

FOR REGISTRATION REGISTER OF DEEDS  
WILLIE L. GOVINGTON  
DURHAM COUNTY, NC  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CENTERPOINT DISTRIBUTION CENTER**

THIS DECLARATION is made, published and declared this 24 day of July, 2002, by WESTGATE DURHAM, LLC, a Delaware limited liability company (the "Declarant" or "Developer"), and any and all persons, firms or corporations hereinafter acquiring any of the within described property:

WHEREAS, the Declarant is the fee simple owner of a certain tract of real property in Durham County, North Carolina, which property is more particularly described in **Exhibit "A"** attached hereto, together with any additional real property which may be subjected to this Declaration by Declarant by amendment(s) hereto (the "Property"); and

WHEREAS, it is to the benefit, interest and advantage of the Declarant, the Lot Owners, and of each and every person or other entity hereafter acquiring any interest in the Property that certain covenants, restrictions, easements, assessments and liens governing and regulating the use and occupancy of the same be established, fixed, set forth and declared as covenants running with the land; and

WHEREAS, Developer retains ownership of all of the Property subject to the Declaration of Covenants as of the date hereof.

NOW, THEREFORE, in consideration of the premises, the Declarant does hereby declare that all or any portion of the Property described in **Exhibit "A"** is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations (and subject to all easements, conditions and restrictions, if any, set out in any and all plats of subdivision filed by Developer with respect to the Property or any part thereof), all of

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which are declared and agreed to be in furtherance of a plan for the development and improvement of the said Property, and the said covenants, conditions, restrictions, uses, limitations and obligations shall run with the land and shall be a burden and a benefit to the Declarant, its successors and assigns, and any person or legal entity acquiring or owning any interest in any portion of the said Property or any improvements thereon, their grantees, successors, heirs, executors, administrators, devisees and assigns.

## ARTICLE I. DEFINITIONS

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

Section 1. "Association" shall mean and refer to Centerpoint Owners' Association, Inc., a nonprofit, non-stock corporation incorporated under the laws of the State of North Carolina, its successors and assigns. The Association's Charter and Bylaws are attached hereto marked Exhibits "B" and "C", respectively, and made a part hereof.

Section 2. "Declarant" shall mean Westgate Durham, LLC, with offices at 8401 Jackson Road, Sacramento, California 95826, its successors and assigns. "Declarant" shall be synonymous with "Developer" for purposes of this Declaration.

Section 3. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, and any supplementary declaration filed hereto, as this Declaration may, from time to time, be amended in accordance with its terms.

Section 4. "Lot" shall mean and refer to the plots of land designated as such from time to time on plats of subdivision filed by Developer with respect to the Property or parts thereof. For all purposes hereunder, it shall be understood and agreed that Declarant shall be the Owner of all of said Lots, save and except only those particular Lots which Declarant conveys in fee simple title by recordable deed from and after the date hereof.

Section 5. "Member" shall mean and refer to every Person who holds membership in the Association.

Section 6. "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 Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, provided, however, that the purchaser at a foreclosure sale or trustee's sale shall be deemed an Owner.

Section 7. "Person" means an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof.

Section 8. "Property" or "Properties" shall mean that real property described in Exhibit "A" attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 9. "Improvements" shall mean the structures, walls, pavement, plantings and other additions built or placed on the Lots. It is intended that the Improvements reasonably meant for the Owner of a particular Lot will lie entirely within said Lot. In the event that, by reason of construction, settlement, reconstruction or shifting of the Improvements, any minor part of the Improvements reasonably intended for a particular Lot lie outside that Lot, an easement of use shall apply thereto in favor of the Lot to be benefited.

## ARTICLE II. PROPERTY

Section 1. Property Subject to Declaration. That certain real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration located in Durham County, North Carolina, and which is more particularly described in Exhibit "A" attached hereto and made a part hereof.

Section 2. Roads, Utilities and Drainage. The driveways, sanitary sewers and storm drainage systems within the Property are, and shall remain private, and have not been dedicated to the City of Durham, or any governmental body. By remaining private, the responsibility for payment of maintenance and repair expenses for said drives, sanitary sewers and storm drainage shall remain the responsibility of the individual Lot Owners, unless otherwise provided herein. Notwithstanding anything herein to the contrary, this paragraph shall not apply to water, sewer and drainage easements designated as "public" easements and shown on the recorded plat, if any.

## ARTICLE III. THE ASSOCIATION

Section 1. Members. Every Person, as defined, who is a record Owner of a fee or undivided fee interest of any Lot within the Property shall be a Member of the Association, as defined, provided, however, that anyone who holds such interest solely as

security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot within the Property. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Voting Rights. All Owners, with the exception of Declarant, shall be entitled to one vote for every acre of land owned within the Property. No votes shall be accorded for any partial acre. The Declarant shall be entitled to three (3) votes for every acre of land in the Property owned by Declarant. Declarant's weighted vote shall cease and convert to one (1) vote for such acre owned on the happening of either of the following events, whichever occurs earlier: (1) When the total eligible votes of all Owners other than the Declarant equal or exceed the total eligible weighted votes of Declarant or (2) September 1, 2007.

Section 3. Secured Parties. No individual or legal entity holding title to a Lot as security for any debt or obligation shall be considered as Owner of such Lot, and such individual or entity shall not be entitled to membership in the Association or to cast a vote on any question or matter affecting the administration of the Association.

Section 4. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of the Members representing a fifty-one percent (51%) majority of the total votes cast, in person or by proxy (provided a quorum exists), shall decide any question brought before such meeting, unless the question is one upon which, by express provisions of statute or of the corporate Charter, or this Declaration, or of the Bylaws, a different vote is required, in which case such express provision shall govern and control. The vote for any membership which is owned by more than one person may be exercised by any of them present at any such meeting unless any objection or protest by any other Owner of such membership is noted at such meeting. In the event all of the co-owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the vote for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

Section 5. Proxies. A Member may appoint any other Member or the Developer or any other person permitted by law or by the Bylaws as his proxy. Any proxy must be in writing and must comply with all requirements imposed by law or by the Association's Bylaws.

**ARTICLE IV.**  
**PROPERTY RIGHTS**

**Section 1. Owner's Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the private driveways located from time to time within the Property, and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

(a) The right of the Association to suspend any enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations;

(b) The right of the Association to provide for and establish easements and rights-of-ways on the private drives, and to regulate parking, motorized and non-motorized vehicular traffic on the private drives, and to maintain the private drives, sewers and drainage within the Property;

(c) Such easements shall be for the purpose of ingress and egress to the Lots in the Property;

(d) The easements herein established do not permit a Lot Owner to use parking areas situated on other Lots within the Property unless the express written consent of the fee owner of the particular parking area is obtained in advance.

**ARTICLE V.**  
**MAINTENANCE AND REPAIR**

**Section 1. Association Responsibilities.** The Association shall provide and pay for all maintenance and expenses for the storm drainage facilities located from time to time on the Lots in the development and any other item for which the Association is responsible. The Association shall also pay all costs associated with maintenance and repair of the fire protection facilities installed on the Property that are used to serve more than one lot within the Centerpoint Development. The fire protection facilities shall include the pump house, the fire pump equipment and the underground fire mains and hydrants that are located on site. Each Owner shall be responsible for all maintenance and expenses associated with all other fire protection systems installed solely for the individual lot owner's use.

**Section 2. Individual Lot Owners.**

Except for the responsibility of the Association to maintain the storm drainage and fire protection facilities as set out in Section 1 of this Article V, each Owner of a Lot shall be responsible for all maintenance, painting, repairs and upkeep on his Lot and the improvements thereon including the landscaping, signage, lighting, driveways, parking and curbs located thereon. Light bulbs, which burn out, must be replaced immediately.

In order to retain the appearance of the development, no exterior maintenance, repairs or replacements which substantially alter the exterior appearance of a Lot shall be commenced for the improvement of an individual Lot unless permission is obtained from the Architectural Control Committee, as hereinafter defined.

In the event an Owner of any Lot in the Property shall fail to maintain the premises and improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, or restore the Lot and the exterior of the building and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

## ARTICLE VI. ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, including roads and sewer maintenance; and (3) emergency assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual, special and emergency assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such collection thereof as are hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

**Section 2. Annual Assessments and Carrying Charges of the Association.** In addition to the sum to be paid by each Owner pursuant to Article V hereof, each Member of the Association shall pay to the Association an annual sum (hereinafter sometimes referred to as "assessments" or "carrying charges") equal to the Member's proportionate share (determined based on the proportion which the area of the Lot owned by such Member bears to the total area of the Property) the sum required by the Association, as estimated by its Board of Directors, to meet its annual expenses, including, but in no way limited to, the following:

(a) The cost of all operating expenses of the Association and services furnished, including charges by the Association for its facilities, if any; and

(b) The amount of all taxes and assessments levied against the Association or upon any property which it may own or which it is otherwise required to pay, if any; and

(c) The cost of extended liability insurance and the cost of such other insurance as the Association may effect; and

(d) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and/or reserve for replacements; and

(e) The estimated cost of repairs, maintenance and replacements of the storm drainage and fire protection facilities and any other item the Association may be responsible for.

