No land owned by the Developer shall be deemed to be Common Area unless such land is expressly referenced as such under Section 2.4 hereof, or subsequently designated as such by the Developer pursuant to Section 2.4 hereof and this Section 5.4, even if the Developer consents or acquiesces to the use of such land by the Owners. In the event any land, easements, use rights, or personal property owned by the Association shall be withdrawn from the Common Area pursuant to this Section 5.4, upon the Developer's written request, the Association shall promptly execute and deliver to the Developer any and all deeds, bills of sale, assignments or other conveyance documents as may be necessary or appropriate to effectuate the withdrawal of such Common Area.

Section 5.5 **Maintenance of Common Area and Compliance with Applicable Permits**. The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as often as necessary, the Common Area and any improvements and landscaping (except utilities owned and maintained by public or private utility companies providing water, sewer, electrical, fire protection, cable television, telephone, or similar utilities to the Property, or any portion thereof) situated on the Common Area, if any. The Association shall maintain all lakes, swales, drainage areas, drainage easements, and control structures, and shall preserve and protect all designated conservation areas and littoral zones located within, or adjacent to the Property, in accordance with all permit requirements and conditions contained in applicable dredge, fill, consumptive use, surface water permits, or any other applicable permits issued by governmental agencies, and all statutes, rules, regulations and requirements pertaining to surface water management, drainage and water quality promulgated by all other local, state and federal authorities having jurisdiction over the Property. The Association shall maintain those portions of the Common Area designated by applicable permit as conservation tracts, stormwater management tracts or similar designations, in accordance with all permit requirements, rules, and regulations promulgated by all local, state and federal authorities having jurisdiction over the Property. The Association shall be responsible for the maintenance, operation and repair of any Surface Water or Stormwater Management System on the Property. Maintenance of the Surface Water or Stormwater Management System shall mean the exercise of practices which allow the system to provide

drainage, water storage, conveyance of other surface water, or stormwater management capabilities as permitted. Any repair or reconstruction of the Surface Water or Stormwater Management System shall be as permitted, or if modified, as approved by the applicable water management district or other applicable authority. All maintenance obligations of the Association shall be performed as ordered by the Board of Directors of the Association, and all or any portion of the cost of such maintenance incurred by the Association pursuant to this Section 5.4, shall be a common expense of the Association to be collected and paid in the manner prescribed by this Declaration.

Section 5.6 **Easement for Maintenance Purposes**. The Developer hereby grants to the Association and its successors, assigns, agents, and contractors, a perpetual, nonexclusive blanket easement in, on, over and upon the Property as may be reasonably necessary for the purpose of maintaining the Common Area, including the Surface Water or Storm Water Management System, or other portions of Property to be maintained by Association, in accordance with the requirements of this Declaration, including, without limitation, in, on, over, and upon each Lot (provided, however, that such easement shall be released with respect to any portion of a Lot on which a residence is constructed and located. The easement granted hereby shall not be exercised by any party in a manner which materially and unreasonably interferes with the use, occupancy, or enjoyment of any improved portion of the Property or Permanent Open Space, or which is prohibited by the law or the terms of any recorded Conservation Easement. Further, in the event that any portion of the Property shall be damaged or altered in any way as the result of the exercise of the easement rights granted hereby, such portions of the Property shall be immediately restored to the condition that existed immediately prior to such damage or alteration by the party exercising such rights.

Section 5.7 **Taxes and Governmental Assessments**. The Association shall pay when due, and in any case before the accrual of penalties thereon, all taxes, assessments, license fees, permit fees and other charges imposed by any governmental authority in connection with the Association's ownership or operation of the Common Area. Provided, however, that the Association may institute an appropriate legal proceeding for the purpose of contesting or objecting to the amount or the validity of any such tax, assessment, fee, or charge by appropriate legal proceedings. If the Association fails to pay any governmental charge when due or fails to contest any governmental charge in a timely and appropriate legal proceeding, then each Owner of a Lot shall become personally obligated to pay to the governmental authority imposing such charge a portion of the charge in an amount determined by multiplying the total charge by a fraction, the denominator of which is the total number of Lots and Townhome Lots and the numerator of which is the number of Lots owned by the Owner for whom the calculation is being performed (the "Owner's Share"). If the Owner does not pay the Owner's Share within thirty (30) days following actual notice to the Owner of the Owner's Share, then the Owner's Share shall become a continuing lien on the Lot or Townhome Lot owned by the Owner, and the governmental entity may bring an action at law against the Owner to obtain payment of the Owner's Share or may foreclose the lien against the Lot or Townhome Lot of the Owner.

ARTICLE VI
ARCHITECTURAL CONTROL

Section 6.1 **Architectural Review and Approval**. Except for the initial construction of residential dwellings and related structures, landscaping and other improvements by Developer ("Initial Construction"), no landscaping, improvement or structure of any kind, including without limitation, any building, fence, play equipment, wall, screen enclosure, sewer, drain, disposal system, landscape device or object, driveway or other improvement shall be commenced, erected, placed or maintained upon any Lot, nor shall any addition, change or alteration therein or thereof be made, unless and until the plans, specifications and location of the same have been submitted to, and approved in writing by the Association. All plans and specifications shall be evaluated as to visual and acoustical privacy and as to the harmony of external design and location in relation to surrounding structures, topography, existing trees and other natural vegetation and as to specific conformance with architectural criteria which may be imposed from time to time by the Developer or the Association. It shall be the burden of each Owner to supply two (2) sets of completed plans and specifications to the Architectural Review Board ("ARB") and no plan or specification shall be deemed approved unless a written approval is granted by the ARB to the Owner submitting same. The ARB shall approve or disapprove plans and specifications properly submitted within thirty (30) days of each submission. Any change or modification to an approved plan shall not be deemed approved unless a written approval is granted by the ARB to the Owner submitting same.

Section 6.2 **Architectural Review Board**. The architectural review and control functions of the Association shall be administered and performed by the ARB, which shall consist of three (3) or five (5) members who need not be members of the Association. The Board of Directors of the Association shall have the right to appoint and remove all of the members of the ARB. A majority of the ARB shall constitute a quorum to transact business at any meeting of the ARB, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARB. Any vacancy occurring on the ARB because of death, resignation, or other termination of service of any member thereof shall be filled by the Board of Directors.

