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DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE
IVY CREEK TOWNHOMES ASSOCIATION, INC.

THIS DECLARATION is made on the date hereinafter set forth by JAMES M. MATHENY and KAREN H. MATHENY hereinafter referred to as "Declarant") and consented to by WESTMINSTER HOMES, INC., a North Carolina corporation (hereinafter "Westminster"):

W I T N E S S E T H:

WHEREAS, Declarant has heretofore acquired certain real property located in the Town of Cary, Cary Township, Wake County, North Carolina, more fully described in the deed recorded in Book 6992, Page 331, Wake County Registry, which Declarant is currently developing into a residential townhouse community known as IVY CREEK TOWNHOMES (hereinafter sometimes referred to as "Ivy Creek" or the "Subdivision");

WHEREAS, Declarant desires to provide for the maintenance and upkeep of the Common Area and to enforce the covenants and restrictions applicable to the Subdivision, and, to that end, desires to subject all of the property within the Subdivision to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, Declarant has deemed it advisable to create an organization to own, maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a non-profit corporation, the IVY CREEK TOWNHOMES ASSOCIATION, INC., for the purpose of exercising the aforesaid functions;

WHEREAS, westminster has heretofore acquired ten (10) lots within the Subdivision and is executing this Declaration to subject such lots to this Declaration;

NOW, THEREFORE, Declarant and Westminster declare that the real property described in Section 1 of Article II of this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, and occupied subject to the covenants,

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conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the **IVY CREEK TOWNHOMES ASSOCIATION, INC.**, a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Properties" shall mean and refer to the "Existing Property" described in Article II of this Declaration and any additional property annexed pursuant said Article II.

Section 3. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties, with the exception of any Common Area owned in fee by the Association and any street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation. Any reference to an Owner in the masculine gender shall be deemed to include the feminine gender, and any reference to an Owner in the singular shall be deemed to include the plural, and vice versa.

Section 5. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee, by easement or otherwise, for the common use and enjoyment by the Owners of Lots within the Properties. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use as set forth herein.

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

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Section 7. "Declarant" shall mean and refer to JAMES M. MATHENY and KAREN H. MATHENY. It shall also mean and refer to any person, firm or corporation to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an Assignment of Declarant's Rights recorded in the Wake County Registry.

Section 8. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use an occupancy as a residence by a single family, whether as Owners or tenants or lessees of the Owner thereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF THE
IVY CREEK TOWNHOMES ASSOCIATION, INC.

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and which is within the jurisdiction of the Association, is described on Exhibit A attached hereto.

Section 2. Annexation by the Declarant.

a. Annexation Without Consent of the Members. At any time prior to December 31, 2005, additional lands within the property described in Exhibit B to this Declaration (hereinafter the "Exhibit B Property") may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed, provided, however, that such property must be contiguous to property already subject to this Declaration and must be approved by the Town of Cary and, if appropriate, by the Federal Housing Administration and/or Veterans Administration. Any or all of the Exhibit B Property may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Association.

b. Annexation With Consent of the Members. At any time that Declarant owns any land within the Properties, Declarant may, with the consent of the Members as set forth in this subparagraph, annex additional property not within the boundaries of the Exhibit B Property and, therefore, subject such additional property to this Declaration. Such annexation must be approved by the affirmative

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vote of not less than three-fourths (3/4) of the Class A votes cast, in person or by proxy, at a duly-called meeting of the Members at which a quorum is present, which meeting shall have been conducted pursuant to a Notice of Meeting which shall have specifically identified, as one of the purposes of the meeting, annexation of the additional property. Such annexation shall be made by recording in the Durham County Registry of a Declaration of Annexation executed by the declarant and the Association extending the operation and effect of this Declaration to the property to be annexed, provided, however, that any property so annexed must be contiguous to property already subject to this Declaration and approved by the Town of Cary and, if appropriate, by the Federal Housing Administration and/or Veterans Administration. Such Declaration of Annexation shall contain a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF THE IVY CREEK TOWNHOMES ASSOCIATION, INC.

This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of the Ivy Creek Townhomes Association, Inc., was held on [Date and Year] at [Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to vote on the proposed annexation into the Association of the following property:

[Property Description as set forth in the Notice of Meeting]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of annexation; and _____ votes were cast against annexation. Accordingly, the motion to annex the property described above was approved.