The Board of Directors of the Association shall determine the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period, but may do so at more frequent intervals should circumstances so require as provided in the Bylaws. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a letter signed by an officer of the Association setting forth whether the assessment on a specific Lot has been paid.

**Section 3. Special Assessments.** In addition to the regular assessments authorized by this Article, the Association may levy in any assessment year a special assessment or assessments, applicable to that year only, for the purpose of defraying, in

whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement for which the Association is specifically responsible or for such other purposes as the Board of Directors may consider necessary, provided that such assessment shall have the assent of the Members representing two-thirds (2/3) of the total number of votes eligible to be cast. A meeting of the appropriate Members shall be sent to all Members at least ten (10) days but not more than thirty (30) days in advance of such meeting, which notice shall set forth the purpose of the meeting.

Section 4. Emergency Assessments. In the event of any emergency situation, condition, or occurrence affecting the life, health, safety or welfare of Members or Property of Members, the Board of Directors, acting pursuant to this section, may declare an emergency assessment in such amount payable at such time as the Board of Directors, in its sole discretion, shall deem necessary. Such emergency assessment, except for the amount and time of payment, shall be governed by all other provisions of this Declaration. Such assessment shall be borne pro rata by all Members of the Association. The Board of Directors shall be fully protected and not liable for any mistake in judgment hereunder if the emergency assessment is made in good faith.

Section 5. Non-Payment of Assessment. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid on the date when due shall be delinquent and shall, together with interest thereon and the cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the Lot or Lots belonging to the Member against whom such assessment is levied and shall bind such Lot or Lots in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. To evidence the lien of any unpaid and delinquent assessments, the Board of Directors shall prepare a written notice setting out the amount of the unpaid indebtedness, the name of the Owner of the Lot, and description of the Lot. Said notice shall be signed by a member of the Board and recorded in the Registry of Durham, North Carolina. The personal obligation of the Member to pay such assessment shall, however, remain his personal obligation for the statutory period, and a suit to recover a money judgment for non-payment of any assessment levied pursuant to this Declaration or the Bylaws, or of any installment thereof, may be maintained without foreclosing or waiving the lien created herein.

Any assessment levied pursuant to this Declaration or any installment thereof, which is not paid within ten (10) days after it is due, may, upon resolution of the Board of Directors, bear interest at a rate not to exceed the highest rate allowed under the laws of the State of North Carolina, and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the said Board may fix. The Association may bring an action at law against the Member personally obligated to pay the same or foreclose the lien against the Lot or Lots subject to prior



mortgages or deeds of trust upon the Lot or Lots, then belonging to said Member; in either of which events, the Association may collect from the said Member interest, costs and reasonable attorney's fees. 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.

For the purpose of enforcing the lien of any unpaid and delinquent assessment, each Lot Owner grants the Board of Directors of the Association irrevocably the power to sell his Lot at public outcry to the highest and best bidder for cash. The Board of Directors is authorized to make such a public sale if and only if such sale is made subordinate to any prior recorded mortgage or deed of trust upon the Lot. The Association is hereby authorized to take any and all courses of action available to them for collection of the assessment, which the laws of the State of North Carolina allow relating to foreclosure proceedings under power of sale. Any such sale shall be made after first giving notice of hearing as to commencement of foreclosure proceedings and obtaining such findings or leave of court as may then be required by law and giving such notice and advertising the time and place of such sale in such manner as may then be provided by law and by written notice of the time and place of such sale to the Owner of the Lot at his last known address. Any sale of a Lot to enforce a lien for delinquent and unpaid assessments shall be free from equity of redemption, including the statutory right of redemption, homestead, and dower and all other exemptions, all of which are expressly waived by the Lot Owners; and any such sale and the lien enforced thereby shall take precedence over and have priority over any and all other liens of every nature against the Lot, except real estate and ad valorem taxes assessed against the Lot and prior recorded mortgages or deeds of trust. The proceeds of any such sale, whether under the power of sale or by foreclosure suit, shall be applied first to the payment of expenses of protecting the Property and the expenses of litigation, attorneys' fees, and sales commission; and second, to the payment of real estate and ad valorem taxes assessed against the Lot and any prior recorded mortgages or deeds of trust (unless sold subject to said mortgage or deed of trust); and third, to the payment of all amounts due the Association under the terms of the Declaration and Bylaws; and the balance, if any, to the Lot Owner whose Lot is sold, and his assigns. Upon any default in the payment of any assessment, the Board of Directors shall have the right to all rents, issues, and profits from the Lot in default and shall have the right to secure the payment through notice to those in possession of the Lot or by entry into possession in the same manner as a mortgagee entering into possession following default. The Association may enforce its lien by whatever means available, including the power of sale granted herein or filing suit for foreclosure in the appropriate court.

All rights, remedies, and privileges granted to the Board of Directors or a Lot Owner, pursuant to any terms, provisions and covenants or conditions of the Declaration and

Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be granted to such party by the Declaration and Bylaws or at law or in equity.

The Association may notify the holder of the first mortgage on any Lot for which any assessment levied pursuant to this Declaration becomes delinquent for a period in excess of sixty (60) days and in any other case where the Owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of sixty (60) days.

Section 6. Acceleration of Installments. Upon default in the payment of any one or more installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

Section 7. Priority of Lien. The lien established by this Article shall have preference over any other assessments, liens, judgments or charges of whatever nature, except as follows:

- (a) General and special assessments for real estate taxes on a Lot; and
- (b) The liens of any deeds of trust, mortgage instruments or encumbrances duly recorded on the Lot prior to the assessment of the lien thereon or duly recorded on said Lot after receipt of a written statement from the Board of Directors reflecting that payments on said liens were current as of the date of recordation of said deed of trust, mortgage instrument or encumbrance.

Section 8. Subordination and Mortgage Protection. NOTWITHSTANDING any other provisions hereof to the contrary, the lien of any assessment levied pursuant to this Declaration upon any Lot shall be subordinate to and shall in no way affect the rights of the holder of any indebtedness secured by any recorded first mortgage (meaning a mortgage with priority over other mortgages) upon such interest made in good faith and for value received, provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a foreclosure or any other proceeding in lieu of foreclosure. Any such delinquent assessments, which are extinguished pursuant to the foregoing provisions, may be reallocated and assessed to all Owners as a common expense, including the purchaser at foreclosure. Such sale or transfer shall not relieve the purchaser at such sale of the Lot from liability for any assessments thereafter becoming due, nor from the lien of any such

subsequent assessment which said lien, if any, claimed shall have the same effect and be enforced in the same manner as provided herein.

No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof shall join in the execution of such amendment.

Section 9. Additional Default. Any recorded first mortgage secured by a Lot in Centerpoint may provide that any default by the mortgagor in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby), but the failure to include such a provision in any such mortgage shall not affect the validity or priority thereof, and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 8 of this Article shall not be altered, modified, or diminished by reason of such failure.

Section 10. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Lot upon the closing of the purchase of the Lot from the Developer.

## ARTICLE VII. ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee. An "Architectural Control Committee" is hereby established. The initial committee shall consist of Dudley Mitchell and Donald Foster. These two (2) individuals shall serve for a period of five (5) years, or until they resign from the Committee by written notice to the Board of Directors of the Association. Upon the expiration of five (5) years from the date hereof, or the earlier resignation of the above-named persons, the Board of Directors of the Association shall then appoint the Architectural Control Committee, which shall be composed of three (3) or more individual Lot Owners. The affirmative vote of a majority of the membership of the Architectural Control Committee shall be required to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permanent authorization or approval pursuant to directives or authorizations contained herein.

Section 2. Approvals Necessary, Rules of Committee and Remedies for Violation. With the exception of Developer, no structure of any kind or nature or any fence or barrier shall be commenced, erected, placed, moved onto, or permitted to remain on any of the

Lots within the Property, nor shall any existing structure, fence or barrier upon any Lots be altered in any way which substantially changes the exterior appearance (which includes but is not limited to changes in paint color and re-roofing) thereof, nor shall there be any additions, attachments, or deletions to improvements, nor shall there be any changes in landscaping, without the written consent of the Architectural Control Committee; nor shall any new use be commenced on any Lot unless plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by the Architectural Control Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Control Committee, but in any event shall include:

(1) A site plan of the Lot showing all proposed grades, the locations of all structures, storage areas, fences, berms (including the proposed front, rear and side setbacks) and the number and location of all parking spaces and driveways.

(2) Architectural floor plans and elevations that depict the proposed exterior building materials, color scheme and building heights. Show proposed materials used to meet screening requirements.

(3) Landscaping and irrigation plan.

(4) Exterior lighting plan.

(5) A description of the proposed use of the site.