Section 6.3 **Powers and Duties of the ARB**. The ARB shall have the following powers and duties:

(a) To recommend amendments to the architectural criteria to the Board at such time as the Board shall have the right to adopt or amend architectural criteria for the Property. For so long as the Developer shall be entitled to elect or appoint a majority of the members of the Board, only the Developer shall have the right to promulgate, amend, eliminate, or replace architectural criteria applicable to architectural review to be conducted by the Association. At such time as members of the Association shall elect a majority of the members of the Board, such architectural criteria shall be promulgated, amended, eliminated, or replaced by the Board. Any amendment of the architectural criteria shall be consistent with the provisions of this Declaration. Notice of any amendment to the architectural criteria, which shall include a verbatim copy of such amendment, shall be delivered to each member of the Association. The delivery to each member of the Association of notice and a copy of any amendment to the architectural criteria shall not, however, constitute a condition precedent to the effectiveness or validity of such amendment. It shall not be necessary for the architectural criteria, or any amendment thereto, to be recorded.

(b) To require submission to the ARB of two (2) complete sets of all plans and specifications for any improvement or structure of any kind requiring review and approval of the ARB pursuant to this Article VI. The ARB may also require submission of samples of building materials proposed for use on any Lot, and may require tree surveys to show the effect of the proposed improvements on existing tree cover, and such additional information as reasonably may be necessary for the ARB to completely evaluate the proposed structure or improvement in accordance with this Declaration and applicable architectural criteria.

(c) To approve or disapprove in accordance with the provisions of this Article VI, any improvements or structures of any kind (other than Initial Construction), or any change or modification thereto, the construction, erection, performance or placement of which is proposed upon any Lot, and to approve or disapprove any exterior additions, changes, modifications or alterations therein or thereon. All decisions of the ARB may, but need not be evidenced by a certificate in recordable form executed under seal by the President or any Vice President of the Association. Any party aggrieved by a decision of the ARB shall have the right to make a written request to the Board, within thirty (30) days of such decision, for a review thereof. The determination of the Board upon review of any such decision shall be dispositive.

(d) To adopt a schedule of reasonable fees for processing requests for ARB approval of proposed improvements. Such fees, if any, shall be payable to the Association, in cash, at the time that plans and specifications are submitted to the ARB.

Section 6.4 **Compensation of ARB**. The Board may, at its option, pay reasonable compensation to any or all members of the ARB.

Section 6.5 **Review of Initial Construction by Developer**. No Initial Construction shall be commenced upon any Lot unless and until the plans, specifications and location of the same have been submitted to, and approved by, the Developer in writing. All plans and specifications shall be evaluated as to visual and acoustical privacy, as to harmony of external design and location in relation to surrounding structures, if any, topography, existing trees and other natural vegetation, and as to consistency with this Declaration and architectural criteria made applicable to Initial Construction by the Developer from time to timeSection 6.6 **Variance**. The Developer and the ARB may authorize variances from compliance with any architectural provisions of this Declaration or applicable architectural criteria when circumstances such as topography, natural obstructions, hardships, or aesthetic or environmental considerations require same. Such a variance must be evidenced by a document signed by an authorized representative of the Developer or ARB, as applicable. If such a variance was granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matters for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provisions of this Declaration or applicable architectural criteria covered by the variance, nor shall it effect in any way an Owner's obligation to comply with all governmental laws and regulations, including but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental or municipal authority.

Section 6.7 **Limited Liability**. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Developer, the ARB, or the Association as contemplated by this Article VI, neither the Developer, the ARB, nor the Association shall be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way related to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted or withheld by the Developer, the ARB, or the Association.

ARTICLE VII
COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 7.1 **Creation of the Lien and Personal Obligation of Assessments**. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, jointly and severally, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due, and costs, including, without limitation, reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made in favor of the Association and the Association shall be entitled to file a document evidencing such lien in the land records of Wake County. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Deed of Trust or on any Deed of Trust to Developer duly recorded in the land records of Wake County and all amounts advanced pursuant to such Deed of Trust and secured thereby in accordance with the terms of such instrument. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Each such assessment, together with late charges, interest, costs, including, without limitation, reasonable attorney's fees actually incurred, shall also be the personal obligation of the Person who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Deed of Trust holder taking title through foreclosure proceedings or deed in lieu of foreclosure.

The Association shall, within five (5) days after receiving a written request therefor 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. A properly executed certificate of the

Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Annual assessments shall be levied at a uniform rate per Lot and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

Section 7.2 **Purpose of Assessments**.

7.2.1 The annual assessments levied by the Association shall be used for the purposes of management and accounting fees, taxes, insurance, utility, and other fees and charges relating to the Common Area, to fund the obligations of the Association set forth in Section 5.5 hereof, and for all other purposes reasonably contemplated by this Declaration, the Articles, the Bylaws, or any cost sharing or similar agreement to which the Association is or may become a party. Further, such annual assessments may be levied to fund reasonable reserves for deferred maintenance of, or non-recurring expenses related to, the Common Area including, the Surface Water or Stormwater Management System. The maintenance responsibilities of the Association payable through assessment of the Owners shall specifically include, but not be limited to, the perpetual maintenance of all retention ponds, drainage swales, and all other drainage and stormwater management improvements lying within the Property, and all other such improvements, constituting a part of any Surface Water or Stormwater Management System permitted (the "Surface Water Permit") including all operation, sampling, testing, monitoring and maintenance requirements as specified by the Surface Water Permit. Assessments collected by the Association to fund reserves shall be separately accounted for, it being the requirement of this Declaration that such funds shall be used exclusively for deferred maintenance of, or non-recurring expenses related to, the Common Area including, but not limited to, the Surface Water or Stormwater Management System.

7.2.2 The Board of Directors may levy special assessments for any purpose relating to permissible or required activities of the Association pursuant to this Declaration, the Articles, or the Bylaws. Any funds collected pursuant to such a special assessment shall be used solely for the purpose or purposes identified by the Board of Directors at the time such special assessment is levied.

7.2.3 In addition to the annual and special assessments provided for in this Declaration, the Association may levy, in any calendar year, a capital assessment contribution for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair, or replacement of any capital improvement upon the Common Area, provided that, except with respect to the Capital Contribution, as hereinafter defined, any such capital assessment shall require the vote of the holders of two-thirds of the total votes of the Association.

Section 7.3 **Calculation and Collection of Assessments**. Annual assessments shall be established by the Board of Directors based upon an annual budget. Each Owner's pro rata share of the total annual assessment or any special assessment shall be based upon the following calculations:

(a) Owners of Lots shall pay a pro rata share of annual and special assessments which shall be allocated among the Owners as provided in subparagraph (b) of this Section 7.3.

(b) All annual and special assessments shall be established at a uniform rate per Lot.