[President/Secretary]

Any property annexed pursuant to this subsection may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this subsection may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Association.

Section 3. Annexation by the Members. At any time after the Declarant no longer owns any land within the Properties, the Members may annex additional property and, therefore, subject such additional property to this Declaration. Such annexation must be approved by the affirmative vote of not less than three fourths (3/4) of the Members of the Association at a duly-called meeting of

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the Members, which meeting shall have been conducted pursuant to a Notice of Meeting which Notice shall have specifically identified, as one of the purposes of the meeting, annexation of the additional property. Such annexation shall be made by recording in the Wake County Registry of a Declaration Of Annexation executed by the Association extending the operation and effect of this Declaration to the property to be annexed, provided, however, that any property so annexed must be contiguous to property already subject to this Declaration and approved by the Town of Cary. Such Declaration of Annexation shall contain a Certification signed by the President or Secretary of the Association in form substantially similar to that set forth in Section 2.b. of this Article II.

Any property annexed pursuant to this Section 3 may be annexed and subjected to this Declaration as one parcel or as several parcels at different times. The addition of such property pursuant to this subsection may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members of the Association.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot which is subject to assessment by the Association 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. Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Ownership of a Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed, and in no event shall more than one vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant and by any builder(s) who or which acquired such Lot(s) from the Declarant for the purpose of constructing a residence thereon and which have not been converted to Class A Lots as provided in subparagraphs (1) or (2) below. Declarant and such builder(s) shall be entitled to three (3) votes for each Class B Lot owned by them.

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The Class B Lots shall cease to exist and shall be converted to Class A Lots upon the earlier of the following to occur:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots, ~~provided, however, that~~ all Lots owned by the Declarant and the builder(s) shall revert to Class B Lots and thereby be reinstated with all rights, privileges and responsibilities of such Class if, after the conversion of Class B Lots to Class A Lots, additional Lots within the Properties are formed by the recording in the Wake County Registry of a new map of Lots as set forth in Article II hereof, thus making Declarant and the builder(s) the Owners, by virtue of the newly-recorded Lots and of other Lots owned by Declarant and the builder(s), of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and reconversion shall occur automatically as often as the foregoing facts shall occur);
or

(2) on December 31, 2005.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other Owners of Class A Lots; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

Section 2. Vacant/Leased Residences. If the Owner of a Lot ceases to occupy the dwelling constructed thereon as his own personal living quarters or if any residence within the Properties is leased for rental purposes to tenants, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine (49) percent on any matter pending before the Association.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment and Access. Except as limited by Section 2 of this Article IV and by the Rules and Regulations adopted by the Members and/or the Board of Directors of the Association, every Owner shall have a right and easement of enjoyment in, use of and access to, from and over the Common Area, which right and easement shall be appurtenant to and shall pass with title to every LOT, subject to.

(a) the right of the Association to charge reasonable admission and other fees for the use of any facilities hereafter situated or constructed on the Common Area and to limit the use of such facilities to Owners who occupy a residence on the Properties and to their families, tenants and guests, as provided in Section 2 of this Article IV.

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

(c) the right of the Association to dedicate, sell 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 upon by the Members. No such dedication or transfer shall be effective unless the Members entitled to at least three-fourths (3/4) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document, provided that this subsection shall not preclude the Board of Directors of the Association, without the consent of the Members, from granting easements upon, over, under and across the Common Area for the purpose of installing and maintaining sewage, utility (including CATV) and/or drainage facilities, when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Properties. Subject to the provisions of subparagraph (e) below, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Cary or to another non-profit corporation organized for similar purposes.

(d) the right of the Association, with the assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, to mortgage, pledge, deed in trust or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association, with the consent of the Town of Cary, Members entitled to at least three-fourths (3/4) of the votes appurtenant to each Class of Lots, and, if required, of the Federal Housing Administration and/or Veterans Administration, to exchange all or part of the Common Area for other property and consideration of like value and utility.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their principal residence in Wake County, North Carolina.

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(b) Tenants. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated by such Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Wake County, North Carolina.

(c) Guests. The right and easement of enjoyment and access granted to every Owner by Section 1 of this Article may be delegated to guests of such Owners, tenants or contract purchasers, subject to such rules and regulations as may be established by the Board of Directors.

