

WAKE COUNTY, NC 514
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
09/23/2005 AT 12:42:29

BOOK:011596 PAGE:01677 - 01692

Prepared by and return to: George N. Hamrick,
7048 Highway 64 East, Suite 200
Knightdale, NC 27545

NORTH CAROLINA
WAKE COUNTY

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
STONEWATER HOMEOWNERS
ASSOCIATION, INC.**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
is entered into this 20th day of September, 2005, between Kirby Marshburn Bldg. Corp.
(hereinafter "Declarant"), and Stonewater Homeowners Association, Inc., (hereinafter
"Association") and all the parties hereafter acquiring any of the described property.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of all lots within a subdivision in the County of
Wake, State of North Carolina, known as Stonewater Subdivision, as shown on map recorded
in Book of Maps 2005, Page 1828, Wake County Registry; and

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and
advantage of every party hereafter acquiring any of the described property that certain
covenants, conditions, easements, assessments, liens, and restrictions governing and
regulating the use and occupancy of the Property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and
amenities and the desirability and attractiveness of said Property; and for the continued
maintenance and operation of any recreational and/or common area.

NOW, THEREFORE, in consideration of the premises, the Declarant agrees with all
parties hereafter acquiring any of the Property hereinafter described, that it shall be and is
hereby subject to the following restrictions, covenants, conditions, easements, assessments,
and liens relating to the use and occupancy thereof, which shall be construed as covenants
running with the land which shall be binding on all parties acquiring any right, title, or
interest in any of the Properties and which shall inure to the benefit of each Owner thereof.

**ARTICLE I
PROPERTY SUBJECT TO THIS DECLARATION**

The Property which shall be held, transferred, sold, conveyed, and occupied subject to
this Declaration is located in the County of Wake, State of North Carolina, and is more
particularly described as being all of that property shown on map and survey recorded in
Book of Maps 2005, Page 1828, Wake County Registry, plus all the utility and access
easements as shown on the aforesaid map. The Declarant hereby subjects the heretofore
described property to this Declaration and the jurisdiction of the Association. Additional

properties may be subjected to these Declarations within ten (10) years from the date of this instrument.

ARTICLE II DEFINITIONS

Section 1. "Association" shall mean and refer to *Stonewater Homeowners Association, Inc.*, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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

Section 4. "Permanent Common Open Space" shall consist of those areas designated on recorded plats of Stonewater Subdivision as such. The Declarant will convey all Permanent Common Open Space shown on the various plats of the subdivision to the Association. The purpose of this agreement, Permanent Common Open Space shall be interpreted to also include the streets located in Stonewater Subdivision as shown on the recorded map. The Association shall be responsible for the repair, maintenance and repaving of the streets within Stonewater Subdivision as shown on recorded map, until such time as said streets are accepted for maintenance by the North Carolina Department of Transportation. Permanent Common Open Space shall also be interpreted to include the Sign Easement shown on recorded map.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Permanent Common Open Space.

Section 6. "Declarant" shall mean and refer to Kirby Marshburn Bldg. Corp., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 7. "Common Expense" shall mean and include:

- (A) All sums lawfully assessed by the Association and its Members.
- (B) Expenses of the common area and administration, maintenance, repair, or replacement of the Permanent Common Open Space;
- (C) Expenses declared to be common expenses by the provisions of this Declaration or the By-Laws;
- (D) Hazard, liability, or such other insurance premiums as the Declaration or the By-Laws may require the Association to purchase;
- (E) Ad valorem taxes and public assessment charges lawfully levied against common areas;
- (F) Expenses agreed by the members to be common expenses of the Association.

ARTICLE III PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Permanent Common Open Space and over the common open spaces for access, ingress and egress from and to public streets, walkways and parking areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the Permanent Common Open Space to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members;

No such dedication or transfer shall be effective unless an instrument agreement to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

(c) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Permanent Common Open Space and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the homeowners hereunder; and

(d) the right of the Association to adopt, publish and enforce rules and regulations as provided in Article IX.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Permanent Common Open Space and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Permanent Common Open Space. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Permanent Common Open Space to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except utility and storm drainage easements.

