

Prepared by and return to:  
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FAISON, BROWN, FLETCHER & BROUCH  
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Raleigh, North Carolina 27609

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
VINTAGE CROVE SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by THE CHATHAM PARTNERSHIP, INC., a North Carolina corporation, 5114 Bur Oak Circle, Raleigh, North Carolina, and THE CONCORD COMPANY, LTD, a North Carolina corporation, 5114 Bur Oak Circle, Raleigh, North Carolina, hereinafter referred to as "Declarant".

W I T N E S S E T H T H A T :

WHEREAS, Declarant is the owner of certain Properties near the Town of Apex, County of Wake, State of North Carolina; and

WHEREAS, Declarant will convey lots from its said Properties subject to certain protective covenants, conditions, restrictions and easements as hereinafter set forth;

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Vintage Grove Homeowner's Association, Inc., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, 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 more particularly described on Exhibit A attached hereto and incorporated herein by this reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean that certain portion of the Properties (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including the private roads or streets, if any, parking areas and any recreational facilities. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described with greater particularity on Exhibit B attached hereto and incorporated herein by this reference.

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 Common Area and road rights-of-way which are offered for public dedication.

Section 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 7. "Declarant" shall mean and refer to The Chatham Partnership, Inc., a North Carolina corporation, and The Concord Company, Ltd., a North Carolina corporation, their successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 8. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 9. "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

Section 10. "Assessment" shall mean and refer to the share of the Common Expenses from time to time assessed against a Lot and its Owner by the Association in the manner herein provided.

Section 11. "Common Expenses" shall mean and refer to all sums lawfully assessed against a Lot by the Association; expenses of administration, maintenance, repair or replacement of the Common Areas; expenses agreed upon as Common Expenses by the Association; expenses declared Common Expenses by the provisions of this Declaration or the Bylaws; and, insurance premiums.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facilities which may constitute a portion of the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of any of the recreational facilities which may constitute a portion of the Common Area by an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) the right of the Association, in accordance with its articles and Bylaws, to borrow money for the purpose of improving the Common Area and its facilities, and in aid thereof, to deed in trust the Common Areas;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Members has been recorded; and,

(e) the right of the Association to formulate, publish, impose and enforce rules and regulations for the use and enjoyment of the Common Area, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common Area, to the members of his family, his lawful tenants, or contract purchasers who reside on such Owner's Lot and, to his guests, invitees and licensees.

Section 3. General Easements and Associated Undertakings. All of the Properties, including Lots and Common Area, shall be subject to such easements for private roads or drives, public streets, water lines, sanitary sewers, storm drainage facilities, gas lines, cable communication transmission, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessor in title, prior to the subjecting of the Properties to this Declaration; provided, however, as to any easements which may be granted that run across or affect any of the Lots, such easements shall not be granted so as to run under or disturb in any way any of the

dwelling structures which may be constructed upon such Lots; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. Sight easements, if any, as may be shown upon any recorded subdivision map of the Properties are hereby reserved by the Declarant.

An easement is hereby established for the benefit of the County of Wake, Town of Apex and any agency thereof over all Common Area and Lots hereby or hereafter established for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewer and drainage facilities, the fighting of fires, collection of garbage and police protection.

Section 4. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and all Owners of any Lot to be used for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any Lot, and installation of driveways, sidewalks, underground drainage and utility conduits and hookups. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In using and taking the benefits of said easement, Declarant or its designate and Owners shall use their best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should Declarant, its designate or an Owner fail to restore the

disturbed land as required above, the Association may restore the Land to the required condition and Declarant, its designate or Owner, as the case may be, shall indemnify the Association for the reasonable expense incurred in performing such restoration. Where any Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably servient and proximate to his Lot.

Section 5, Emergencies and Entrance. Every Lot and dwelling structure thereon shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any dwelling structure and that endangers any improvement or portion of the Common Area. Every Lot and dwelling structure thereon shall also be subject to an easement and right of entry by the Association to do other work reasonably necessary for the maintenance and operation of the Properties, as to the right of entry to the dwelling structure granted by this sentence, prior notice of the entry shall be given by the Association and the same shall be exercised at reasonable times.