(c) The assessment obligations of each Owner other than the Developer shall commence upon the recordation of this Declaration in the current public records of Wake County, North Carolina. Annual assessments shall be collectable in advance on a periodic basis established by the Board of Directors from time to time, which periodic basis shall not be less frequent than annually. Special and capital assessments shall be collectible in advance in the manner established by the Board of Directors at the time such special assessments are authorized. Notwithstanding anything to the contrary, commencing with the first and continuing with each conveyance of any Lot with a completed residential dwelling thereon, the grantee of such conveyance shall pay the Association the sum of $105 for each Lot and $300 for each Townhome Lot as a contribution to the capital of the Association (the "Capital Contribution"). The Association may use the Capital Contribution or any part thereof for any of the purposes authorized for assessments by this Declaration.

(d) The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year (or, if the assessment has not been established at the time an Owner purchases such Owner's Lot, at least thirty (30) days prior to the due date of the first installment in the case of the initial budget). The budget and the assessment shall become effective unless disapproved at a meeting by the holders of a majority of the total Association votes. Notwithstanding the foregoing, however, in the event the members disapprove the proposed budget or the Board fails for any reason to set the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 7.4 **Effect of Non-Payment of Assessment: Lien, Personal Obligation, and Remedies of Developer**. The lien of the Association shall be effective from and after recording in the public records of Wake County, North Carolina, a claim of lien stating the description of the Lot encumbered thereby, the name of the Owner, the amount and the due date. Such claim of lien shall include assessments which are due and payable when the claim of lien is recorded as well as assessments which may accrue thereafter, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as herein provided. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record, and the affected Owner shall pay the cost of such satisfaction. If the assessment is not paid within fifteen (15) days after the due date, the assessment shall bear interest from the due date at the highest lawful rate, and the Association may at any time thereafter bring an action to enforce the lien authorized hereby by appropriate foreclosure proceedings and/or a suit on the personal obligation against the Owner. In the event the Association shall fail to bring such an action for collection of a delinquent assessment within thirty (30) days following receipt of written notice from any Owner demanding that such proceedings be commenced, such Owner shall be authorized to institute such proceedings on behalf of the

Association with proceeds to the Association. There shall be added to the amount of such delinquent assessment the costs of collection incurred by the Association, or such Owner, which shall specifically include without limitation reasonable attorneys' fees. Payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.

Section 7.5 **Subordination of Lien to Deeds of Trust**. The lien of the assessments provided for by this Declaration shall be subordinate to the lien of any bona fide Deed of Trust which is perfected by recording prior to the recording of the claim of lien for any such unpaid assessments. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of the affected Lot by deed in lieu of foreclosure, pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure of such Deed of Trust. No sale or other transfer shall release any Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessments. A written statement of the Association that the lien is subordinate to a Deed of Trust, shall be dispositive of any question of subordination.

Section 7.6 **Developer's Assessments**. Notwithstanding any provision of this Declaration to the contrary, during the Development Period (as defined below) the Lots and other portions of the Property owned by the Developer shall not be subject to any annual or special assessments levied by the Association or to any lien for such assessments. During the Development Period, the Developer shall pay the balance of the actual operating expenses of the Association (excluding costs of major repairs, deferred maintenance, replacements and reserves) remaining after the Association levies and collects assessments from Owners (other than the Developer). The Developer shall be obligated to fund such balance only as the expenses are actually incurred by the Association during the Development Period. The Development Period shall begin upon the conveyance of the first Lot in the Property to an Owner other than the Developer and shall continue until (i) the Developer shall notify the Association that it will no longer pay for operating deficits of the Association; or (ii) the Class B Membership shall cease and be converted to Class A Membership. Upon termination of the Developer's agreement to pay operating deficits, the Developer shall become obligated to pay assessments on Lots owned by it within the Property on the same basis as other Owners. In no event shall the Developer be obligated to pay for operating deficits of the Association after the Developer no longer owns any Lots within the Property.

Section 7.7 **Neighborhood Assessments** The Board may specifically assess Owners of Lots within Neighborhoods for Association expenses as follows: (a) expenses of the Association which benefit all of the Lots in a Neighborhood but not the Lots in other Neighborhoods may be specifically assessed equitably among all of the Lots in the benefited Neighborhood according to the benefit received; and (b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

Prior to the commencement of each fiscal year of the Association or at any time it deems best (said fiscal year being specified in the Bylaws), the Board shall prepare a separate budget covering the estimated Neighborhood expenses for the coming year. During the Development Period, the Board shall determine the level of services to be provided by the Association to each Neighborhood.

After the expiration of the Development Period, any Neighborhood may request that additional services or a higher level of service be provided by the Association and, upon approval of a majority of Owners within such Neighborhood, any additional costs shall be added to such budget. Such budget may contain a contribution establishing a reserved fund for repair and replacement of capital items maintained as a Neighborhood expense. Neighborhood expenses shall be allocated equally among all Lots within the Neighborhood benefited thereby and levied as a Neighborhood Assessment.

The Board shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Neighborhood Assessment so determined for such fiscal year and the amount of such Neighborhood Assessment which shall be levied against each Lot, to the Owner of every affected Lot prior to the commencement of the fiscal year during which such Neighborhood Assessment is to be paid. The amount of such Neighborhood Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments as the Board shall determine and shall be paid to the Association when due without further notice.

ARTICLE VIII
EXTERIOR MAINTENANCE ASSESSMENT

Section 8.1 **Exterior Maintenance**. The Association may provide maintenance upon any Lot or Limited Common Area requiring same, when necessary in the opinion of the Association's Board of Directors to preserve the beauty, quality, or value of any or all portions of the Property. Such maintenance shall include but not be limited to painting, roof repair and replacement, repair of gutters, downspouts, and exterior building surfaces, and yard clean-up and yard maintenance. Each affected Owner shall have fifteen (15) days within which to perform the required maintenance after being notified in writing by the Association that such maintenance is necessary before the Association undertakes the maintenance.

The Association shall further have the right, but not the obligation, to maintain and keep in good repair the Stoop, Driveway, Deck, Patio Area, roof and other exterior portions and exterior lighting appurtenant to each Townhome, or any portion or portions thereof as the Board of Directors may determine at any time and from time to time in its sole discretion

Section 8.2 **Assessments of Costs**. The cost of any maintenance undertaken by the Association under the provisions of Section 8.1 shall be assessed against each Lot upon which such maintenance is performed or, in opinion of the Board, benefitting from same. Exterior maintenance assessments shall not be considered a part of the annual or special assessments imposed upon the Property pursuant to Article VII of this Declaration. Any exterior maintenance assessment shall be a lien upon each Lot assessed and the personal obligation of the Owner of each such Lot and shall become due and payable in all respects, together with interest, attorneys fees, and costs of collection, as provided for in Section 7.3 and 7.4, and shall be subordinate to Deed of Trust liens to the extent provided by Section 7.5.