Section 4. Parking Rights. The Association will not allow the parking of boats, trailers and other such items on the Permanent Common Open Space.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they, determine, but in

no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

Class B. The Declarant shall be a Class B member and shall be entitled to four (4) votes for each Lot owned. 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:

- (a) when the total vote outstanding in the Class A membership equals the total vote outstanding in the Class B membership; or
- (b) on December 31, 2008; or
- (c) upon the surrender of all Class B membership by the holder thereof or cancellation by the Association.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

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

- (A) Annual assessments or charges.
- (B) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All assessments relating to common open spaces shall be shared equally by the owners of each Lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and, in particular, for the acquisition, improvement and maintenance of the Permanent Common Open Space, including the maintenance, repair and reconstruction of private streets, driveways, walks and parking areas situated on the Permanent Common Open Space, such maintenance to include the cutting and removal of weeds and grass and the removal of trash and rubbish or any other maintenance or for any other maintenance or for the use and enjoyment of the Permanent Common Open Space, including but not limited to, the cost of repairs, replacement and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Permanent Common Open Space, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting, the generality of the foregoing, signs, paving, grading, landscaping and any other major expense for which the Association is responsible, and such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate

reserve fund for the periodic maintenance, repair, and replacement of improvements to the common area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$350.00 per lot.

(A) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of membership by up to ten percent (10%) of the previous year's assessment.

(B) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3(a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(C). The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Permanent Common Open Space, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on an annually basis, provided, however, that the assessment for Lots owned by Declarant which are not occupied as a residence, may be a lesser amount as fixed by the Board of Directors of the Association.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the 1st day of the month following the conveyance of the Permanent Common Open Space. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth that the assessments on a specified Lot have been paid. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Property in the same manner in which Deeds of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the North Carolina General Statutes, or its successors, and, in either event, interest, costs, and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Permanent Common Open Space or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and *ad valorem* taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

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

Section 12. Working Capital Fund. At the time of closing of the sale of each unit a sum equal to at least two (2) months assessment for each unit shall be collected from the homeowner and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance of regular assessments.

Section 13. Fines. The board may impose fines against any lot, provided that the association shall not impose any fines without first notifying the owner of the offending residential lot in writing of the specific violation, which written notice shall also provide for a specific period of time for said offending owner to cure the indicated violation without

incurring a fine. Such fines shall be a lien against the owner's lot. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the fine. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the association may otherwise be legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the association might otherwise be entitled to recover by law from such owner. Fines shall be as follows:

(A) First noncompliance or violation: a fine of not less than \$50.00.

(B) Second noncompliance or violation: a fine not in excess of \$100.00.

(C) Third and subsequent noncompliance or violation or violations that are of a continuing nature: a fine of not less than \$100.00 per week for continued violation or noncompliance.

ARTICLE VI ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. A. Until such time as Declarant no longer owns any real property within the Properties, the Architectural Control Committee shall consist of one (1) or more persons designated by the Declarant.

B. At such time as Declarant no longer owns any real property within the Properties (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), whichever is earlier, the rights, powers, duties and obligations of the Architectural Control Committee shall be assigned to the Association. Upon said assignment to the Association, (i) the Board shall designate the number of and appoint the members of the Architectural Control Committee on an annual basis, (ii) in the event of the death, resignation, or removal by the Board (with or without cause) of any member of the Architectural Control Committee appointed by the Board, the Board shall have the full right and authority to designate and appoint a successor to complete the unexpired term of such deceased, resigned or removed member; and (iii) members of the Architectural Control Committee appointed by the Board may be removed and replaced by the Board at any time with or without cause, without notice.