Section 6. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns that it will convey fee simple title to the Common Area described on Exhibit B hereto to the Association, which Common Area shall include any private roads or drives which may have been previously created free and clear of all encumbrances and liens, except those matters of record.

Section 7. Utility Charges for Water and Street Lights. As consideration for the conveyance of the Common Area and as consideration for the rights, entitlements and benefits granted to and conferred upon the Association under and by virtue of this

Declaration, the Association covenants and agrees to accept the responsibility for payment of any and all fees, charges and expenses arising by virtue of the use of water provided to and used in connection with any of the Common Area and by virtue of the use and operation of the street lights installed and erected within the Common Area from and after the date of acceptance. Such cost of fees, charges and expenses paid by the Association shall be charged ratably to the Owners as an Assessment according to the provisions of Article IV below.

Section 8. Parking Rights. No automobiles, boats, trailers, campers or recreational vehicles shall be parked within the Common Area, or right-of-way of any public or private road or street within the Properties. No boat, trailer, camper or recreational vehicle shall be parked in the front yard of any lot within the Properties.

### ARTICLE III

#### 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 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 vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member(s) shall be the Declarant and shall be entitled to three (3) 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 votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided, however, in the event the Class B membership shall cease and be converted to Class A membership because the Declarant no longer owns the number of Lots required to keep such Class B membership in effect, such Class B membership shall be reinstated by the recordation of a subdivision map of the Properties which creates additional Lots that are in accordance with the overall plan of development for Vintage Grove Subdivision or annexed in accordance with the provisions of Article IX, Section 5 hereof, but in no event shall such Class B membership extend beyond the time stated in subparagraph (b) of this Section; or
- (b) on October 1, 1992.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned with 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: (1) annual Assessments or charges, and (2) 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, casts, 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 became due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them.

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 for the improvement and maintenance of the Common Area and the improvements thereon, including but not limited to, the private roads or streets, for the establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Area, payment of insurance premiums for contracts of hazard and liability insurance on the Common Area and, payment of assessments for public and private capital improvements made to or for the benefit of the Common Area, payment of local ad valorem taxes, if any, on the Common Area and such other needs as may arise.

Section 3. 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 Three Hundred Dollars (\$300.00).

(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 each year not more than ten percent (10%) above the maximum Assessment for the previous year by the Board of Directors without a vote of the membership.

(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 ten percent (10%) 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.

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

Section 4. Special Assessments 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 Common Area, including fixtures and personal property related thereto or extraordinary exterior maintenance required to be performed; provided, however, any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all Members not less than 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 percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the

required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special Assessments must be fixed at a uniform rate for all Lots and annual Assessments shall be due and payable and collected on a quarterly basis; provided, however, annual and special Assessments for all Lots owned by Declarant which are not occupied as a residence may be such lesser amount as may be fixed by the Board of Directors of the Association, but shall not be less than twenty-five percent (25%) of such Assessments for other Lots. Special Assessments may be collected on a quarterly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual Assessments provided for herein shall commence and shall be due and payable as to all Lots platted of record on the first day of the month following the conveyance of the Common Area to the Association and on the first day of each quarter thereafter. Such amount due and payable on the first day of each such quarter shall be equal to one-fourth (1/4) of the annual Assessment as set forth and established pursuant to Section 3 of this Article. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. In addition to the annual Assessment, there shall be paid at the time of the initial sale of each completed dwelling on a Lot at least two/twelfths (2/12) Assessments in order to provide a working capital fund for the initial months of the Association's operation, which payment shall be exclusive of the annual Assessment otherwise due. 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 date shall be as previously set forth herein, unless otherwise established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments. Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall be subject to a late charge of Twenty Five and NO/100 Dollars (\$25.00). The Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent Assessment, late charges and reasonable attorney's fees of any such action, or foreclose the lien against the property. For purposes of this Section, the amount of delinquent Assessment and late charge shall be considered evidenced by this paragraph and therefore, evidence of indebtedness shall exist hereby. No owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the 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 10. Lien for Delinquent Taxes or Government Assessments. Upon default by the Association in the payment of any ad valorem taxes or assessments for public improvements to the governmental authority entitled thereto, which default shall continue for a period of six (6) months, the taxing or assessing governmental authority shall be vested with a lien on each individual Lot within the Properties in an amount determined by dividing the total taxes and assessments due the governmental authority by the, total number of Lots in the Properties. Such liens may be foreclosed by the governmental authority in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments for public improvements.