Section 8.3 **Access**. For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after the notice to the Owner provided under Section 8.1, to enter upon any Lot at reasonable hours on any day except Sunday. In the case of emergency repairs, access will be permitted at any time with only such notice as under the circumstances is practical.

Section 8.4 **Party Walls** Each wall or fence built as part of the original construction of the Townhome Lots which serves and separates any two adjoining Lots shall constitute a party wall or fence and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall or fence shall be shared by the Owners who make use of the wall or fence in equal proportions. If a party wall or fence is destroyed or damaged by fire or other casualty, then any Owner who has benefited by the wall or fence may restore it, and the other Owner who is benefited by the wall or fence shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

ARTICLE IX
UTILITY PROVISIONS

Section 9.1 **Water System**. The central water supply system provided for the service of the Property shall be used as sole source of potable water for all water spigots and outlets located within or on all buildings and improvements located on each Lot. Each Owner shall pay water meter charges of the supplier thereof and shall maintain and repair all portions of the water lines serving the Owner's Lot in accordance with the requirements of the applicable utility supplier. No individual potable water supply system or well for consumptive purposes shall be permitted on any Lot without the prior written consent of the Association.

Section 9.2 **Sewage System**. The central sewage system provided for the service of the Property shall be used as the sole sewage system for each Lot. Each Owner shall maintain and repair all portions of the sewer lines serving the Owner's Lot in accordance with the requirements of the applicable utility provider, and shall pay when due the periodic charges or rates for the furnishing of such sewage collection and disposal services made by such utility provider. No sewage shall be discharged onto the open ground or into any wetland, lake, pond, park, ravine, drainage ditch or canal or roadway and no septic tank or drain field shall be placed or allowed within the Property.

Section 9.3 **Garbage Collection**. Garbage, trash and rubbish shall be removed from the Lots only by parties or companies approved by the Association, which approval shall not be unreasonably withheld. Each Owner shall pay when due the periodic charges or rate for such garbage collection service made by the party or company providing the same.

Section 9.4 **Utility Service**. From time to time Developer or the Association may enter into utility provider agreements or exclusive access or marketing arrangements with utility or service providers ("Designated Providers"). It shall be the responsibility of the Owner or occupant of each

Lot to make direct arrangements with the Designated Providers or other suppliers of electricity, water, sewer, and any other utility services for service to such Lot.

ARTICLE X
USE RESTRICTIONS AND RIGHTS AND EASEMENTS RESERVED BY DEVELOPER

Section 10.1 **Residential Use**. The Lots subject to this Declaration may be used for residential dwellings, a garage, and one permanent accessory building and for no other purpose except that one or more Lots may be used for model homes during the development and sale of Lots within the Property or other properties. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof except with the prior written approval of the Board and so long as the business or business activity is in compliance with applicable zoning requirements. No Lot shall be divided, subdivided or reduced in size without the prior written consent of the Developer. Assessments for common expenses attributable to any Lot which may be subdivided pursuant to this Section 10.1 shall be reallocated by the Developer, in its sole discretion, at the time written consent for such subdivision is given by the Developer. No garage shall be converted or used as a bedroom, storage room, or other living space. Garages shall be used for the parking of motor vehicles and limited storage which does not interfere with such parking.

Developer or the Association shall have the right, without the consent of the Owners, to enter into reciprocal easement agreements with one or more commercial property owners adjacent to the Property for purposes of providing cross access, cross drainage, or other mutually beneficial easements and to provide for the payment by the owners of such commercial parcels of compensation as deemed reasonable and appropriate by Developer and/or the Association, it is sole discretion.

Section 10.2 **Living Area**. Each detached single family residence constructed upon a Lot shall contain a minimum of 1,800 square feet of heated and air conditioned living area. The Developer and the Association shall have the right to change the minimum required square footage for single family residences with respect to Lots developed in future phases or upon additional properties added by supplemental declaration.

Section 10.3 **No Detached Buildings**. Unless approved in advance and in writing by the ARB, no detached garages, tool or storage sheds, tents, trailers, tanks, temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot. Any such structures must be constructed out of materials and reflect aesthetic design characteristics substantially similar to the residential dwelling on such Lot. No dwelling or any other structure shall be erected within any easement area shown on any plat of all or any portion of the Property or within any easement reserved by Section 11.1 of this Declaration.

Section 10.4 **Leasing**. Improved Lots may be leased for residential purposes only. All leases shall be for a minimum term of at least 6 months. All leases shall require that the tenant acknowledge receipt of a copy of this Declaration, the Bylaws, use restrictions and rules and regulations of the Association. No owner may rent a Lot without the prior written consent of the

Board of Directors and in no event may greater than twenty percent (20%) of the lots in any neighborhood (i.e., no more than 20% of the detached homes may be rented and no more than 20% of the townhomes may be rented) be rented.

Section 10.5 **Landscaping**. Landscaping shall be installed on each Lot as stated hereafter.

10.5.1 Except for landscaping installed by the Developer, a landscaping plan for each Lot and Limited Common Area appurtenant thereto must be submitted to and approved by the Developer at the time of Initial Construction of a residence on such Lot. Maximum utilization of existing trees and shrubs, and natural landscaping techniques shall be encouraged. All Lots and appurtenant Limited Common Areas that are not landscaped or left in a natural wooded state shall be grassed to the paved roadway and/or lake's edge where such Lot abuts a roadway and/or lake.

10.5.2 Subsequent to approval by the Developer of landscaping plans submitted pursuant to Section 10.5.1 above, the Owner shall be obligated to complete the landscaping of his Lot and Limited Common Area in accordance with such plans and Section 10.5.1 above, within thirty (30) days following the issuance of a Certificate of Occupancy or similar final approval for the residence constructed on the Lot by the Building Department of Wake County, North Carolina, or other governmental authority having jurisdiction. In the event the landscaping is not completed as provided herein, the Association shall have the right to enter the Lot and complete said landscaping in accordance with the approved plans, in the same manner as exterior maintenance may be performed by the Association pursuant to Article VIII of this Declaration. The Association shall be entitled to a lien against the Lot in an amount equal to one hundred ten percent (110%) of the cost to complete landscaping on such Lot and Limited Common Area, which sum may be collected as provided in Article VII hereof.