C. Prior Approval. No building, sign, fence, outside lighting, hedge, wall, walk, mailbox, or other structure or planting shall be constructed, erected or planted until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and location with respect to topography and finished ground elevation shall have been submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving such plans and applications, the Architectural Control Committee shall consider the suitability of the proposed building, improvements, structure or landscaping and materials of which the same are to be built, the site upon which it is proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the Architectural Control Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final and complete form, within sixty (60) days after written request for final approval or disapproval, such plans and specifications shall be deemed approved. There is specifically reserved unto the Architectural Control Committee, the right of entry and inspection upon any Lot for the purpose of determination by the Architectural Control Committee whether there exists any construction of any

improvement which violates the terms of any covenants, conditions and restrictions to which its deed or other instrument of conveyance makes reference. The Architectural Control Committee and the Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the property of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expense and reasonable attorney's fees in connection therewith. The Association, Declarant, Architectural Control Committee or any officer, employee, director or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in Judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that it will not bring any action or suit against the Association, Declarant, or Architectural Control Committee to recover any such damages.

Section 2. Maintenance. Common Areas and improvements thereon and landscape islands within public street rights-of-way adjoining the Properties and landscape easements as shown on the recorded plats of the properties shall be maintained by the Association. Such areas shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants must be removed by the Association. Neither the County nor the State will be liable for any accidents or damage caused by such encroachment within the right(s)-of-way and the Association shall hold harmless the public and indemnify the County and State from such liability.

Any Owner who fences or encloses any portion of his Lot (which fence or enclosure shall require the prior approval of the Association) may plant trees, shrubs, flowers and grass in the fenced or enclosed portion as he elects and shall maintain the fenced or enclosed portion at his own expense, provided that such maintenance does not hinder the Association in performing its maintenance duties as to the Common Area. No such maintenance by an Owner shall reduce the Assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period. No Owner shall plant any vegetation on the common Area except with the written approval of the Association.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner or his family, tenants, contract Purchasers, guests, or invitees or of any contractor, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the Assessment to which such Lot is subject.

The streets within Stonewater Subdivision shall be dedicated for public use on each recorded map. The Declarant shall be responsible for any maintenance or repair necessary for any street until maintenance responsibility has been transferred to the Association and the Association shall remain responsible for any maintenance or repair necessary for any street until maintenance is formally accepted by the North Carolina Department of Transportation or other appropriate government entity.

Section 3. Dwelling Size and Driveways. Except with prior written approval of the Architectural Control Committee, no residential structure on any Lot which has an enclosed heated area of less than 2000 square feet, exclusive of porches, breezeways, steps and garages, shall be erected or placed or permitted to remain on any Lot. If additional lands are annexed pursuant to the provisions of this Declaration, the minimum enclosed heating area

applicable to residential structures on Lots with said annexed additional lands shall be as set forth in the recorded Declaration of Annexation which annexes said additional lands; if the recorded Declaration of Annexation shall not specify the minimum heated area applicable to residential structures on Lots within said annexed land, then the minimum heated area for said Lots shall be 2000 square feet as above provided. All driveways shall be paved (concrete or asphalt) from street to each residence including parking area. All driveway culverts shall be a minimum of a 20 foot concrete pipe. The Declarant reserves the right to waive in writing any minor violation of this section, and for purposes hereof, any violation which does not exceed 10% shall be considered a minor violation. Each residence shall be required to have an attached two car garage. The exterior of the residential structure must be brick, stone or masonry. No other exterior siding material shall be permitted except for hardiplank which can be used on dormers, roof offsets or as an accent. No vinyl siding is allowed except on soffits, facias and overhangs.

Section 4. Building Set Back Lines. The building set backs for each Lot shall be as is required and established by the zoning ordinance of the County of Wake from time to time.

Section 5. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat as well as 10 feet along the rear of each Lot and 5 feet along each side of the Lot, unless shown in excess of such distances on the recorded plat for such Lot, in which case the distance shown on the plat shall control. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water through the drainage channels in the easements. Such easement area of each Lot, and all improvements in it, shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible and except for storm drainage pipes located in drainage easements serving more than one Lot, for which the Association is responsible. No such easement shall exist along an interior Lot line on any Lot on which a residence is constructed within an area which would otherwise be an easement, if the placement of the residence is permitted by these covenants. Declarant reserves the right to waive, in writing, any one or all rear and side line easement requirements.