The Architectural Control Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on the Lots including, without limitation access driveways, utility easements, the exterior lighting and planting and may issue statements of policy with respect to approval or disapproval of the architectural styles or details or other matters which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Architectural Control Committee at any time and no inclusion in or omission from or amendment of any such rule or statement shall be deemed to bind the Architectural Control Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Architectural Control Committee's discretion as to any such matter, but no change of policy shall affect the finality of the approval of any plans or specifications previously submitted to and approved by the Architectural Control Committee. However, approval of any plans and specifications for improvement of a particular Lot shall not be deemed a waiver by the Architectural Control Committee in its discretion to disapprove such plans or specifications or any features or elements included therein if such plans, specifications,

features or elements are subsequently submitted for use on any other Lot. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter provided that the plans and specifications as approved and any condition attached to any such approval have been adhered to and complied with in regard to all structures, fences, or barriers on the uses of the Lot in question.

In the event the Architectural Control Committee fails to approve or disapprove any plans and specifications as herein provided within fifteen (15) days after submission thereof, the same shall be deemed to have been approved as submitted and no further action shall be required.

If any structure, fence, or barrier shall be altered, erected, placed or maintained (including exterior maintenance) upon any Lot or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Architectural Control Committee as required herein, such alteration, erection, maintenance, or use shall be deemed to have been undertaken in violation of the restrictions herein and without the approval required herein, and upon written notice from the Architectural Control Committee any such structure, fence or barrier so altered, erected, placed or maintain upon any Lot in violation hereof shall be removed or realtered, and such use shall be terminated so as to extinguish such violation.

If fifteen (15) days after the notice of such violation, the Owner or Owners of the Lot upon which such violation exists shall not have taken reasonable steps towards the removal or termination of the same, the Association by its officers or directors shall have the right through its agents and employees to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the costs thereof shall be a binding personal obligation of such Owner as well as a lien upon the Lot in question upon the recording of such with the Registry of Durham County, North Carolina.

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by the Architectural Control Committee, the Architectural Control Committee shall, upon written request of the Owner thereof, issue a letter of compliance in form suitable for recordation, identifying such structure and the Lot on which such structure is placed and stating that the plans and specifications, location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation and recording of such letter shall be at the expense of the Owner or Owners of such Lot. Any letter of compliance issued in accordance with the provisions of this paragraph shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value or as to

any title insurer, such letter shall be conclusive evidence that all structures and the use or uses described therein comply with all the requirements of these restrictions and all other requirements as to which the Architectural Control Committee exercises any discretionary or interpretive powers.

The Architectural Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to these restrictions payable at the time such plans and specifications are so submitted.

Any agent of Developer or of the Architectural Control Committee may, at reasonable times, enter upon and inspect any Lot and any improvements thereon for the purposes of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions of these restrictions, and no such persons shall be deemed to have committed a trespass or other wrongful acts by reason of such entry or inspection.

The Association or any Owner of any Lot contained within the Property shall have the right to enforce by any proceeding at law or in equity all conditions, restrictions, covenants, reservations and easements herein or hereinafter contained or otherwise contained in any deed to any Lot. Failure by any Owner to enforce any of such proceedings shall in no event be deemed a waiver of the right to do so thereafter.

Should a request to the Committee come from a Committee member, the other members of the Committee shall select a disinterested Lot Owner to take the place of the Committee member making the request.

No Architectural Control Committee approval shall be required for any additions and expansions of any structure built on a Lot provided the design, appearance and materials used in constructing said additions or expansions are consistent with the design, appearance and materials used in the construction of the original structure.

## ARTICLE VIII. RESTRICTIVE COVENANTS

Section 1. Commercial Use. All Lots shall be used for professional and/or business purposes only.

Section 2. Prohibited Uses and Nuisances. In order to provide for a congenial occupation of the buildings within the Property and to provide for the protection of the values

of the entire development, the use of the buildings shall be in accordance with the following provisions:

(a) Said property is hereby restricted to professional and/or business purposes only. All buildings or structures erected upon said Property shall be of new construction, and no buildings or structures shall be moved from other locations onto said Property. No structures of a temporary character, boat, boat trailer, house trailer, trailer, motor home, tent, shack, garage, barn or other building shall be used on any portion of said Property at any time, either temporarily or permanently, except for construction trailers during periods of construction.

(b) Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof and all easements, restrictions and covenants set out in the subdivision plat filed with respect to such Lot. No Lot may be used in any manner, which would have the effect of negating this Declaration.

(c) No outdoor storage of any nature (except for trash containers, which shall be screened in the manner provided in Section 2(f) below) shall be permitted.

(d) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant to maintain, during the period of the sale of said Lots, upon such portion of the premises as Declarant deems necessary, such facilities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the sale of said Lots, including, but without limitation, a business office, storage area, construction yard, signs, model units, and sales office.

(e) No animals, livestock or poultry of any kind shall be raised, bred, or kept on any of said Lots.

(f) All heating and air conditioning equipment, trash bins and electric utility boxes shall be kept screened by adequate planting or fencing so as to conceal them from view of the private drives and neighboring streets. The Declarant, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage or screening of the same on the Property. All trash or garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon.

(g) Without prior written approval and the authorization of the Architectural Control Committee, no exterior television or radio antennas of any sort shall be placed,

allowed, or maintained upon any structure situated upon the Property other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna. All antennas must be screened from view.

(h) No action shall at any time be taken by the Association or its Board of Directors, which in any manner would discriminate against any Owner or Owners in favor of the other Owners.

(i) Each Lot will be required to install landscaping in accordance with the required landscaping plates shown on the approved zoning site plans.

(j) Grass, weeds, vegetation and debris on each Lot shall be kept mowed and cleared at regular intervals by the Owner thereof so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines, debris and plants which die shall be promptly removed from such Lots. Developer, at its option and its discretion, may mow and have dead trees and debris removed from such Lots and the Owner of such Lot shall be obligated to reimburse Developer for the cost of such work should he refuse or neglect to comply with the terms of this paragraph.

(k) No obnoxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners within Centerpoint.

(l) No building material of any kind or character shall be placed, stored or allowed to accumulate on any of said Lots, except building materials during the course of construction of any approved structure. Building materials shall not be placed or stored in the street or between the curb and property lines.

(m) No sign or other advertising device of any nature shall be placed upon any Lot except as approved by the Declarant as to color, location, nature, size and other characteristics of such signs or devices.

(n) No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for temporary irrigation purposes.

(o) The Owner of a Lot may not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical or telephone service on said Lot (except such poles and overhead facilities as may be required at those places where distribution



facilities enter and leave the particular areas and except during periods of initial construction) without the prior written consent of the Declarant. Nothing herein shall be construed to prohibit overhead street or parking lot lighting where serviced by underground wires or cables.

(p) There shall be no violation of any rules, which may from time to time be adopted by the Board of Directors and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in the Bylaws authorized to adopt such rules.

## ARTICLE IX. COMMON EASEMENTS

Section 1. Access Easements. There shall be reciprocal easements in favor of the Lot Owners, their respective agents, employees, tenants and invitees for ingress and egress over and across all driveways from time to time located on the Lots. Such easements shall not extend to permit use of parking areas on any Lot by the Owners of other Lots or their tenants, employees, agents or invitees. Maintenance of all such driveways (exclusive of any parking areas) shall be the responsibility of the individual lot owner. All such driveways shall remain open at all times to facilitate the free circulation of automobile and truck traffic throughout the Property except that the Association may temporarily block use of driveways during periods of repair or maintenance to such driveways. No parking shall be permitted on such driveways.

Section 2. Easement of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between adjacent Lots due to unintentional placement or settling or shifting or Improvements constructed, reconstructed or altered thereon.

Section 3. Easement for Utilities, Etc. Declarant hereby reserves for itself and its designees (including without limitation, the City of Durham, County of Durham or any utility) blanket easements upon, across, over and under that portion of each Lot located within ten (10) feet of the property line thereof for ingress, egress, installation, replacing, repairing and maintaining cable television systems, master television antenna systems, security, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Property described on Exhibit "A".

Section 4. Easement for Monument and Sign Landscaping. There is hereby reserved for the benefit of the Developer and the Association, an easement over, across and upon those Lots shown on the attached **Exhibit "D"** to allow the Developer to erect, and the Association to maintain, repair or replace monument signs together with any necessary utility easement for water and power for the sign and shrubbery, trees and other landscaping features, which may be installed or placed on said Lot. Any such monument signs shall be used solely for the purpose of project identification and may not be used as identification signage by individual lot owners.

Section 5. Easement for Fire Prevention Facilities. Developer hereby reserves for the benefit of the Developer and the Association, an easement over, across and upon the Lots shown on the attached **Exhibit "E"** for the installation, operation, maintenance and repair of the fire protection facilities.

#### ARTICLE X. INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to obtain a public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage, a One Million Dollar (\$1,000,000.00) limit per occurrence, and a Thirty Thousand Dollar (\$30,000.00) minimum property damage limit.

Premiums for all such insurance shall be common expenses of the Association.

Cost of insurance coverage obtained by the Association for the Common Area and other improvements for which the Association is responsible shall be included as an assessment as defined in Article VI.