Section 3. Conveyance of Title To The Association.
Declarant covenants, for itself, its successors and assigns, that it will convey title to the Common Area within each phase or section of the Subdivision to the Association prior to the conveyance of the first Lot within such phase or section to an Owner. Declarant reserves an easement over and across the Common Area so long as it owns any Lots within the Properties for the purpose of constructing such improvements on the Common Area as it deems necessary or advisable. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens, except utility and drainage easements of record or shown on the recorded plats of the Subdivision. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements.

Section 4. Regulation and Maintenance of Common Area Easements. Declarant will, prior to the conveyance of the first Lot to an Owner, reserve on a recorded plat or grant to the Association an easement over and across that portion of any Lot on which a Common Area easement lies. It is the intent of the Declarant that, unless otherwise approved by the Declarant or the Association as provided in Article VIII of this Declaration, the easement area shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner.

(a) Rights and Responsibilities of the Lot Owners. Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his Lot, including that portion of such tax or assessment as is attributable to a Common Area easement. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within the Common Area; (2) erect gates, fences, or other structures on the Common Area; (3) place any garbage receptacles on or in the Common Area; (4) fill or excavate the Common Area or any part thereof; or (5) plant vegetation or otherwise restrict or interfere with the use, maintenance, and preservation of the Common Area.

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(b) Rights and Responsibilities of the Association: The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners within the Subdivision and, to that end, shall: (i) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners within the Subdivision; (ii) procure and maintain adequate liability insurance, in an amount not less than \$1,000,000.00, covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which a Common Area easement lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot that it owns 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 annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 8 of this Article V and all costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorney's fees, shall also be the personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (i) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) repair and reconstruction of improvements on the Common Area, including storm water infiltration devices and other storm water drainage facilities constructed on or serving the Properties, including but

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not limited to, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof, (iii) payment of taxes and public assessments levied against the Common Area owned by the Association in fee; (iv) maintenance, replacement, repair and reconstruction of such portions of the Lots and the improvements and landscaping installed thereon as the Association may deem proper; (v) procurement and maintenance of insurance in accordance with the Section 4(b) of Article IV and Section 8 of Article IX of this Declaration; (vi) employment of attorneys, accountants and other persons or firms to represent the Association when necessary; (vii) payment of principal and interest on funds borrowed for Association purposes; and (viii) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1, 1998, the maximum annual assessment shall be \$540.00 per Class A Lot (\$45.00 per month) and, subject to the provisions of Sections 3(c) and 3(d), below, \$135.00 per Class B Lot (\$11.25 per month).

(a) From and after January 1, 1998, the Maximum Annual Assessment may be increased by the Board of Directors effective January 1 of each year without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the maximum assessment for the previous year unless such increase is approved as set forth in Section 3(b), below.

(b) The Maximum Annual Assessment may be increased without limitation if such increase is approved by the Class B Member and not less than two-thirds (2/3) of the votes cast by the Class A Members, in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at any amount not in excess of the maximum (including zero); provided, however, that, except as otherwise provided in this Declaration, the assessment established for each Class B Lot shall always be one-fourth (1/4) of the assessment for a Class A Lot.

A Class B Lot (i.e., a Lot owned by the Declarant or a builder who purchased such Lot from the Declarant) shall be assessed at the Class B rate until a dwelling constructed thereon is occupied as a residence pursuant to a certificate of occupancy issued by the appropriate governmental agency; thereafter it shall be assessed at the Class A rate. Such Lot shall remain a Class B Lot for all other purposes as long as it is owned by the Declarant or such builder. It is the intent of the foregoing that a Lot containing a dwelling owned by the Declarant or a builder and used as a model or sales center, and not as a residence, shall be assessed at the Class B rate, but that such Lot shall be assessed at the Class A rate even though owned by the Declarant or a builder if it is occupied as a residence.

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In the event that Class B Lots are converted to Class A Lots, or Class A Lots are reconverted to a Class B Lots, the assessment with respect to such Lots shall be prorated and charged according to their class as of the date of each conversion and reconversion.

(d) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by the Board.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of any improvement for which the Association is responsible, including, if appropriate, fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the assent of the Class B Member and not less than two-thirds (2/3) of the votes cast by the Class A Members, in person or by proxy, at a meeting duly called for this purpose, and shall be in the ratios provided in Section 3(c) of this Article.

Section 5. Assessment Rate; Collection Period. Annual and special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, quarterly or monthly basis, as determined by the Board of Directors.