ARTICLE VII USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Area, including, but not limited to levying fines or penalties.

Section 2. Use of Lots. No Lot shall be used except for single-family residential purposes, except for use by the Declarant or Declarant's assigns as a temporary sales office. No building shall be erected, altered, placed or permitted to remain on any Lot without written permission of the Architectural Control Committee.

(A) Outside clothes lines shall not be permitted.

(B) No Commercial signs, with the exception of a "For Sale" sign no more than three feet in width and three feet in height, shall be erected or maintained on any Lot. Such signs allowed hereunder, being temporary in nature, shall not be subject to any set back requirement. Declarant and/or Declarant's assigns shall be authorized to erect and maintain temporary signs for the sales and construction offices and for marketing of Stonewater, and

to erect and maintain decorative fencing at any sales or construction office.

(C) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot in an exposed location except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction in which same is to be used.

(D) With the approval of the Architectural Control Committee it will be permissible for a recreational swimming pool to be placed on a lot.

(E) Nothing shall be kept and no activity shall be carried on in any dwelling structure on a Lot or on the Common Area which will increase the rate of insurance for the Common Area. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his dwelling structure or on the Common Area which will result in the cancellation of insurance on any portion of the Properties, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area. All garbage receptacles, containers and enclosures shall be located at the rear of the dwelling structure on a Lot, out of view from any street abutting the Lot.

(F) Except with the prior written consent of the Architectural Control Committee, no trailer, tent, shack, barn, or other outbuildings, shall be erected or placed on any Lot covered by these covenants. Except with the prior consent of the Architectural Control Committee, no detached garage shall be used for human habitation, temporarily or permanently.

(G) No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum building set back line except upon approval by the Architectural Control Committee. No chain link or horizontal board, or pasture style fence shall be used without prior written approval of the Architectural Control Committee.

(H) No accessory building of any nature whatsoever (including but not limited to a detached garage, storage building, dog houses, greenhouses) shall be placed on any Lot without prior written approval of the Architectural Control Committee, with said Committee to have the sole discretion relating to the location and type of accessory building which shall be permitted on any Lot. Any building larger than a 12 x 16 must be constructed of materials to match house.

(I) Each Owner shall keep his building site free of tall grass (Grasses eight (8) inches in height and taller are prohibited), undergrowth, dead trees, trash and rubbish and property maintained so as to present a pleasing appearance. In the event an Owner does not properly maintain his Lot as above provided, in the opinion of the Architectural Control Committee, the Committee may have the required work done and the costs thus incurred shall be paid by the Owner or the Owner may be fined.

(J) No "satellite dish" exceeding twenty four inches (24") in diameter shall be erected or allowed to remain on any Lot. Each Owner must receive location approval by the Architectural Control Committee prior to installation.

(K) Decorative lawn ornaments shall be approved in writing by the Architectural Control Committee prior to installation on any Lot.

(L) All mail boxes must be uniform in design and color as determined by the Architectural Committee.

Section 3. Parking Rights. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of motor vehicles owned by such Owner, and Owners of

Lots shall not be permitted to park their automobiles on the streets in the Properties. Owners of Lots shall not be permitted to park boats, trailers, campers and all other similar property on the streets in the development, and such property shall be parked in a garage or area screened from the street and adjoining Lot view and approved by the Architectural Control Committee.

In no case shall recreational vehicle parking be allowed in front of or beside a house. Any recreational vehicle parked in the rear of a house shall be adequately screened from view of the street and adjoining Lots. No inoperative or abandoned vehicle, of any type, shall be parked or stored on any Lot or on the streets in the Properties.

Section 4. Negative Activities. The pursuit of activities which might tend to cause disorderly, unsightly or unkempt conditions shall not be permitted or undertaken on any part of any Lot or Common Area.