The Association's Board of Directors shall make every reasonable effort to secure insurance policies that will provide for the following:

- (i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) That no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or mortgagee;

(iv) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(v) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

**Section 2. Individual Insurance - Repair and Reconstruction.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Lot and structures constructed thereon for full replacement cost. In the event of damage or destruction by fire or other casualty, the Owner shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damage or destroyed portions of the improvements in a workmanlike manner in conformance with the original plans and specifications of the building (including landscaping). In the event the Owner refuses or fails to so repair or rebuild any and all such damage to his improvements within thirty (30) days, the Association, by and through its Board of Directors, is hereby authorized by such Owner to repair and rebuild the improvements in a good and workmanlike manner in conformity with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs, and the Association will have a lien securing the payment of same identical to that provided for in Article VI, securing the payment of said sums

expended and subject to the power of sale and foreclosure as set forth in said Article.

The individual Owners shall make every reasonable effort to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Association, other Lot Owners, and their respective tenants, servants, agents and guests.

The individual Owners shall furnish a certificate of insurance to the Association or its manager.

## ARTICLE XI GENERAL PROVISIONS

Section 1. Duration and Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, unless otherwise expressly limited herein, after which time said covenants shall be automatically extended for successive periods of ten (10) years each. Unless specifically prohibited herein, this Declaration may be amended by an instrument signed by Owners holding not less than sixty-seven percent (67%) of the votes of the membership at any time. Any amendment must be properly recorded to be effective. During the first five (5) years from the date of the recording of this Declaration, any amendment must also be approved by the Declarant.

NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DECLARANT RESERVES THE RIGHT FOR A PERIOD OF FIVE (5) YEARS FROM THE DATE HEREOF TO UNILATERALLY AMEND THIS DECLARATION (i) TO COMPLY WITH THE REQUIREMENTS OF ANY GOVERNMENTAL AGENCY, FEDERAL, STATE OR LOCAL; (ii) TO COMPLY WITH THE REQUIREMENTS OF ANY MORTGAGE LENDER; (iii) TO ADD ADDITIONAL REAL PROPERTY TO CENTERPOINT, AND/OR (iv) FOR ANY REASON THAT THE DECLARANT DEEMS ADVISABLE FOR THE ORDERLY DEVELOPMENT OF THE PROPERTY.

Section 2. Notices. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

**Section 3.** **Enforcement.** The Declarant, the Association, or any Member, shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity, against any person or persons violating or attempting to violate any covenant or restriction, to restrain violations, to require specific performance and/or to recover damages; and against the land to enforce any lien created by these covenants; and failure by the Association or any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The expense of enforcement by the Association shall be chargeable to the Owner of the Lot violating these covenants and restrictions and shall constitute a lien on the Lot, collectible in the same manner as assessments hereunder.

**Section 4.** **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect the validity of any other provisions, which shall remain in full force and effect.

**Section 5.** **Waiver.** No restriction, condition, obligation or provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

**Section 6.** **Gender, Etc.** Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

**Section 7.** **Captions.** The captions preceding the various paragraphs and subparagraphs of these restrictions are for the convenience of reference only, and none of them shall be used as an aid in the construction of any provision hereof.

**Section 8.** **Reverter.** No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

**[SEPARATE SIGNATURE PAGE ATTACHED]**

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused these presents to be signed by the officer duly authorized so to do as of the day and year first above written.

WESTGATE DURHAM, LLC

By: PDC DURHAM, LLC, a Delaware limited liability company

By: PANATTONI INVESTMENTS, LLC, a California limited liability company, is Managing Member

By: PANATTONI LIVING TRUST, dated April 8, 1998, Managing Member

By:



Carl D. Panattoni, Trustee

STATE OF CALIFORNIA

COUNTY OF Sacramento

I, Katrina K. Woodbury, Notary Public, certify that **CARL D. PANATTONI** personally came before me this day and acknowledged that he is the Trustee of PANATTONI LIVING TRUST dated April 8, 1998, the Managing Member of Panattoni Investments, LLC, a California limited liability company, who is the Managing Member of PDC Durham, LLC, a Delaware limited liability company, who is the Managing Member of WESTGATE DURHAM, LLC, a Delaware limited liability company, and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by Carl D. Panattoni.

WITNESS my hand and official seal, this the 31<sup>st</sup> day of July,

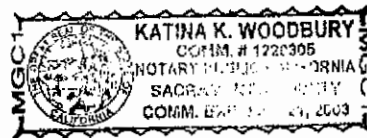
~~2000.~~  
2002 *kkw*

*Katrina K Woodbury*

Notary Public



My commission expires: May 21, 2003



**JOINDER OF MORTGAGEE**

First Union National Bank, herein called the mortgagee, the holder of a Deed of Trust on the property described on **Exhibit "A"** of the Declaration of Covenants, Conditions and Restrictions, which Deed of Trust is recorded at Book 2851, Page 791-809 6/14/00, in the Registry of Durham, North Carolina, joins in submitting said property to the said Declaration of Covenants, Conditions and Restrictions. Said Deed of Trust remains prior to any liens created by said Declaration of Covenants, Conditions and Restrictions.

Wachovia Bank, N.A. f/k/a  
FIRST UNION NATIONAL BANK

ATTEST:

David Harry  
David Harry, AWP  
Secretary - Sr. Vice President

By: Melissa J. Frawley  
Melissa J. Frawley  
Title: Sr. Vice President

and Jerry K. Martin  
Jerry K. Martin  
VP

Corporate Seal:



STATE OF Georgia

COUNTY OF Fulton

I, Ella P. Hubbard, a Notary Public, certify that Melissa Frawley personally came before me this day and acknowledged that ~~she~~ <sup>she</sup> is secretary of First Union National Bank, a national bank, and that by authority duly given and as the act of the bank, the foregoing instrument was signed in its name by its Sr. Vice President, sealed with its corporate seal, and attested by self as its secretary.

WITNESS my hand and Official Seal, this the 14<sup>th</sup> day of August, 2000.

Ella P. Hubbard

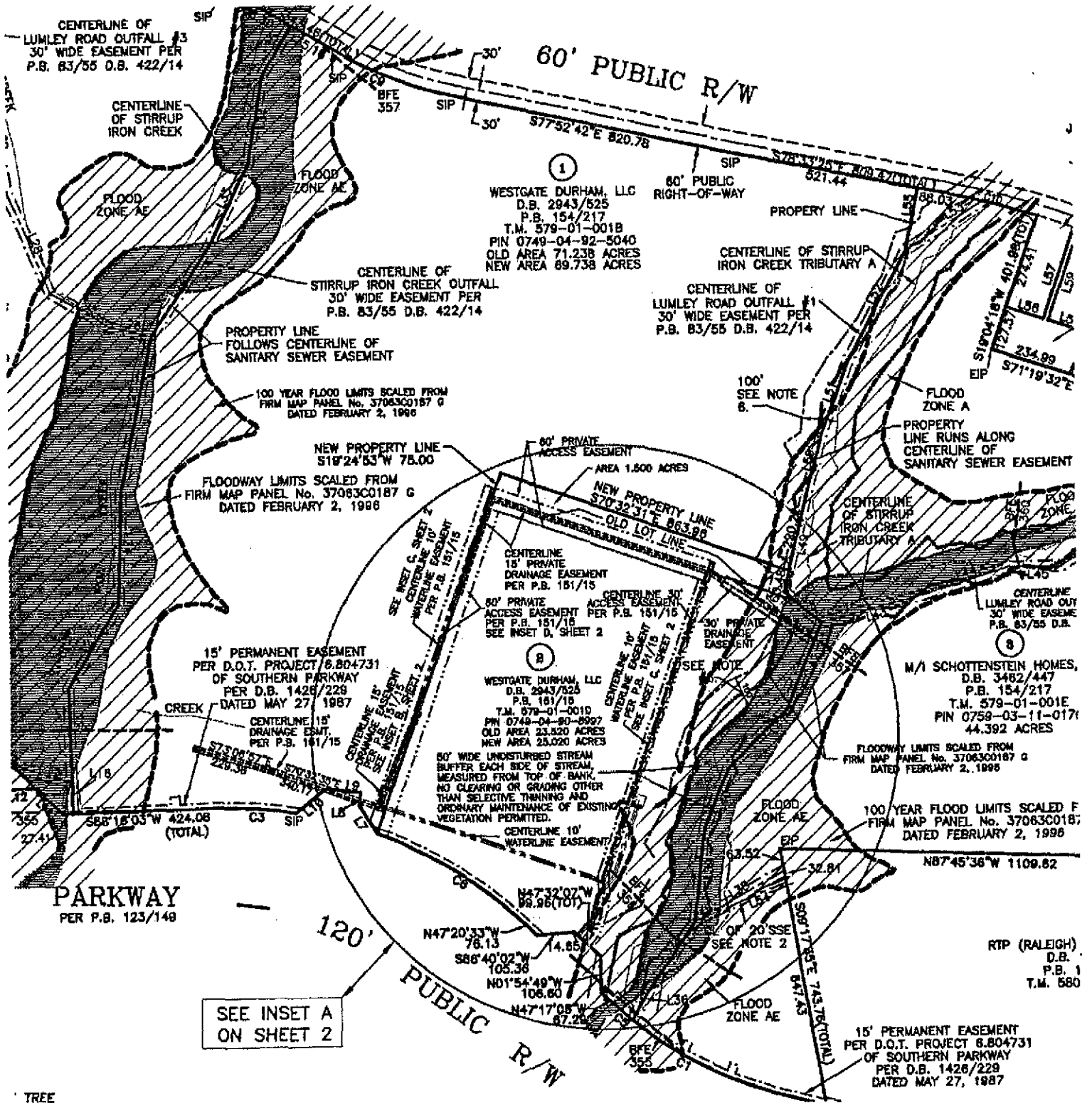
NOTARY PUBLIC

My Commission Expires:

Ella P. Hubbard  
Notary Public-Fulton County, Georgia  
My Commission Expires 9-30-2005



EXHIBIT A - 1.