Section 6. Notice of 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 V shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of members or of proxies entitled to cast fifty percent (50%) of the votes appurtenant to each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments; Amount of Initial and Subsequent Annual Assessments; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots in any phase on the first day of the month following the recording of the plat of that phase. Unless a lower amount is set by the Board of Directors, the first annual assessment shall be the "maximum annual assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year.

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At least twenty-five (25) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least fifteen (15) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto. The due dates for the payment of annual and special assessments shall be established by the Board of Directors.

The Association shall, upon demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. If such certificate states that an assessment has been paid, such certificate shall be conclusive evidence of payment.

Section 8. Effect of Nonpayment of Assessments; Remedies. Any assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days after the due date, shall also bear interest from the due date at the rate of twelve percent (12%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of a Lot pursuant to such a foreclosure of a mortgage or deed of trust shall extinguish the lien of such assessments as to the payment thereof which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 10. Exempt Property. All property dedicated to and accepted by a 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. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

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Section 11. Working Capital Fund. At the time of closing of the initial sale of each dwelling constructed on each Lot, a sum equal to one-sixth (1/6) of the annual assessment for Class A Lots in effect at the time of such sale shall be collected from the purchaser of such dwelling and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to pursuant to this Section shall not be considered as an advance payment of any regular assessment.

ARTICLE VI

RIGHTS OF LENDERS

Section 1. Books and Records. Any owner or holder of a first deed of trust on any Lot, or its agent(s), shall have the right, during normal business hours, to examine copies of this Declaration, the Articles of Incorporation, By-laws, and the books and records of the Association and, upon written request to the Association, to receive a copy of the financial statement for the immediately preceding fiscal year.

Section 2. Notice to Lenders. Upon written request to the Association, the owner or holder of a first deed of trust on any Lot shall be entitled to timely written notice of:

- (a) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of the Lot securing its loan;
- (b) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and/or
- (c) Any proposed action that requires the consent of a specified percentage of owners or holders of first mortgages on the Lots.

Section 3. Approval of Owners and Holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the owners and holders of the first deeds of trust on Lots located within the Properties have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this

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clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement, or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the Town of Cary or to another non-profit corporation for the aforementioned purposes. Nothing herein shall be deemed to prohibit the Association, with the consent of the Town of Cary, from exchanging Common Area for other property as provided in Section 1(e) of Article IV of this Declaration, or to require the approval of such exchange by the holders of first deeds of trust on the Lots.

(b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;

(c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or

(d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

Section 4. Payment of Taxes and Insurance Premiums. The owners or holders of first deeds of trust on Lots, jointly or singly, may pay taxes or other charges which are in default and which have or may become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy covering property owned by the Association. The persons, firms or corporations making such payments shall be owed immediate reimbursement therefor by the Association.

ARTICLE VII

EASEMENTS

Section 1. Access and Utility Easements. Easements for the installation and maintenance of driveways, walkways, water, gas, telephone, cable television and electric power transmission lines, sanitary sewer and storm water drainage facilities, and other public utility installations are reserved as shown on the recorded plats of the Properties. The Association may reserve or grant easements over the Common Area as provided in Article IV, Section 1(c), of this Declaration. Within any such easement herein provided, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or

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maintenance of the utilities installed thereon, or which may change the direction of flow or drainage of water through drainage pipes or channels constructed in such easements.

For a period of twenty-five (25) years from the date hereof, Declarant reserves an easement and right of ingress, egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and otherwise restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

Section 2. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot within the Properties for the benefit of applicable governmental agencies for: installing, removing and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, garbage collection and the delivery of mail.

Section 3. Owners' Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 4. Association's Easement and Right of Entry. The Association, for itself and its employees, agents, contractors, subcontractors and invitees, shall have a perpetual access easement over the each Lot to the extent reasonably necessary to perform the maintenance to be performed by the Association as provided in Article IX of this Declaration.