#### ARTICLE V

#### INSURANCE

Section 1. Ownership of Policies. All insurance policies upon the Common Area which shall be purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear.

Section2. Coverage. All improvements and personal property included in the Common Area shall be insured in an amount equal to one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect thereto. In addition, public liability insurance shall be secured by the Association with limits of liability of no less than One Million 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. Such policies shall contain clauses providing for waiver of subrogation, if possible. The Association shall maintain insurance and fidelity bond coverage as specified in the FNMA Lending Guide, Chapter 3, Part 5, as the same may be amended from time to time, or as contained in any successor provisions relative thereto.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association, 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 at least six (6) months' Assessments plus reserves accumulated.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to all Owners as an Assessment according to the provisions of Article IV above.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) the proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.

(b) any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

#### ARTICLE VI

##### ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. Required Approval. Except for the initial dwelling structure constructed on a Lot by Declarant in accordance with Declarant's general plan of development, which initial dwelling structure shall be exempt from the following approval process, so long as the plans and specifications therefor are in strict conformity with those previously approved by the Federal National Mortgage Association, Veterans Administration or Federal Housing Administration, as the case may be, no dwelling, building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, including expansions of the initial dwelling structure constructed, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it,

approval will not be required and this Article will be deemed to have been fully complied with.

Section 2. Maintenance. The Association shall be authorized to own and shall maintain the Common Areas, including but not limited to, all equipment, recreational facilities, private roadways, trees, shrubs, grass, walks and other improvements as deemed necessary by the Association.

Any owner who fences or enclosed 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 Areas. No Owner shall plant any vegetation on the Common Area except with the prior 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, 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.

Section 3. Location and Size Dwellings. No building shall be located or erected on any Lot, other than a corner lot, less than 35 feet from the front lot line or less than 10 feet from any side lot line. The location of a building on a corner lot shall be located no less than 35 feet from the front lot line and 25 feet from the side street right of way line. No building shall be located or erected less the 25 feet from the rear lot line. All lots shall be subject to a perpetual easement for encroachment of initial improvements constructed on lots by



Declarant to the extent such initial improvements actually encroach, including without limitation, such items as eaves, gutters, downspouts, exterior storage rooms, bay windows, stoops and steps. No residential structure which has an area of less than 1500 square feet (a minimum of 800 of which shall be on the first floor of a two story dwelling), exclusive of porches, breezeways, steps and garages shall be erected or permitted to remain on any of said lots.

#### 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.

Section 2. Use of Properties. No portion of the Properties (except during the period of initial Lot sales the Declarant may use one or more Lots for temporary office space and as a model for sales purposes) shall be used except for residential purposes incidental or accessory thereto.

(a) Outside clothes lines shall not be permitted upon any Lot at locations where they can be viewed from any street.

(b) No commercial signs, with the exception of a "For Sale" or "For Rent" sign no more than three feet in width and three feet in height, shall be erected or maintained on any Lot.

(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) No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance, except that such tanks may be placed above-ground provided they are kept in a screened enclosure which must be compatible in appearance and locale with the previously constructed residential structure. Any such screened enclosure must exceed in height by at least one (1) foot any such tanks as may be placed therein.

(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 Common Areas. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, 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.

(f) No satellite discs shall be permitted upon any Lot or upon any portion of the Common Area.

(g) Location and design of any detached storage building shall be approved in advance by the architectural review committee pursuant to Article VI, Section 1.

Section 3. Hobbies and Activities. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkept conditions, shall not be pursued or undertaken on any part of any Lot or Common Area.