SEE INSET A ON SHEET 2

EXHIBIT A - 2

## LEGAL DESCRIPTION - LOT 1

Beginning at a point located in the southern right-of-way line of Lumley Road (a 60' public right-of-way), said beginning point being located the following courses and distances from the northwestern most corner of Westgate Durham, LLC (Deed book 2943, page 525, Durham County registry): S72-41-32E 560.81 feet, thence running along the arc of a circular curve to the right having a radius of 2341.23 feet a distance of 581.83 feet, said arc being defined by the chord S65-38-15E 580.33 feet, thence S59-08-54E 208.30 feet; thence running from said beginning point along the southern right-of-way of Lumley Road the following courses and distances: S59-08-54E 135.16 feet, thence running along the arc of a circular curve to the left having a radius of 1097.88 feet a distance of 373.75 feet, said arc being defined by the chord S68-07-33E 371.95 feet, thence S77-52-42E 820.78 feet, thence S78-33-25E 521.44 feet; thence leaving the southern right-of-way line of Lumley Road running S11-26-35W a distance of 181.38 feet to a point located in the centerline of the Lumley Road Outfall #1 easement (Deed book 442, page 14); thence running along the centerline of Lumley Road Outfall #1 the following courses and distances: S28-20-00W 351.83 feet, thence S20-15-00W 225.23 feet, thence S14-29-00W 180.22 feet, thence S13-32-00W 220.22 feet; thence leaving the centerline of Lumley Road Outfall #1 running N70-32-31W a distance of 863.96 feet to a point; thence running S19-24-53W a distance of 1083.22 feet to a point in the northern right-of-way of Southern Parkway (a 120' public right-of-way); thence running along the northern right-of-way of Southern Parkway the following courses and distances: N31-31-20W 93.09 feet, thence N06-09-28E 39.00 feet to a point, thence N83-48-18W 100.00 feet to a point, thence S51-22-10W 108.10 feet to a point, thence along the arc of a circular curve to the left having a radius of 1205.92 feet a distance of 234.58 feet, said arc being defined by the chord N86-09-19W 234.21 feet, thence S88-16-03W 396.67 feet to a point in the centerline of Stirrup Iron Creek Outfall easement (Deed book 422, page 14); thence running along the centerline of Stirrup Iron Creek Outfall easement the following courses and distances: N02-11-00W 89.68 feet to a point, thence N01-29-00W 267.08 feet to a point, thence N30-44-00E 279.05 feet to a point, thence N01-49-00E 321.11 feet to a point, thence N11-24-00E 448.76 feet to a point, thence N33-10-00E 303.63 feet to a point, thence N25-35-00E 262.15 feet to a point, thence N09-39-00E 250.95 feet to a point, thence N30-01-00E 166.77 feet to the point and place of beginning containing 69.738 acres and being Lot 1 as shown on that plat entitled "Final Plat for Westgate Durham, LLC" dated June 28, 2002 prepared by Triangle Surveyors, Inc., said plat being recorded in Plat Book 156, page

209 + 211

EXHIBIT X - 2

## LEGAL DESCRIPTION - LOT 2

Beginning at a point located in the northern right-of-way line of Southern Parkway, thence running along the northern right-of-way line of Southern Parkway along the arc of a circular curve to the right having a radius of 1,085.92 feet a distance of 49.93 feet, said arc being defined by the chord N 48-38-04 W 49.92, thence continuing along the northern right-of-way line of Southern Parkway the following courses and distances: N 47-17-05 W a distance of 67.29 feet, thence N 01-54-49 W a distance of 106.60 feet, thence N 47-32-07 W a distance of 99.96 feet, thence S 86-40-20 W a distance of 105.36 feet, thence N 47-20-33 W a distance of 76.13 feet, thence running along the arc of a circular curve to the left having a radius of 1205.92 feet a distance of 463.85 feet, said arc being defined by the chord N 58-22-40 W 461.00 feet, to a point the southeast corner of Westgate Properties, Inc. (Deed Book 2634, page 990, Durham County Registry); thence leaving the northern right-of-way of Southern Parkway running along an eastern line of Westgate Properties, Inc. N 19-24-53 E a distance of 1083.22 feet to a point, thence running along a southern line of Westgate Properties, Inc. S 70-32-31 E a distance of 863.96 feet to a point, said point also being located in the centerline of a 30' wide City of Durham sanitary sewer easement (Deed Book 422, page 14 and Plat Book 83, page 55); thence continuing along the centerline of a 30' wide City of Durham sanitary sewer easement the following courses and distances: S 13-32-00 W a distance of 60.48 feet, thence S 49-28-00 E a distance of 137.74 feet, thence S 22-04-00 W a distance of 261.43 feet to a point, thence S 44-44-00 W a distance of 241.13, thence S 22-10-00 W a distance of 182.97 feet, thence S 06-15-00 W a distance of 265.53 feet, thence S 34-26-00 W a distance of 234.12 feet, thence S 29-54-00 W a distance of 98.36 feet to the point and place of beginning containing 25.020 acres as shown on that plat prepared by Triangle Surveyors, Inc. entitled "Final Plat for Westgate Durham, LLC" dated June 28, 2002 and recorded in Plat Book 156, page \_\_\_\_\_ of the Durham County Registry.

209+211

**Exhibit B**

**Charter**



# NORTH CAROLINA

## Department of The Secretary of State

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To all whom these presents shall come, Greetings:

I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

**ARTICLES OF INCORPORATION**  
**OF**  
**CENTERPOINT OWNERS' ASSOCIATION, INC.**

the original of which was filed in this office on the 16th day of October, 2000.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 16th day of October, 2000

*Elaine F. Marshall*

Secretary of State

State of North Carolina  
Department of the Secretary of State

20 290 5165

ARTICLES OF INCORPORATION  
NONPROFIT CORPORATION

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the corporation is: CenterPoint Owners' Association, Inc.
2. \_\_\_\_\_ (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).
3. The street address and county of the initial registered office of the corporation is:  
Number and Street 225 Hillsborough Street  
City, State, Zip Code Raleigh, NC 27603 County Wake
4. The mailing address if different from the street address of the initial registered office is:  
\_\_\_\_\_
5. The name of the initial registered agent is:  
CT Corporation System
6. The name and address of each incorporator is as follows:  
J. Edward Peel  
Glankler Brown, PLLC  
6000 Poplar Avenue, Suite 100  
Memphis, TN 38119-3978
7. (Check either a or b below.)  
a.  The corporation will have members.  
b.  The corporation will not have members.
8. Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.
9. Any other provisions which the corporation elects to include are attached.
10. The street address and county of the principal office of the corporation is:  
8401 Jackson Rd., Sacramento, CA 95826 County Sacramento
11. The mailing address if different from the street address of the principal office is:  
\_\_\_\_\_

12. These articles will be effective upon filing, unless a later time and/or date is specified: \_\_\_\_\_

This is the 10<sup>th</sup> day of October, 2000.

J. Edward Peel  
*Signature of Incorporator*

J. Edward Peel, Attorney INCUBATOR  
*Type or print Incorporator's name and title, if any*

NOTES:

1. Filing fee is \$60. This document and one exact or conformed copy of these articles must be filed with the Secretary of State.

## **PLAN OF DISSOLUTION**

As per N.C. Gen. Stat. § 55A-14-03, upon dissolution CenterPoint Owners' Association, Inc. agrees that all liabilities and obligations of the corporation will be paid and discharged, or adequate provisions be made therefor, and that the remainder of the corporation's assets will be distributed as follows:

(1) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements; and

(2) Other assets, if any, shall be distributed as provided in the Bylaws.



**Exhibit C**

**Bylaws**

**BYLAWS**  
**OF**  
**CENTERPOINT OWNERS' ASSOCIATION, INC.,**  
  
**A NORTH CAROLINA NONPROFIT CORPORATION**

These Bylaws shall regulate the affairs of CENTERPOINT OWNERS' ASSOCIATION, INC. (herein the "Corporation"), subject to the provisions of the Corporation's Charter and any applicable provisions of the North Carolina Nonprofit Corporation Act, Section 55A-1-20 *et seq.*, North Carolina General Statutes. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Declaration of Covenants, Conditions and Restrictions for CenterPoint Planned Development (the "Declaration").