Section 10.6 **Motor Vehicles and Boats**. No motor vehicles, except four wheel passenger vehicles that are road worthy and have current registration and inspection stickers, may be placed, parked or stored upon any Lot; except, boats and motorcycles may be parked inside enclosed garages. No maintenance or repair may be performed upon any boat or motor vehicle upon any Lot. Commercial vehicles shall not be parked overnight within the Property within public view. Construction trailers may be parked only with the prior written consent of the Developer and in an area designated by the Developer.

Section 10.7 **Nuisances**. Nothing shall be done or maintained on any Lot which may be or become an annoyance or nuisance to any party. Any activity on a Lot which interferes with television, cable or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. If a dispute or question arises as to what may be or become a nuisance, the issue shall be submitted to the Association's Board of Directors, whose decision shall be dispositive of such dispute or question. No immoral, improper or unlawful use shall be made of any portion of the Property and all valid laws, zoning ordinances and regulations of governmental agencies having jurisdiction thereof shall be complied with.

Section 10.8 **Antenna**. The installation of all aerials, antennae or satellite dishes shall be subject to the approval of the ARB in accordance with architectural criteria imposed by the

Developer or the Association from time to time and in accordance with all applicable rules and regulations of the Federal Communications Commission or other governmental authorities having jurisdiction.

Section 10.9 **Lakes**. Only the Developer and the Association shall have the right to pump or otherwise remove any water from any lake adjacent to or near to the Property or any Lot for the purpose of irrigation or other use, or to place any refuse in such lake or lakes. The Developer and the Association shall have the sole and absolute right (but no obligation) to control the water level of such lake or lakes and to control the growth and eradication of plants, fowl, reptiles, animals, fish and fungi in or on any such lake. No gas or diesel driven boats or other powered watercraft shall be permitted to be operated on any lake; nonmotorized boats or watercraft of any kind shall be subject to the rules and regulations of the Association, as in effect from time to time. Lots which now or may hereafter be adjacent to or include a portion of a lake (the "lake parcels") shall be maintained so that such grass, planting or other lateral support to prevent erosion of the embankment adjacent to the lake and the height, grade and contour of the embankment shall not be changed without the prior written consent of the Association. Further, all shoreline vegetation, including cattails and the like, shall be maintained and controlled by the Owner of any lake parcel pursuant to the requirements of Section 10.15 hereof. If the Owner of any lake parcel fails to maintain the embankment or shoreline vegetation as part of its landscape maintenance obligations in accordance with the foregoing, the Association shall have the right, but no obligation, to enter upon any such lake parcel to perform such maintenance work which may be reasonably required, all at the expense of the Owner of such lake parcel pursuant to the provisions of Article VIII of this Declaration. Title to any lake parcel shall not include ownership of any riparian rights associated therewith. No docks, bulkheads or other structures shall be constructed on such embankments unless and until same shall have been approved by the Developer and all applicable governmental agencies. The Association shall have the right to adopt reasonable rules and regulations from time to time in connection with use of the surface waters of any lake adjacent to or nearby the Subdivision. Fishing by Owners and guests will be permitted at fishing ports only, if any. The Association shall have the right to deny such use to any person who in the opinion of the Association may create or participate in the disturbance or nuisance on any part of the surface waters of any such lake. The use of the surface waters of any such lake shall be subject to rights granted to other persons pursuant to the rules and regulations of the Association.

WITH RESPECT TO WATER QUALITY, WATER LEVELS, WILDLIFE, LAKE BANKS, SLOPES AND LAKE BOTTOMS, ALL PERSONS ARE REFERRED TO SECTION 12.10 HEREOF.

Section 10.10 **Trees**. No tree or shrub, the trunk of which exceeds six (6) inches in diameter one (1) foot above the ground, shall be cut down, destroyed or removed from a Lot without the prior express written consent of the Developer, except for trees located within an approved building pad, and the area within five (5) feet of such building pad.

Section 10.11 **Artificial Vegetation**. No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the ARB.

Section 10.12 **Signs**. No sign of any kind shall be displayed to the public view on any Lot except as may be approved as to size and design and in accordance with criteria established by the Association; provided however, directional signage to be used during the construction of homes within the Property shall be solely subject to the approval of the Developer.

Section 10.13 **Lighting**. No lighting shall be permitted which alters the residential character of the Subdivision.

Section 10.14 **Animals**. All animals shall be kept under control by each Owner at all times and leashed when outside the boundaries of the Owner's Lot. Any animal not so kept or which poses a danger to persons or other animals may be permanently or temporarily removed by the Association or by animal control authorities at the request of the Associaiton. Animals shall be kept for the pleasure of Owners only and not for any commercial or breeding use or purposes. If, in the discretion of the Board, any animal shall become dangerous or an annoyance or nuisance to other Owners, or destructive of wildlife or property, such animal may not thereafter be kept on a Lot. Further, in the event any group of animals shall collectively become dangerous or an annoyance or nuisance to other Owners, or destructive to wildlife or property, the Board shall have the right to require the applicable Owner to reduce the number of animals kept on the Lot, or to take such other remedial action as the Board shall specify in its sole discretion. Pens, kennels, dog houses and other structures used for keeping animals may be placed on a Lot only with approval of the ARB.

Section 10.15 **Maintenance of Lots and Limited Common Areas**. After construction of improvements on a Lot has commenced, no weeds, underbrush or other unsightly vegetation shall be permitted to grow or remain upon any Lot or Limited Common Area. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere within the Property other than in reasonably kept construction dumpsters. All such Lots and any improvements placed thereon, shall at all times be maintained in a neat and attractive condition and landscaping shall be maintained in a neat, attractive and orderly manner, including maintenance of grass, plants, plant beds, trees, turf, proper irrigation and lake edge maintenance, all in a manner with such frequency as is consistent with good property management. In order to implement effective control, the Association, its agents and assigns, shall have the right to enter upon any Lot for the purpose of mowing, pruning, removing, clearing, or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of the Board distracts from the overall beauty and safety of the property in accordance with the provisions of Article VIII hereof. During construction of the dwelling or other improvements, the builder will be required to maintain his Lot in a clean condition, providing for trash and rubbish receptacles and disposal. Construction debris shall not be permitted to remain upon any Lot.

Section 10.16 **Fences**. Except as approved by the Developer as part of Initial Construction, or as subsequently approved by the ARB, no fence, wall or other barrier shall be constructed upon any Lot or any other portion of the Property.