Section 5. Required Land Area. No single family residential Lot may be subdivided or recombined by sale or otherwise so as to reduce the total area thereof below that as shown on any recorded subdivision map of the Properties, unless approved by the Architectural Control Committee and unless the resulting lot(s) is(are) in compliance with Wake County.

Section 6. Animals and Pets. No animals, livestock, or poultry of any kind shall be kept or maintained on any lot or in any dwelling. Household pets are limited to a total of three (3) household cats or three (3) domesticated dogs or any combination of dogs and cats for a maximum number of three (3). Said pet(s) may be kept or maintained provided that they are not kept or maintained for commercial purposes. Said pet(s) are not allowed to disturb or annoy residents or guests. Pitt Bulls and Rottweilers, or any partial breeds of these dogs are not allowed. No animal is allowed that displays vicious tendencies. All pets must be kept under the direct control of the owner by fence, (which must first be approved by the Architectural Control Committee) leash, or harness, and may not run freely at any time. Pet owners are required to clean up after their dog when in Common Areas, Violators will be subject to a fine and/or legal action.

Section 7. Prohibited Activities. Noxious, offensive or land activities shall not be carried on upon any Lot. Each owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Each owner shall keep and maintain his Lot in a neat, orderly and well kept manner. No industry or trade of any kind shall be permitted on any Lot or any Common Area, except that Declarant, and/or its assigns, may use any unsold Lots of the Property for sales or display purposes.

Section 8. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Properties shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

ARTICLE VIII ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require approval from the appropriate governmental authority, and shall be required to occur within ten (10) years from the date of this instrument, provided, however, that all annexations of additional properties to the original development described in Article I hereof must contain a minimum of five (5) acres, be contiguous to the property described in Article I hereof or property previously annexed. Provided further, that no annexation of additional property shall have the effect of placing the original development in violation of the appropriate governmental ordinances.

Section 2. Annexation of additional Properties shall be accomplished by recording in the County Registry a Declaration of Annexation , duly executed, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation, except approval by the governmental authority.

Section 3. Prior to the conveyance of the first lot in any newly annexed area, the Declarant shall deliver to the Association one or more deeds conveying fee simple title to any Permanent Common Open Space within the lands annexed free and clear of all encumbrances and liens except utility, storm drainage and greenway easements.

ARTICLE IX INSURANCE

Section 1. Any insurance coverage obtained by the Association on the Property shall be governed by the following provisions:

- (A) **Ownership of Policies.** All insurance policies upon the common area shall be purchased by the Association for the benefit of all the Association and the Owners.
- (B) **Coverage.** All buildings and improvements and all personal property included in the Permanent Common Open Space and facilities shall be insured in an amount equal to one hundred (100%) percent insurable replacement value, as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:
 - (i) Loss or damage by fire and other hazards covered by the standard coverage endorsement.
 - (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, if any.
 - (iii) Such policies shall contain clauses providing for waiver of subrogation.
- (C) **Liability.** Public liability insurance may be secured by the Association with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.
- (D) **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association and charged to the Owners as an assessment according to the provisions of Article V above.

(E) **Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustees under this Declaration. The sole duty of the Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the By-Laws and for the benefit of the Owners and their mortgagees in the following shares:

- (i) Proceeds on account of damage to Permanent Common Open Space and facilities held for the Association.
- (ii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustees shall be distributed to or for the benefit of the beneficial Owners in the following manner:

- (A) **Expense of the Trust.** All expenses of the insurance trustees shall be first paid or provisions made therefor.
- (B) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.
- (C) **Fidelity Insurance or Bond.** All persons responsible for or authorized to expend funds, or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments plus reserves accumulated.

ARTICLE X GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment. These covenants and restrictions shall run with, burden, and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument

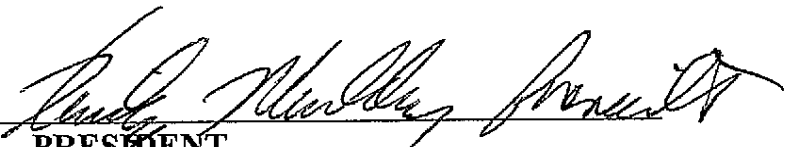
signed by not less than ninety percent (90%) of the Lot owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the Lot owners.