Section 4. Required Land Use. No Lot may be subdivided by sale or otherwise so as to reduce the total area thereof below that as shown on any recorded subdivision map of the Properties.

Section 5. Animals and Pets. No stable, poultry house or yard or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any Lot without the express written permission of the Association first had and obtained. However, a reasonable number of household pets as determined by the Board of Directors of the Association shall be permitted, provided they are not raised for commercial purposes.

Section 6. Prohibited Activities. Noxious, offensive or loud 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.

Section 7. 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

##### GENERAL PROVISIONS

Section 1. Enforcement. The Association, Declarant 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, Declarant or 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 wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument approved by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument approved by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Amendment Form. If any amendment to these covenants, conditions and restrictions is so approved, 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 validly approved 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

VINTAGE GROVE SUBDIVISION

By authority of its Board of Directors, Vintage Grove Homeowner's Association, Inc., hereby certifies that the foregoing instrument has been duly approved by the Owners, of \_\_\_\_\_ percent of the Lots of Vintage Grove Subdivision and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Vintage Grove Subdivision.

This the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

VINTAGE GROVE HOMEOWNER'S  
ASSOCIATION, INC.

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of their recordation in the County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots.

Section 5. Annexation of Additional Properties. At any time during the effective term of this Declaration, Declarant may propose that the Association annex additional properties which have been or will be developed as a part of the general plan of development for Vintage Grove Subdivision as follows:

(a) Additions of Declarant. Additional land within the land described in exhibit C attached hereto may be annexed by Declarant without consent of members within five (5) years from the date of this Declaration provided that said annexation is approved by the required governmental authorities and is in accordance with the general plan of Vintage Grove Subdivision. The additions authorized under this and the succeeding subsection shall be made by filing of record an amendment with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

(b) Other Additions. Annexation of additional properties shall require the assent of two-thirds (2/3) of the votes of the Class A membership of the Association and two-thirds (2/3) of the votes of the Class B membership of the Association, if any, 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. The presence of Members or of written proxies entitled to cast sixty-six and two-thirds percent (66 2/3%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be the same. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written consent to the action taken thereat.

Section 6. Leasing. No Lot or the residential structure thereon shall be leased for transient or hotel purposes, nor may any Owner lease less than the entire residential structure on his Lot, nor shall any such lease be for a period of less than thirty (30) days. Any lease must be in writing and provide that the terms of the lease and occupancy of the dwelling structure shall be subject to this Declaration and the Bylaws and any failure by a lessee to comply with such shall be a default under the lease.

Section 7. Addition of Recreational Facilities. The Declarant shall not add any unplanned recreational facilities as amenities for the Association without first obtaining the written consent of a majority of the Class A Members.

Section 8. Contract Rights of Association. As long as there is a Class B membership, any contract entered into by or on behalf of the Association shall contain a provision giving the Association or the other party thereto the right to terminate such contract upon the giving of not more than ninety (90) days written notice to the other party or parties.

Section 9. Lender's Notice. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

(a) any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.

(b) any sixty (60) day delinquency in the payment of Assessments owed by the Owner of the Lot on which it holds the mortgage.

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

(d) any proposed action that requires the consent of a specified percentage of mortgage holders.

(e) the Association's financial statement for the immediately preceding fiscal year.

Section 10. FHA/VA/FNMA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration, Veterans Administration or Federal National Mortgage Association, as the case may be: Annexation of additional properties, dedication of



Common Area, deeding in trust the Common Area, mergers and consolidations and amendment of this Declaration.

Section 11. Conflicts. In the event of a conflict between the terms and provisions of this Declaration and the Bylaws or Articles of Incorporation of the Association, the terms and provisions of this Declaration shall control. In the event of a conflict between the terms and provisions of the Bylaws and the Articles of Incorporation of the Association, the terms and provisions of the Articles of Incorporation shall control.

Section 12. Subordination. BarclaysAmerican/Mortgage Corporation and Trustee, Kenneth Eller join in the execution of this Declaration solely for the purpose of subordinating its interest pursuant to a Deed of Trust filed in Book 4249, Page 414 of the Wake County Registry to the Declaration and for no other purpose.