**SECTION 1**  
**OFFICES AND REGISTERED AGENT**

Section 1.01. Registered Office. The Corporation shall designate and continuously maintain a registered office in the State of North Carolina.

Section 1.02. Principal Office. The principal office of the Corporation shall be that which is designated as such in its Charter.

Section 1.03. Other Offices. The Corporation may also have other offices within and without the State of North Carolina at such places as the Board of Directors or the Members may from time to time determine.

Section 1.04. Registered Agent. The Corporation shall designate and continuously maintain a registered agent in the State of North Carolina at its registered office.

**SECTION 2**  
**APPLICABILITY**

These Bylaws and each provision thereof shall be applicable to all Lots and Members, as defined within the development known as CenterPoint Planned Development and as shown by the Final Plat for Westgate Durham, LLC recorded in Plat Book 156, Pages 209 & 211, in the Register's Office of Durham County, North Carolina (the "Property").

**SECTION 3**  
**MEMBERS**

Section 3.01. Eligibility. The Owner or Owners of a Lot, who have become such in compliance with all of the requirements and conditions contained in the Declaration, including these

Bylaws, shall be entitled to attend and vote at all meetings of the Association. The Declarant shall be considered the Owner of each Lot which is unsold by it. Ownership of a Lot shall be sole qualification for membership in the Association.

Section 3.02. Voting Rights. The Owner or Owners of a Lot shall be entitled to the number of votes set forth in Article III, Section 2 of the Declaration.

Section 3.03. Place of Meeting. Meetings of the membership shall be held in Durham County, North Carolina or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 3.04. Annual Meetings. The annual meetings of the Members of the Association shall be held at 5:00 P.M. on the first (1st) Monday in September of each year, beginning in 2002. At such meeting there shall be elected by secret written ballot of the Members a Board of Directors in accordance with the requirements of Section 5 of Article V of these Bylaws. The Members may also transact such other business of the Association as may properly come before them.

Section 3.05. Special Meetings. It shall be the duty of the President to call a special meeting of the Members as directed by resolution of the Board of Directors or upon a petition signed by Members representing at least twenty-five percent (25%) of the total number of votes entitled to be cast on any issue proposed to be considered at the proposed special meeting having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 3.06. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof, in the case of a special meeting, as well as the time, date and place where it is to be held, to each member of record, at his address as it appears on the membership book of the Association, if any, or if no such address appears, at his last known place of address, at least ten (10) days but no more than two (2) months prior to such meeting. Service may also be accomplished by the delivery of any such notice to the member at his last known address by deposit in the box or slot for the United States mail. Notice by either such method shall be considered as notice served. Attendance by a Member at any meeting of the Members shall be a waiver of notice by him of the time, place and purpose thereof.

Section 3.07. Quorum. The presence, either in person or by proxy, of Members representing at least seventy-five percent (75%) of the total votes entitled to be cast with respect to any question, shall be requisite for, and shall constitute a quorum for, the transaction of business at all meetings of Members. If the number of Members at a meeting drops below the quorum and the question of a lack of a quorum is raised, no business may thereafter be transacted.

Section 3.08. Adjourned Meeting. If any meeting of Members cannot be organized because a quorum has not attended, the Members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 3.09. Voting. At every meeting of the Members, each of the Members shall have the right to cast his vote on each question. The vote of Members representing a sixty-six percent (66%) majority of the total votes cast, in person or by proxy, provided a quorum exists, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Articles of Incorporation, or the Declaration, or of these Bylaws, a different vote is required, in which case such express provision shall govern and control. No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, who is shown on the books or management accounts of the Association to be more than sixty (60) days delinquent in any payment due the Association.

Section 3.10. Proxies. Any Member may appoint any other Member or the Developer or any other person permitted by law or by these Bylaws as his proxy. Any proxy must be in writing and must comply with all requirements imposed by law or by these Bylaws.

Section 3.11. Written Ballot. Whenever the vote of Members at a meeting thereof is required or permitted to take any action in accordance with any statute, the Declaration or these Bylaws, such meeting and vote may be dispensed with if all Members who had been entitled to vote upon such action receive a written ballot from the corporation. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approvals shall be valid only when the number of votes cast by ballot equals or exceed the quorum required to be present at a meeting authorizing the action, and the number of approvals equal or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

Section 3.12. Order of Business. The order of business at all regularly scheduled meetings of the Members shall be as follows:

- (a) Roll call and certificate of proxies.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of Officers, if any.
- (e) Reports of committees, if any.
- (f) Unfinished business.
- (g) New business.
- (h) Election or appointment of inspectors of election.
- (i) Election of directors.

In the case of a special meeting, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of the meeting.

## SECTION 4 BOARD OF DIRECTORS

Section 4.01. General Powers and Qualifications. All corporate powers of the Corporation shall be exercised by and under the authority of, and the affairs of the Corporation shall be managed under the direction of, the Board of Directors. All Directors must be natural persons and shall be at least eighteen (18) years of age.

Section 4.02. Number of Directors. The Board of Directors shall be comprised of at least three (3) persons and not more than seven (7) persons, a majority of whom (after the second annual meeting of Members) shall be Members of the Association.

Section 4.03. Initial Directors. The initial Directors shall be elected by the Developer and need not be Members of the Association. The names of the Directors who shall act as such from the date upon which the Declaration is recorded in the Register's Office of Durham County, North Carolina, until the first annual meeting of the Members or until such time as their successors are duly chosen and qualified are as follows:

- 1) Dudley Mitchell
- 2) Donald Foster
- 3) Dayne Pryor

Section 4.04. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 4.05. Election and Term of Office. The term of the Directors named herein or in the Charter of Incorporation shall expire when their successors have been elected at the first annual meeting of Members and are duly qualified. At the first annual meeting of the Members, the Members shall determine the number of Directors consistent with these Bylaws, who shall constitute the Board of Directors to serve until the next annual meeting and until their successors have been elected and duly qualified. The term of office of each Director thereafter shall be for a period of one (1) year and until their successors shall have been elected and hold their first meeting.

Section 4.06. Power and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and the planned development and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Members. The powers and duties of the Board of Directors shall include, but not be limited to, the following;

To provide for:

(a) Care and upkeep of the road, sewers, and any other properties charged to the care of the Association, including establishing reserves for repairs or replacements.

(b) Establishment and collection of assessments and /or carrying charges from the Members and for the assessment and/or enforcement of liens therefor in a manner consistent with law and the provisions of these Bylaws and the Declaration.

(c) Designation, hiring and/or dismissal of the personnel necessary for the good working order of the Property and to provide services for the community in a manner consistent with law and the provisions of these Bylaws and the Declaration.

(d) Promulgation and enforcement of such rules and regulations and such restrictions or requirements as may be deemed proper respecting the use, occupancy and maintenance of the Property, all of which shall be consistent with law and the provisions of these Bylaws and Declaration.

(e) Elect an Architectural Control Committee as provided in Article VII, Section 1 of the Declaration.

Section 4.07. Regular Meetings. Except as otherwise provided herein, regular meetings of the Board of Directors may be held without notice at such time and place, either within or outside the state of North Carolina, as the Board of Directors shall determine from time to time, but no less frequently than twice a year.

Section 4.08. Special Meetings. Special meetings of the Board of Directors may be called by the President, the Chairman of the Board of Directors, or by any two (2) Directors and may be held within or outside the state of North Carolina.

Section 4.09. Presence at Meetings. Unless the charter provides otherwise, a Board may permit any or all Directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 4.10. Notice of Meetings. Except as otherwise provided herein, regular meetings of the Board of Directors may be held without notice of the date, time, place, or purpose of the meeting. Except as otherwise provided herein, special meetings of the Board of Directors must be preceded by at least three (3) days' written notice to each Director of the date, time, place and purpose of such

special meeting. The written notice may be delivered personally or mailed directly to each Director at his or her last known address, and such notice shall be effective as provided in Section 8.03 of these Bylaws. Notice of any adjourned meeting need not be given if the time and place to which the meeting is adjourned are fixed at the meeting at which the adjournment is taken, and if the period of adjournment does not exceed one (1) month in any one (1) adjournment.

Section 4.11. Waiver of Notice. If a Director attends or participates in a meeting, he or she waives any required notice to him or her of the meeting unless the Director at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 4.12. Quorum and Voting. A quorum of the Board of Directors consists of a majority of the Directors then in office before a meeting begins. If a quorum is present when a vote is taken, the affirmative vote of a majority of the Directors present is the act of the Board of Directors, except as otherwise provided in these Bylaws. If less than a majority of the Directors is present at a meeting, a majority of the Directors present at the meeting may adjourn the meeting from time to time without further notice. A Director who is present at a meeting of the Board of Directors when corporate action is taken is deemed to have assented to the action taken unless:

- (a) He or she objects at the beginning of the meeting (or promptly upon arrival) to holding the meeting or transacting business at the meeting;
- (b) His or her dissent or abstention from the action taken is entered in the minutes of the meeting; or
- (c) He or she delivers written notice of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the Corporation immediately after adjournment of the meeting.

The right of dissent or abstention is not available to a Director who votes in favor of the action taken.