If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

- (A) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined.)
- (B) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

**CERTIFICATION OF VALIDITY OF AMENDMENT TO
COVENANTS, CONDITIONS, AND RESTRICTIONS OF
STONEWATER SUBDIVISION HOMEOWNERS ASSOCIATION, INC.**

STONEWATER HOMEOWNERS
ASSOCIATION, INC.

BY: 
PRESIDENT

Section 4. Management and Contract Rights of Association. Declarant may enter into a contract with a Management company manager for the purpose of providing all elements of the operation, care, supervision, maintenance, and management of the property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer or management by Declarant to the Association.

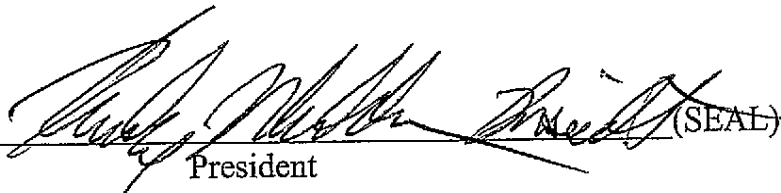
Section 5. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day (60) delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

**ARTICLE XI
ELECTRICAL SERVICE**

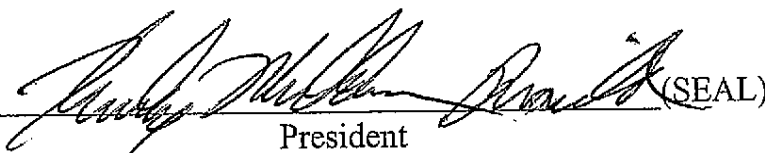
Declarants reserve the right to subject the above-described Property to a contract with Progress Energy Carolinas, Inc. for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy Carolinas, Inc. by the Owner of each Lot within said Property.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed, by the authority of its Board of Directors, this 20th day of September, 2005.

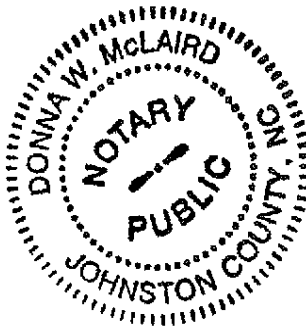
DECLARANT: KIRBY MARSHBURN BLDG CORP.

By:  (SEAL)
President

STONEWATER HOMEOWNERS ASSOCIATION, INC.

By:  (SEAL)
President

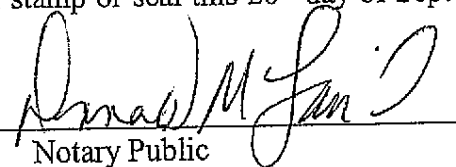
STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON



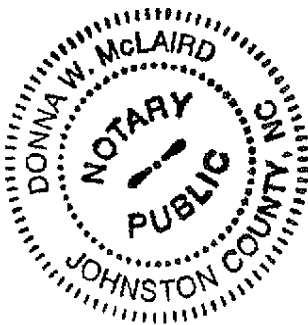
I, a Notary Public of the County and State aforesaid, certify that **Kirby Marshburn**, personally came before me this day and acknowledged that he is President of **Kirby Marshburn Bldg. Corp.**, a North Carolina corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation

WITNESS my hand and official stamp or seal this 20th day of September, 2005.

My commission expires: 4-13-2008


Notary Public

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON



I, a Notary Public of the County and State aforesaid, certify that Kirby Marshburn, personally came before me this day and acknowledged that he is President of **Stonewater Homeowners Association, Inc.**, a North Carolina corporation, and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation

WITNESS my hand and official stamp or seal this 20th day of September, 2005.

My commission expires: 4-13-2008


Notary Public