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ARTICLE VIII

ARCHITECTURAL CONTROL

No 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, nor shall a building permit for such improvement or change be applied for or obtained, nor shall any major landscaping or re-landscaping of any Lot be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed improvements within thirty (30) days after complete plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. The Declarant shall have the right to charge a reasonable fee, not to exceed \$75.00, for receiving and processing each application. The Declarant shall have the right to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style, exterior color or finish, roofing material, siding material, driveway material, landscape design and construction technique. The Declarant shall not approve any Improvements which it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article VIII to the Board of Directors of the Association or to any other person(s) or firm(s). Such delegation shall be made by the Declarant by recording in the Wake County Registry an Assignment Of Declarant's Rights. Declarant shall delegate such authority to the Association (which may, in turn, delegate such authority to an Architectural Committee composed of three or more persons appointed by the Board of Directors of the Association), not later of the date upon which Declarant no longer owns any Lots within the Properties or December 31, 2005, whichever is earlier. Any use of the term "Declarant" in this Article VIII shall be deemed to apply to Declarant and, when appropriate, to any such assignee of Declarant's rights. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

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ARTICLE IX

MAINTENANCE OF LOTS AND UNITS

Section 1. Association's Responsibility. In addition to maintenance of the Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed by the Declarant, Association or the builder who constructed the initial improvements on such Lot(s), and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping), provided, however, that: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence installed; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity.

The Association shall have no responsibility to maintain or repair any Unit or any portion thereof or for insuring any Unit or other improvements on any Lot, and shall not be liable for any damage to any Unit, except such damage caused by the Association, its duly authorized agents or employees.

The Association shall have the right (but not the obligation), by the affirmative vote of a majority of the Members of each Class, to accept certain items, areas or improvements on a Lot for maintenance by the Association, including, but not limited to, Yard Improvements installed by an Owner. Such acceptance shall be in writing and may be subject to such terms and conditions, including, but not limited to, a special assessment or increased annual assessment for that Lot, as the Association might establish in such written acceptance.

Section 2. Owner's Responsibility: Remedy for Owner's Failure to Maintain. Any maintenance on a Lot that is not the responsibility of the Association, whether by the terms of this Declaration or by written acceptance of same, shall be the responsibility of the Owner of such Lot. Each Owner shall keep his Lot and Unit in an orderly condition and shall keep the improvements thereon in a suitable state of repair. If an Owner does not perform exterior maintenance of his Lot and Unit, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of not less than two-thirds (2/3) of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Unit

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erected thereon, and the cost of such exterior maintenance plus a surcharge of 15% for administration shall be assessed in accordance with Section 3 of this Article. Prior to such entry, the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article IX.

Section 3. Assessment of Cost. In the event that the Association performs maintenance on any Lot as provided in Section 2 of this Article IX, the cost of any such maintenance, replacement or repairs shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the assessments to which such Lot is subject under Article V hereof, enforceable under the terms thereof.

Section 4. Access at Reasonable Hours. As provided in Section 4 of Article VII of this Declaration, the Association, through its duly authorized agents or employees, shall have the right, after reasonable oral or written notice to the Owner, to enter upon any Lot at reasonable hours on any day.

ARTICLE X

USE RESTRICTIONS

Section 1. Prohibited Uses. No Lot or dwelling constructed thereon shall be used for any purpose which is not permissible under applicable governmental residential zoning regulations.

Section 2. Prohibited Activities; Businesses. No noxious or offensive trade or activity shall be carried on or in any Lot or unit, nor shall anything be done thereon or therein which may be or become an annoyance or nuisance to the neighborhood. No business trade or activity may be conducted on any Lot unless permitted by the Board of Adjustments of the Town of Cary.

Section 3. Temporary Structures. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

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Section 4. Signs. Except as otherwise required by the Town of Cary, no sign of any kind shall be displayed to the public view on any Lot except signs used by Declarant or a builder to advertise lots and/or dwellings for sale during the construction and sales period, one sign of not more than six (6) square feet advertising the property for sale or rent, and signs of not more than six (6) square feet expressing support or or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election.

Section 5. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any Unit, except that dogs, cats, or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes. As provided in Section 12 of this Article X, the Board of Directors of the Association shall have the right and authority to adopt rules and regulations which further limit or prohibit the types of animals or household pets which may be kept or maintained on a Lot or in a Unit and which limit or prohibit such animals upon Common Area.

Section 6. Antennas; Satellite Dishes. No satellite receiver or disc of any size and no radio or television transmission or reception towers or antennas shall be erected on a Lot unless approved as provided in Article VIII of this Declaration.

Section 7. Clotheslines. No clothesline may be erected or maintained on any Lot.