Section 4.13. Vacancy. If a vacancy occurs on the Board of Directors, including a vacancy resulting from an increase in the number of Directors or a vacancy resulting from a removal of a Director with or without cause:

- (a) The Board of Directors, by a majority vote, may fill the vacancy; or
- (b) If the Directors remaining in office constitute fewer than a quorum of the Board, they may fill the vacancy by the affirmative vote of a majority of all Directors remaining in office.

Any individual appointed to fill a vacancy on the Board of Directors shall hold office until his or her successor is elected. Directors are expected to regularly attend all meetings of the Board. Any member of the Board of Directors who misses three (3) consecutive meetings with no extenuating circumstances or has been continuously disabled for a period of six (6) months, as determined in the sole discretion of the Board of Directors, so as to prevent him or her from discharging the duties of

the office of a Director, shall constitute a vacancy on this Board. Any vacancy that will occur at a specific later date (by reason of a resignation effective at a later date or otherwise) may be filled before the vacancy occurs, but the new Director may not take office until the vacancy occurs.

Section 4.14. Compensation of Directors. Directors, in their capacity as Directors, shall not receive any salary for their services. A Director may be reimbursed for any reasonable out-of-pocket expenses incurred on behalf of the Corporation.

Section 4.15. Removal of Directors. The Board of Directors may remove without cause a Director who has been elected by the Board by the vote of two-thirds (2/3) of the Directors then in office.

Section 4.16. Resignation of Directors. A Director may resign at any time by delivering written notice to the Board of Directors, the President, or to the Corporation. A resignation is effective when the notice is effective under Section 5.03 of these Bylaws, unless the notice specifies a later effective date.

Section 4.17. Action Without Meeting. Action that is required or permitted to be taken at a meeting of the Board of Directors may be taken without such a meeting if all Directors consent to taking such action without a meeting. If all Directors so consent, the affirmative vote of the number of Directors that would be necessary to authorize or take such action at a meeting shall be the act of the Board, except as otherwise provided in these Bylaws. Such consent(s) shall describe the action taken, be in writing, be signed by each Director entitled to vote, indicate each signing Director's vote or abstention on the action, and be delivered to the Secretary of the Corporation and included in the minutes filed with the corporate records.

Section 4.18. Rules and Regulations. The Board of Directors shall have the power to make and adopt such rules, regulations and policies that are not inconsistent with the laws of the State of North Carolina, the Articles of Incorporation of the Corporation or these Bylaws, as it deems advisable for the management, administration and regulation of the business and affairs of the Corporation.

Section 4.19. Indemnification. With respect to claims or liabilities arising out of service as a Director of the Corporation, the Corporation shall indemnify and advance expenses to each present and future Director (and his or her estate, heirs, and personal representatives) to the fullest extent allowed by the laws of the State of North Carolina, both as now in effect and as hereafter adopted or amended.

Section 4.20. Immunity. To the fullest extent allowed by the laws of the State of North Carolina, both as now in effect and as hereafter adopted or amended, each present and future Director (and his or her estate, heirs, and personal representatives) shall be immune from suit arising from the conduct of the affairs of the Corporation.

Section 4.21. Common or Interested Directors. The Directors shall exercise their powers and duties in good faith and with a view to the interests of the Association and the Property. No contract or other transaction between the Association and one or more of its Directors, or between the



Association and any corporation, firm or association (including the Developer) in which one or more of the Directors of this Association are Directors or officers or are pecuniarily or otherwise interested, is either void or voidable because such Director or Directors are present at a meeting of the Board of Directors of any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following subparagraphs exist:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; and

(b) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction with like force and effect as if he were not such Director or officer of such other corporation or not so interested.

Section 4.22. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for the Association of trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

## SECTION 5 OFFICERS

Section 5.01. Required Officers. The officers of the Corporation shall be a President, a Vice President, a Secretary and a Treasurer and such other officers as may from time to time be elected or appointed by the Board of Directors. Except for the offices of President and Vice President, the same individual may simultaneously hold more than one (1) office in the Corporation.

Section 5.02. Election. At the first meeting of the Board of Directors after each annual meeting of the Members, the Board shall elect the officers of the Corporation by ballot by a majority vote of those Directors present, provided a quorum exists. If at such meeting the election of officers is not held, such election shall be held as soon as may be convenient.

Section 5.03. Term of Office. The officers of the Corporation shall hold office for one (1) year or until their successors are chosen and qualify in their stead, subject, however, to the right and authority of the Board of Directors to remove any officer at any time with or without cause.

Section 5.04. Powers and Duties of Officers. The powers and duties of the officers of the Corporation shall be as follows:

(a) *President.* The President shall be the principal executive officer of the Corporation, shall preside at all meetings of the Members and of the Board of

Directors, shall have general and active management of the Corporation, and shall see that all orders and resolutions of the Board of Directors are carried into effect, subject, however, to the right of the Board of Directors to delegate any specific powers, unless exclusively conferred upon the President by law, to any other officer(s) of the Corporation. The President or an agent of the President shall report on the activities and financial condition of the Corporation at all annual meetings of the Members. The President shall sign, with the Secretary of the Corporation, certificates of membership, if any, the issuance of which shall have been authorized by resolution of the Board of Directors, and may sign any deeds, mortgages, deeds of trust, notes, bonds, contracts or other instruments authorized by the Board of Directors to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Corporation, or shall be required by law to be otherwise signed or executed. The Chairman/ President shall, in general, perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

(b) *Vice President.* The Vice President shall have such powers and perform such duties as may be assigned to him or her by the Board of Directors or the Chairman/ President. In the absence or disability of the Chairman/ President, or in the event of his or her refusal to act, the Vice President shall perform the duties and exercise the powers of the President. The Vice President may sign and execute contracts and other obligations pertaining to the regular course of his or her duties.

(c) *Secretary.* The Secretary shall attend all meetings of the Board of Directors and of the Members of the Corporation and shall be responsible for preparing the minutes of such meetings. The Secretary shall be responsible for the care and custody of the minutes book of the Corporation, for authenticating records of the Corporation, have general charge of the Corporation's books in which a record of the Members is kept, and retain on file at all times a complete copy of the Bylaws and any amendments thereto. It shall be his or her duty to give or cause to be given notice of all meetings of the Members and of the Board of Directors. The Secretary shall keep a register of the post office address of each member which shall be furnished to the Secretary by such Members. It shall be the duty of the Secretary to sign, with the Chairman/ President, certificates of membership, if any, the issuance of which shall have been authorized by resolution of the Board of Directors. The Secretary shall also perform such other duties as may be assigned to him or her by the Board of Directors or by the President, under whose supervision he or she shall act. In the event the Secretary is absent for some reason from any meeting where minutes are to be prepared or is otherwise unable to take such minutes, the presiding officer of such meeting shall appoint another person, subject to the approval of those present and entitled to vote at such meeting, to take the minutes thereof.

(d) *Treasurer.* The Treasurer shall have custody of and be responsible for the Corporation's funds and securities, shall keep full and accurate account of receipts and disbursements in the appropriate corporate books, and shall require the deposit of

all monies and other valuables assets in the name of and to the credit of the Corporation in such financial institutions as may be designated by the Board of Directors. The Treasurer shall require disbursement of the funds of the Corporation as may be ordered by the Board of Directors, and shall render to the President and the Board of Directors, at any time they may require, an account of his or her transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall also report on the activities and financial condition of the Corporation at all annual meetings of the Members.

Section 5.05. Removal of Officers. Any member of the Board of Directors removed from office pursuant to Section 4.15 of these Bylaws shall be automatically removed as an officer. Upon an affirmative vote of a majority of the Members of the Board of Directors, any officer may be removed either with or without cause, and his successors elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 5.06. Vacancies. Any vacancies occurring in any office shall be filled by the Board of Directors as soon as practicable for the unexpired portion of the term.

Section 5.07. Employment of Personnel. The Board of Directors may employ such personnel as is necessary to carry out the purposes and intent of the Corporation and to perform all duties as designated by the Board of Directors.

Section 5.08. Compensation. The compensation, if any, of any officer, agent or employee who is also a Director or close relative to a Director shall be determined by the Members and the powers, duties and compensation of any other officer, agent and employee shall be fixed by the Board of Directors.

Section 5.09. Delegation of Powers and Duties. In case of the absence of any officer of the Corporation, or for any reason that the Board of Directors may deem sufficient, the Board of Directors may delegate the powers of such officer to any officer or to any Director for the time being.

Section 5.10. Indemnification. With respect to claims or liabilities arising out of service as an officer of the Corporation, the Corporation shall indemnify and advance expenses to each present and future officer (and his or her estate, heirs and personal representatives) to the fullest extent allowed by the laws of the State of North Carolina, both as now in effect and as hereafter adopted or amended.