Section 10.17 **Maintenance of Driveways**. Each Lot Owner shall be responsible for maintenance of the driveway serving his Lot.

Section 10.18 **Window Air Conditioning**. No window air conditioning units shall be installed on any building within the Subdivision.

Section 10.19 **Compliance with Laws**. All Owners and other occupants of the Property shall at all times comply with the terms of all environmental, land use, marketing and consumer protection ordinances, statutes, regulations, and permits applicable to the Property or to any improvements constructed thereon.

Section 10.20 **Platting and Additional Restrictions**. The Developer shall be entitled at any time, and from time to time, to plat or replat all or any part of the Property owned by it, and to file any covenants and restrictions, or amendments to this Declaration, with respect to any undeveloped portion or portions of the Property owned by the Developer.

Section 10. 21 **Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swells, storm sewers or storm drains. Developer hereby reserves for the benefit of Developer, any builder who has purchased any Lot(s) for the purpose of the construction of a residence thereon and the resale of such Lot(s) and residence(s), and the Association and their respective successors and assigns, a perpetual easement across the Common Area and the Lots for the purpose of altering drainage and water flow. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. Notwithstanding the foregoing, in no event shall any exercise of such right materially adversely affect the drainage flows over and across any Lot or the Common Area without the prior written consent of the Owner of such Lot or the Developer and the Association, respectively.

Section 10.22 **Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 10.23 **Setbacks.** 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 applicable subdivision ordinances of the Town of Wake Forest and Wake County or other applicable laws, rules, and regulations. Notwithstanding any more permissive governmental regulations, no building other than a townhome shall be located on any Lot nearer to the side lot line than ten (10) feet without Developer's or the Association's prior written consent.

Section 10.24 **Utility Lines.** Except as may be permitted by the ARB, no overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Developer.

Section 10.25 **Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless

they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARB.

Section 10.26 **Swimming Pools.** No swimming pool shall be constructed, erected or maintained upon any Lot without the prior written consent of the ARB and in no event shall any above-ground swimming pool be permitted.

Section 10.27 **Gardens and Play Equipment.** No vegetable garden, hammock, statuary or play equipment (including, without limitation, basketball goals) shall be constructed, erected or maintained upon any Lot unless the type and location thereof has been previously approved by the ARB. Any such play equipment shall be placed in the rear yard so that it cannot be seen from the front of the dwelling.

Section 10.28 **Mailboxes.** All mailboxes and mailbox posts shall be of a similar style and color as that installed initially by Developer or a builder.

Section 10.29 **Exteriors.** Any change to the exterior color, finish or texture of any improvement located on a Lot, including, without limitation, the dwelling, the roof on any dwelling or any fence, must be approved by the ARB.

Section 10.30 **Clothesline.** No exterior clothesline of any type shall be permitted upon any Lot.

Section 10.31 **Entry Features.** Owners shall not alter, remove or add improvements to any entry features constructed by Developer on any Lot, or any part of any easement area associated therewith without the prior written consent of the ARB.

Section 10.32 **Window Treatments.** No foil or other reflective materials shall be used on any windows for sun screens, blinds, shades or for any other purpose. The side of all window treatments which can be seen at any time from the outside of any structure located on a Lot must be white or off-white.

Section 10.33 **Fuel or Water Tanks.** No fuel tanks or water tanks shall be stored or maintained upon any Lot in such a manner as to be visible from any public street or road or from any other Lot, unless used by Developer, temporarily, in the ordinary course of development of the Community.

Section 10.34 **Erosion Control.** No activity which may create erosion or siltation problems shall be undertaken on any Lot without the prior written approval of the ARB of plans and specifications for the prevention and control of such erosion or siltation. The ARB may, as a condition of approval of such plans and specifications, require the use of certain means of preventing and controlling of such erosion or siltation.

Section 10.35 **Association Insurance.** If and to the extent necessary to satisfy the requirements of federal, state or local law, ordinance or regulation, including without limitation the

requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs ("VA") or the U.S. Department of Housing and Urban Development ("HUD"), or otherwise as determined by the Board of Directors, the Board of Directors or the duly authorized agent of the Association shall have the authority to and shall obtain or cause to be obtained the following insurance:

(a) for all insurable improvements, whether or not located on Common Area, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts;

(b) a public liability policy covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars ($1,000,000.00); and,

(c) such other insurance necessary to satisfy the requirements of applicable laws or deemed necessary in the sole discretion of the Board.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefitted parties. All policies shall be written with a company authorized to do business in North Carolina. All policies shall be reviewed annually by one (1) or more qualified persons, at least one (1) of whom must be in the real estate industry and familiar with construction in Wake County. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Deed of Trust holder having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. The Association's Board of Directors shall make every reasonable effort to secure insurance policies that will provide that no policy may be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 10.36 **Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any

repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against Owner and the Lot as a specific assessment.

ARTICLE XI
RIGHTS AND EASEMENTS RESERVED BY DEVELOPER

Section 11.1 **Easements for Ingress, Egress, Utilities and Drainage**. The Developer reserves for itself, the Association, and their respective successors, assigns and designees, a right-of-way and perpetual, nonexclusive easement for ingress and egress and to erect, maintain and use utilities, electric, telephone and street lighting poles, wires, cables, conduits, storm sewers, sanitary sewers, water mains, gas, sewer, water lines, drainage ways and structures, cable television and radio equipment or other public conveniences or utilities, on, in and over, (i) any portion of the Common Area; (ii) any area designated as an easement, private street or right-of-way area on any plat of all or any portion of the Property; and (iii) a strip of land within each Lot five feet in width along the front, rear and sides of each Lot. Developer will not be responsible for damage or destruction of any landscaping, fencing, or other improvement placed in the foregoing easement.

Section 11.2 **Drainage Flow**. Drainage flow shall not be obstructed or diverted from drainage easements. The Developer or the Association may, but shall not be required to, cut drainways for surface water wherever and whenever such action may appear to be necessary to maintain reasonable aesthetic standards relative to the Property and surrounding properties. These easements include the right to cut any trees, bushes or shrubbery, make any grading of the land, or to take any other reasonable action necessary to install utilities and to maintain reasonable aesthetic standards, but shall not include the right to disturb any permanent improvements erected upon a Lot which are not located within the specific easement area designated on the plat or reserved in this Declaration. Except as provided herein, existing drainage shall not be altered so as to divert the flow of water onto an adjacent Lot or into sanitary sewer lines.