Section 8. Garbage; Unsightly Storage. All trash and rubbish shall be kept in garbage cans stored behind the Unit in such a manner as not to be visible from the street upon which the Unit fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

Section 9. Lease of Dwelling. The Owner of a Unit may lease or sublet the premises. However, any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

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"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions And Restrictions For The Ivy Creek Townhomes Association, Inc., recorded in the Wake County Registry. Tenant acknowledges that he/she/they has/have received of a copy such Declaration and is familiar with the provisions of same."

If an Owner fails to include said provision in any lease or sublease, it shall be conclusively deemed to be included and part of said lease or sublease. Owner shall furnish the Association a copy of any leases or subleases of his/her unit.

Section 10. Parking. The Association shall provide and maintain at least the minimum number of parking spaces required by the Town of Cary for the Subdivision. The Board of Directors of the Association shall have the right and authority to assign parking spaces to Owners, provided, however, that each Lot shall have at least two (2) assigned parking spaces. The Owner of each Lot shall provide the Association with the make, model, color and license plate number of each vehicle owned or normally driven by the Owner and his family, any person regularly residing with the Owner, and/or any lessee or sublessee of such Owner.

No Owner or his family, lessee or sublessee or guest an Owner shall: (i) park any vehicle on the street within or adjoining Ivy Creek Townhomes except in a designated paved parking space; (ii) park or keep on any Lot or street within or adjoining the Subdivision any abandoned, partly dismantled or inoperative vehicle; or (iii) park or keep on any Lot or any street within or adjoining the Subdivision any boat or boat trailer, motor home, camper, bus, truck in excess of one ton weight, commercial vehicle, truck or van, or anything else other than normally intended to be a private passenger vehicle within the Subdivision.

The Board of Directors shall have the right and authority to make, implement and enforce such additional parking rules and regulations as it might determine from time to time necessary or appropriate, and shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof. Furthermore, the Association shall have the right and authority to have towed any vehicle parked or maintained in violation of these or subsequently-adopted parking rules and regulations, the cost of which towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered.

Section 11. Fines. The Board of Directors shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration and/or the rules and regulations

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hereafter promulgated by the Board pursuant thereto. Any monetary fine or penalty shall be deemed a Special Assessment against the Lot of the Owner against whom such fine or penalty is assessed.

Section 12. Adoption of Rules. The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within Ivy Creek and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective. Any violation of such rules shall be punishable by fine and/or suspension of voting rights as provided in this Declaration.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Enforcement. The Association or any Owner shall have the right to enforce, by 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 an 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 provision, which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots, and thereafter by an instrument signed by the Owners of not less than fifty percent (50%) of the Lots. No amendment shall be effective unless it has been approved, if required by Section 4 of this Article IX, by the Federal Housing Administration or Veterans Administration, and is recorded in the office of the Register of Deeds of Wake County.

Section 4. FHA/VA Approval. In the event that Declarant has arranged for and provided purchasers of Lots with FHA-insured or VA-guaranteed mortgage loans, then, as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA"):

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annexation of additional property, mortgaging of Common Area, dedication, exchange or otherwise deeding of Common Area to persons other than the Association, and amendment of this Declaration.

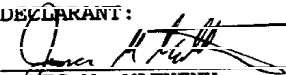
Section 5. Non-Liability of Governmental Entities. Neither the Town of Cary nor any other governmental entity shall be responsible for failing to provide any emergency or regular fire, police or other public service to the Properties, any Lot, or any Owner or occupant when such failure is due to the lack of access to the Properties or any Lot therein due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot.


Section 6. Subdivision of Lots. No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total lot area shown on the recorded plats of the Subdivision, except by and with the consent of the Declarant and, if required, by the Town of Cary.

Section 7. Declarant's Right To Change Development. With the approval of the Town of Cary, and, if required, by FHA or VA, and subject to such terms and conditions as the Town of Cary may impose, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types and reallocate units within, and withdraw real property from the Subdivision.

Section 8. Insurance. The Association shall procure and maintain adequate liability insurance covering the Association, in an amount not less than \$1,000,000.00. The Association shall also procure and maintain adequate hazard insurance on real and personal property owned by the Association or for which the Association is otherwise responsible and shall procure and maintain officers' and directors' liability insurance. The premiums for such insurance shall be a common expense paid from the annual assessments provided in Article V of this Declaration.