Section 11.3 **Future Easements**. Developer reserves the right to impose further restrictions and to grant or dedicate additional easements and rights of way on any Lots within the Property owned by Developer. In addition, Developer hereby expressly reserves the right to grant easements and rights-of-way over, under and through the Common Area so long as Developer shall own any portion of the Property. The easements granted by Developer shall not materially or adversely affect any improvements or unreasonably interfere with the enjoyment of the Common Area.

Section 11.4 **Cable Television or Radio**. Developer reserves for itself, and its successors and assigns, an exclusive easement for the installation, maintenance and supply of radio and

television cables within the rights of way and easement areas depicted upon any plat of any portion of the Property or within any easement reserved by this Declaration.

Section 11.5 **Easements for Maintenance Purposes**. The Developer reserves for itself, the Association, and their respective agents, employees, successors or assigns, easements, in, on, over and upon each Lot and the Common Area as may be reasonably necessary for the purpose of preserving, maintaining or improving roadways, landscaped areas, wetland areas, lakes, ponds, hammocks, wildlife preserves or other areas, the maintenance of which may be required to be performed by the Developer or the Association.

Section 11.6 **Developer Rights Re: Temporary Structures, Etc.** Developer reserves the right for itself, it successors, assigns, nominees and grantees, to erect and maintain such temporary dwellings, trailers, model houses and/or other structures upon Lots owned by the Developer, which it may deem advisable for development purposes and to do all acts reasonably necessary in connection with the construction and sale of improvements located on the Lots within the Subdivision. Nothing contained in this Declaration shall be construed to restrict the foregoing rights of Developer.

Section 11.7 **Easements Over Townhome Lots**. The Townhome Lots shall be subject to, and the Developer does hereby grant, in addition to the easements described above, the following non-exclusive perpetual and temporary easements for the enjoyment of Developer, the Association, any builders and subcontractors authorized by Developer, the Members, the Owners, and the successors-in-title of each:

(a) Townhome Maintenance. There is reserved for the benefit of each Townhome Lot a reciprocal appurtenant easement between all adjacent Townhome Lots for the purpose of maintaining or repairing the improvements located on each Townhome Lot, which easement shall extend to a distance of five (5) feet as measured from any point on the common boundary between the Townhome Lots. This easement shall be used only for such period of time as is reasonably necessary in order to complete the maintenance or repair. The Owner exercising this easement right shall be liable for the prompt repair of any damage to the Townhome Lots over which this easement is exercised which arises out of such maintenance or repair work. In addition, each Townhome Lot shall be subject to a perpetual easement in favor of the Association and its contractors for the maintenance of the Townhomes and of the landscaping and other features located on the Townhome Lots.

(b) Maintenance. Each Townhome Lot shall be subject to a perpetual easement in favor of the Association and its contractors for the maintenance of the Lots as provided for in the Article entitled "Maintenance" herein.

(c) Townhome Lot Construction and Boundary Line Improvements. Each Townhome Lot shall be subject to a temporary construction easement in favor of the Developer, authorized builders and subcontractors, and adjoining Lot Owners for the construction of any Lot, including, but not limited to, installation of boundary line improvements such as fences, walls and hedges. Any boundary line improvement made by an adjoining Lot Owner shall first be approved by Developer or the Association prior to installation.

ARTICLE XII
GENERAL PROVISIONS

Section 12.1 **Remedies for Violations.**

12.1.1 If any Owner or other person shall violate or attempt to violate any of the covenants or restrictions herein set forth, the Association, the Developer, or any Owner shall have all remedies available at law or in equity, which shall be cumulative, including, without limitation (i) to sue for damages against those so violating or attempting to violate any such covenant; or (ii) to file suit against those so violating or attempting to violate any such covenant for the purpose of preventing or enjoining all or any such violations, including mandatory injunctions requiring compliance with the provisions of this Declaration. The prevailing party in such suits shall be entitled to recover from the non-prevailing party or parties, reasonable attorneys' fees for pre-trial preparation, trial, appellate, arbitration, and bankruptcy proceedings.

12.1.2 In addition to all other remedies, and to the maximum extent allowed by law, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, lessees, invitees or employees, to comply with any covenant or restriction herein contained, or rule of the Association, provided the following procedures are adhered to:

(a) For a first violation, the Association shall warn the Owner of the alleged infraction in writing.

(b) For a subsequent violation, the Association shall provide the Owner with a notice of its intent to impose a fine for such violation. Included in the notice shall be the date and time of a meeting of a committee appointed by the Board of Directors (the "Rules Enforcement Committee") at which time the Owner may present argument as to why a fine should not be imposed. At least fourteen (14) days prior notice of such meeting shall be given by the Association.

(c) At the meeting, the alleged infractions shall be presented to the Rules Enforcement Committee, after which the Committee shall receive evidence and hear argument as to why a fine should not be imposed. A written decision of the Rules Enforcement Committee shall be submitted to the Owner not later than thirty (30) days after the Board of Directors meeting. At the meeting, the Owner shall have the right to be represented by counsel and to cross-examine witnesses.

(d) The Rules Enforcement Committee, by majority vote, may impose a fine not to exceed the maximum amount allowed by law from time to time.

(e) Fines shall be paid not later than five (5) days after notice of the imposition or assessment thereof.

(f) The payment of fines shall be secured by one or more liens encumbering the Lot or Lots owned by the offending Owner. Such fines and liens may be collected and enforced in the same manner as regular and special assessments are collected and enforced pursuant to Article VII hereof.

(g) All monies received from fines shall be allocated as directed by the Board of Directors.

(h) The imposition of fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association or any Owner may be otherwise legally entitled; provided, however, any fine paid by an offending Owner shall be deducted from or offset against any damages which may be otherwise recoverable from such Owner.

(i) The Rules Enforcement Committee shall be comprised of not less than three (3) members who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director or employee. No member of the Rules Enforcement Committee shall participate in the review of any infraction in which such member is alleged to have participated.

Section 12.2 **Severability**. Invalidation of any of the provisions of this Declaration by judgment or court order shall not affect or modify any of the other provisions, which shall remain in full force and effect.

Section 12.3 **Additional Restrictions**. No Owner, without the prior written consent of the Developer, may impose any additional covenants or restrictions on any part of the Property, but the Developer may include in any contract or deed hereafter made and covering all or any part of the Property, any additional covenants or restrictions applicable to the Property so covered which are not inconsistent with and which do not lower standards established by this Declaration.

Section 12.4 **Titles**. The addition of titles to the various sections of this Declaration are for convenience and identification only and the use of such titles shall not be construed to limit, enlarge, change, or otherwise modify any of the provisions hereof, each and all of which shall be construed as if not entitled.

Section 12.5 **Termination or Amendment**. The covenants, restrictions, easements and other matters set forth herein shall run with the title to the Property and be binding upon each Owner, the Developer, the Association, and their respective successors and assigns for a period of fifty (50) years, and shall be automatically renewed for successive ten (10) year periods unless terminated as herein provided. The Owners holding two-thirds (2/3) or more of the total votes of the Association may alter, amend or terminate these covenants. Any amendment to this Declaration shall be executed by the Association and Developer, if applicable, and shall be recorded in the current public records of Wake County, North Carolina. For so long as there is a Class B Membership and provided HUD or VA shall have insured or hold a Deed of Trust within the Property, the following actions shall require approval of the Federal Department of Housing and Urban Development ("HUD") and the Veteran's Administration ("VA"): annexation of additional properties, dedication of any portion of the Common Area, and amendment of this Declaration.

Notwithstanding the foregoing, the Board of Directors, with the written consent of the Developer, and without the vote of the members, may amend this Declaration for the sole purpose of

electing not to be governed by the provisions of the North Carolina Planned Community Act, N.C. Gen. Stat. §§ 47F-1-101, *et seq.*

This Declaration may be amended unilaterally by the Developer at any time prior to the sale of the first single family Lot, and notwithstanding the sale of a single family Lot, Developer may unilaterally amend any provision of this Declaration related to the Townhome Lots at any time prior to the sale of the first Townhome Lot. This Declaration may also be amended unilaterally by Developer if: (a) such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rules or regulation or judicial determination which shall be in conflict therewith, (b) such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots, (c) such amendment is required by an institutional or governmental lender or purchaser of mortgage loans (such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation) to enable such lender or purchaser to make or purchase loans on the Lots, (d) such amendment is necessary to enable any governmental agency or private insurance company, including but not limited to HUD and the VA, to insure or guarantee loans on the Lots, provided, however, that any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing, or (e) such amendment does not materially adversely affect the substantive rights of any Owners hereunder nor adversely affect title to any Lot without the consent of the affected Owner.

Any such amendment shall become effective upon the recording with the Register of Deeds of the instrument evidencing such change unless a later effective date is specified therein. The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate. Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the Superior Court in Wake County within one year of the date of recordation of such amendment with the Register of Deeds.

Section 12.6 **Assignment of Permit Responsibilities and Indemnification**. In connection with the platting and development of the Property, the Developer may have assumed certain obligations in connection with the maintenance of the Surface Water or Stormwater Management System. The Developer hereby assigns to the Association, and the Association shall be solely responsible for, all of the Developer's obligations and responsibilities for maintenance of the Surface Water or Stormwater Management System pursuant to all applicable Permits and the plat of the Property. Subsequent to the termination of the Class B Membership, the Association shall indemnify, defend and hold the Developer harmless from all suits, actions, damages, liability and expenses in connection with loss of life, bodily or personal injury or property damage, or any other damage arising from or out of an occurrence in, upon, at or resulting from the operation or maintenance of the Surface Water or Stormwater Management System, occasioned wholly or in part by any act or omission of the Association or its agents, contractors, employees, servants or licensees.

Section 12.7 **Conflict or Ambiguity in Documents**. To the extent of any conflict, ambiguity, or inconsistency between this Declaration, the Articles, or the Bylaws, the terms of this Declaration shall control both the Articles and Bylaws.

Section 12.8 **Usage**. Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 12.9 **Effective Date**. This Declaration shall become effective upon its recordation in the public records of Wake County, North Carolina.

Section 12.10 **Disclaimers as to Water Bodies**. NEITHER THE DEVELOPER, THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY ADJACENT TO OR WITHIN THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO, OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS, POISONOUS SNAKES, AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES AND NATURAL AREAS WITHIN THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT OR OTHER PORTION OF THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR LAKE BOTTOMS LOCATED THEREIN.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed under seal this ___ day of April, 2005.

STONEGATE PARTNERS, LLC, a
Florida limited liability company

By: Stokes Bush & Kirkpatrick Investments, LLC

By: Matt H. Kirkpatrick
Its: Vice President

Address: 4315 Pablo Oaks Court
Jacksonville, Florida 32224

STATE OF ~~FLORIDA~~ North Carolina
COUNTY OF Wake

I, Laura Scott, a Notary Public of the County and State aforesaid, certify that Matt H. Kirkpatrick personally came before me this day and acknowledged that s/he is Vice President of **Stokes Bush & Kirkpatrick Investments, LLC**, a Florida limited liability company, and that s/he as Vice President, being duly authorized to do so, executed the foregoing instrument on behalf of said company as the general manager of Stonegate Partners, LLC, on behalf of the company.

Witness my hand and official stamp or seal this 20th day of April, 2005.

Laura Scott Notary Public

My Commission Expires: 01/30/07

Laura Scott
Notary
Public
Alamance County, NC

EXHIBIT A

Legal Description of the Property

BEING all of Lots 178-196 as shown on map entitled "Stonegate at St. Andrews" prepared by the John R. McAdams Company, Inc. and recorded at Book of Maps 2005, Pages 592-596, Wake County Registry.

CONSENT AND JOINDER TO DECLARATION

The undersigned, **REGIONS BANK**, the owner and holder of a deed of trust upon a portion of the Property described in the foregoing Declaration hereby consents and joins in the foregoing Amended and Restated Declaration of Covenants, Conditions, Easements, and Restrictions for Stone Gate (the "Declaration"), and acknowledges and agrees that the Property shall be subject to all of the terms, conditions, easements, and assessments set forth and provided for in the Declaration.

IN WITNESS WHEREOF, this Consent and Joinder is executed by the undersigned this _____ day of _____, 2004.

REGIONS BANK

By: _____
Print Name: _____
Title: _____ President

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that she/he is the ____ President of Regions Bank and, being duly authorized to do so, executed the foregoing instrument as ____ President of Regions Bank, on behalf of the Bank.

Witness my hand and official stamp or seal this _____ day of _____, 2004.

_____Notary Public

My Commission Expires: _____

BOOK:011319 PAGE:00467 - 00505

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

WAKE COUNTY NORTH CAROLINA

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

North Carolina – Wake County

The foregoing certificate___ of Laura Scott

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

Laura M. Riddick, Register of Deeds

By: Carolyn J. Kibbie
~~Assistant~~/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
39 New Time Stamp
_____ # of Pages

22.004-7/11/03