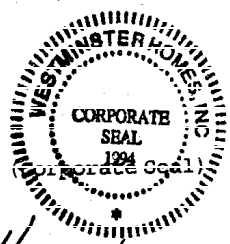
IN WITNESS WHEREOF, Declarant has hereunto set his/her hand and seal, and Westminster Homes, Inc., has caused this instrument to be executed under seal by its duly authorized officers, as of the day and year shown notary acknowledgements set forth below.

DECLARANT:


JAMES M. MATHENY (Seal)


KAREN H. MATHENY (Seal)

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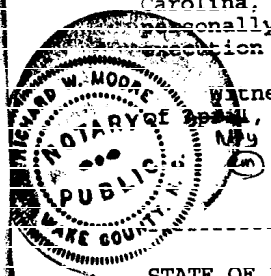
WESTMINSTER HOMES, INC.,
a North Carolina corporation

By: Michael Chadwick
Vice President

ATTEST
[Signature]
Secretary

STATE OF NORTH CAROLINA - WAKE COUNTY

I, Richard W. Moore, a Notary Public for Wake County, North Carolina, certify that JAMES M. MATHENY and KAREN H. MATHENY personally appeared before me this day and acknowledged the due execution of the foregoing instrument.



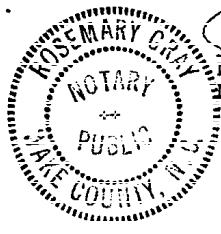
Witness my hand and official stamp and seal, this the 18th day of April, 1997.

R. W. Moore
Notary Public
My commission expires: 06/17/99

STATE OF NORTH CAROLINA - WAKE COUNTY

I, Rosemary Gray, a Notary Public for said County and State, certify that Michael Chadwick personally appeared before me this day and that he is Vice President of WESTMINSTER HOMES, INC., a North Carolina corporation, and that, by authority duly given and as the act and deed of the corporation, the foregoing instrument was signed by him as its Vice President, sealed with its corporate seal, and attested by ~~Karen H. Matheny~~ as its Assistant Secretary, as of the day and year first above written.

Witness my hand and official stamp and seal, this the 18th day of April, 1997.



Rosemary Gray
Notary Public
My commission expires: 9-30-97

NORTH CAROLINA - WAKE COUNTY
The foregoing certificate of Richard W. Moore
Rosemary Gray
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.

By Laura M. Binnick
Laura M. Binnick, Register of Deeds
Deputy Register of Deeds

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STATE OF NORTH CAROLINA -- COUNTY OF WAKE:

The foregoing certificates of RICHARD W. MOORE and ROSEMARY GRAY, Notaries Public, are certified to be correct. This instrument and these certificates 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: _____
Deputy/Asst. Register of Deeds

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EXHIBIT A

IVY CREEK, PHASE 1

LYING and being in the Town of Cary, Cary Township, Wake County, North Carolina, and being more particularly described as follows:

BEING all of Lot 3 as shown on that certain plat entitled "Property of ANGELES PARTNERS, L.P. (LOT 2) & CANTERBURY WOODS ASSOC. (LOTS 1 & 3)", recorded in Book of Maps 1981, Page 992, WAKE County Registry, to which plat reference is hereby made for a more particular description of same.

TOGETHER WITH the rights and easements for ingress and egress to the property herein described over the property currently known as Cardinal Woods Apartments (see Book 2781, Page 207, Wake County Registry, as follows:

Over and along that certain existing driveway which runs in a westerly direction from Bargate Drive through the property described in Book 2781, Page 207, Wake County Registry, to Lot 3 hereinabove described.

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EXHIBIT B

LYING and being in the Town of Cary, Cary Township, Wake County, North Carolina, and being more particularly described as follows:

BEING all of Lot 1 as shown on that certain plat entitled "Property of ANGELES PARTNERS & (LOT 2) & CANTERRERY WOODS ASSOC. (LOTS 1 & 2)", recorded in Book of Maps 1981, Page 992, WAKE County Registry, to which plat reference is hereby made for a more particular description of same.

TOGETHER WITH the rights and easements for ingress and egress to the property herein described over the property currently known as Cardinal Woods Apartments (see Book 2781, Page 207, Wake County Registry, as follows:

Over and along a 50-foot wide strip of land, the easternmost line of which is an extension in a northerly direction of the 15th call in Tract II on that certain deed recorded in Book 2781, Page 207, Wake County Registry (said call being North 13 deg. 30' 30" East a distance of 371.00 feet) from the termination of said call to Lot 1 hereinabove described.