## SECTION 6 ASSOCIATION MANAGEMENT

Section 6.01. Management and Common Expenses. The Association, acting by and through its Board of Directors, shall manage, and operate the affairs of the Association and, for the benefit of the Lots and the Owners thereof, shall enforce the provisions hereof and shall pay out of the common expense fund herein and elsewhere provided for, the following:

- (a) The cost of such insurance as the Association may effect.
- (b) The cost of providing such legal and accounting services as may be considered necessary to the operation of the Property.
- (c) The cost of any and all materials, supplies, labor, services, maintenance, repairs, taxes, assessments or the like, which the Association secures in the discretion of the Board of Directors or by the vote of the Members shall be deemed necessary or proper.
- (d) The cost of the maintenance or repair on any Lot in the event such maintenance or repair is reasonably necessary in the discretion of the Board of Directors to protect the Common Area or to preserve the appearance or value of the Property or is otherwise in the interest of the general welfare of all Owners of the Lots; provided, however, that no such maintenance or repair shall be undertaken without a resolution by the Board of Directors and not without reasonable written notice to the Owner of the Lot proposed to be maintained and provided, further, that the cost thereof shall be assessed against the Lot on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be sent promptly to the then Owner of said Lot at which time the assessment shall become due and payable and a continuing lien and obligation of said Owner.
- (e) All other items which are listed as responsibilities of the Association as found in the Declaration.

Section 6.02. Duty to Maintain. Except for maintenance requirements herein imposed upon the Association by the Declaration of these Bylaws, the Owner of any Lot shall, at his own expense, maintain the interior and exterior of any improvements on his Lot, including all driveways, parking areas and other paved areas (except as provided in Article V of the Declaration) and any and all equipment, and fixtures therein situate, and its other appurtenances, in good order, condition and repair, and in clean and sanitary condition, and shall do all redecorating, painting and the like which may at any time be necessary to maintain the good appearance of his Lot and appurtenances. All exterior maintenance is subject to approval of the Architectural Control Committee.

Section 6.03. Right of Entry. For the purpose solely of performing any of the repairs or maintenance required or authorized by these Bylaws, or in the event of a bona fide emergency involving illness or potential danger to life or property, the Association, through its duly authorized agents or employees, shall have the right, after reasonable efforts to give notice to the Owner or occupant, to enter upon any Lot at any hour considered to be reasonable under the circumstances.

## SECTION 7 RECORDS AND REPORTS

Section 7.01. Corporate Records. The Corporation shall keep as permanent records minutes of all meetings of its Members and Board of Directors, a record of all actions taken by the Board of Directors without a meeting, and appropriate accounting records.

Section 7.02. Records at Principal Office. The Corporation shall keep at all times a copy of the following records at its principal office:

- (a) Its Charter or Restated Charter and all amendments thereto;
- (b) These Bylaws and all amendments thereto;
- (c) Resolutions adopted by the Board of Directors relating to the characteristics, qualifications, rights, limitations and obligations of Members;
- (d) A list of the names and business or home addresses of its current Directors and officers; and
- (e) The most recent annual report delivered to the North Carolina Secretary of State.

Section 7.03. Annual Financial Statements. The Corporation shall prepare annual financial statements that include a balance sheet as of the end of the fiscal year, an income statement for that year, and such other information necessary to comply with the requirements of the applicable provisions of the North Carolina Nonprofit Corporation Act.

Section 7.04. Annual Report for Members. The Association shall furnish its Members, and the holder of first mortgages requesting same within ninety (90) days from the date of close of each fiscal year, with an annual financial statement, including the income and disbursements of the Association.

Section 7.05. Annual Report for Secretary of State. The Corporation shall deliver to the Secretary of State of the State of North Carolina an annual report that sets forth all the information required under the laws of the State of North Carolina.

Section 7.06. Inspection of Books. The book and accounts of the Association, and vouchers accrediting the entries made thereupon, shall be available for examination by the Members of the Association, and/or their duly authorized agents or attorneys, and to the institutional holder of any first mortgage on any Lot and/or its duly authorized agents or attorneys, during normal business hours and for purposes reasonably related to their interest as Members.

## SECTION 8 MISCELLANEOUS PROVISIONS

Section 8.01. Tax Year. The tax year of the Corporation shall begin on January 1 of each year and end on December 31 of the same year.

Section 8.02. No Seal. The Corporation shall have no seal.

**Section 8.03. Notices.** Whenever notice is required to be given to Directors or officers, unless otherwise provided by law, the Charter or these Bylaws, such notice may be given in person, teletype or other form of wire or wireless communication, or by telephone, telegraph, mail or private carrier. If such notice is given by mail, sent postage prepaid by first class United States mail or by registered or certified United States mail, return receipt requested, and addressed to the respective address that appears for each such person on the books of the Corporation, written notice sent by mail to Members shall be deemed to have been given when it is mailed. Any other written notice shall be deemed to have been given at the earliest of the following:

- (a) When received;
- (b) Five (5) days after its deposit in the United States mail if sent first class, postage prepaid, and correctly addressed;
- (c) On the date on the return receipt, if sent by registered or certified United States mail, return receipt requested, postage prepaid and the receipt is signed by or on behalf of the addressee; or
- (d) Twenty (20) days after its deposit in the United States mail, if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

**Section 8.04. Waiver of Notice.** Whenever any notice is required to be given under the provisions of any statute, or of the Charter or these Bylaws, a waiver thereof in writing signed by the person entitled to such notice, whether before or after the date stated thereon, and delivered to the Secretary of the Corporation and included in the minutes or corporate records, shall be deemed equivalent thereto.

**Section 8.05. Negotiable Instruments.** All checks, drafts, notes or other obligations of the Corporation shall be signed by such of the officers of the Corporation, or by such other person(s), as may be authorized by the Board of Directors.

**Section 8.06. Deposits.** The monies of the Corporation may be deposited in the name of the Corporation in such bank(s) or financial institution(s) as the Board of Directors shall designate from time to time and shall be drawn out by check signed by the officer(s) or person(s) designated by resolution adopted by the Board of Directors.

**Section 8.07. Contracts.** Except as otherwise provided in these Bylaws, the Board of Directors may authorize any officer or officers, agent or agents, employee or employees, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**Section 8.08. Employment of Management Company.** The Association shall be authorized to employ a management company to aid the Association in carrying out its duties and responsibilities. Prior to passage of control of the Association from the Developer, no management

or service contract shall be entered into unless there is a right of termination, without cause, upon ninety (90) days written notice.

Section 8.09. Notice to Board of Directors. Any Owner of any Lot in the planned development who mortgages such Lot shall promptly notify the Board of Directors of the name and address of his mortgagee and, if requested so to do, shall file a conformed copy of such mortgage with the Board of Directors. The Board of Directors shall maintain suitable records pertaining to such mortgages.

Section 8.10. Mortgagee Definition. As used in this Section, the term "mortgagee" shall mean any mortgagee and shall not be limited to institutional mortgagees and the term "mortgage" shall include a deed of trust. As used generally in these Bylaws, the term "institutional holder" or "institutional mortgagee" shall include banks, trust companies, insurance companies, savings and loan associations, pension funds and any corporation, including a corporation of, or affiliated with, the United States government, or any agency thereof.

Section 8.11. Waiver. No restriction, condition, obligation or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

Section 8.12. Captions. The captions contained in these Bylaws are for convenience only and are not a part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of the Bylaws.

Section 8.13. Gender, Etc Whenever in these Bylaws the context so requires, the singular number shall include the plural and the converse; and the use of any gender shall be deemed to include all genders.

## **SECTION 9 AMENDMENT OF BYLAWS**

By a majority vote of the Directors then in office, the Board of Directors may amend these Bylaws, at any regular or special meeting of the Board of Directors where a quorum is present, provided that such meeting is preceded by at least three (3) days' notice to each Director of the date, time and place of the meeting. Such notice shall also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the Bylaws, and shall contain or be accompanied by a copy or summary of the proposed amendment or state the general nature thereof. These Bylaws may also be amended by the Directors without a meeting in the same manner as provided therefor herein, except that such action to amend must be by a majority vote of the Directors then in office.

## **SECTION 10 SEVERABILITY**

In the event that any provision of these Bylaws is unenforceable, the unenforceability of any such provision shall not affect the other provisions of these Bylaws, which other provisions shall be enforceable to the fullest extent allowed by law.

**SECTION 11  
CONFLICTS**

THESE BYLAWS ARE SUBORDINATE TO ALL PROVISIONS OF THE DECLARATION. ALL OF THE TERMS HEREOF, EXCEPT WHERE CLEARLY REPUGNANT TO THE CONTEXT, SHALL HAVE THE SAME MEANING AS IN THE DECLARATION. IN THE EVENT OF ANY CONFLICT BETWEEN THESE BYLAWS AND THE DECLARATION, THE PROVISIONS OF THE DECLARATION SHALL CONTROL, AND IN THE EVENT OF ANY CONFLICT BETWEEN THE AFORESAID DECLARATION OR THESE BYLAWS AND ANY OF THE LAWS OF THE STATE OF NORTH CAROLINA, THE PROVISIONS OF THE STATUTE SHALL CONTROL.

DATED, this 14 day of August, 2002.

**DIRECTORS:**

---

DUDLEY MITCHELL

  
DONALD FOSTER

---

DAYNE PRYOR



**Exhibit D**

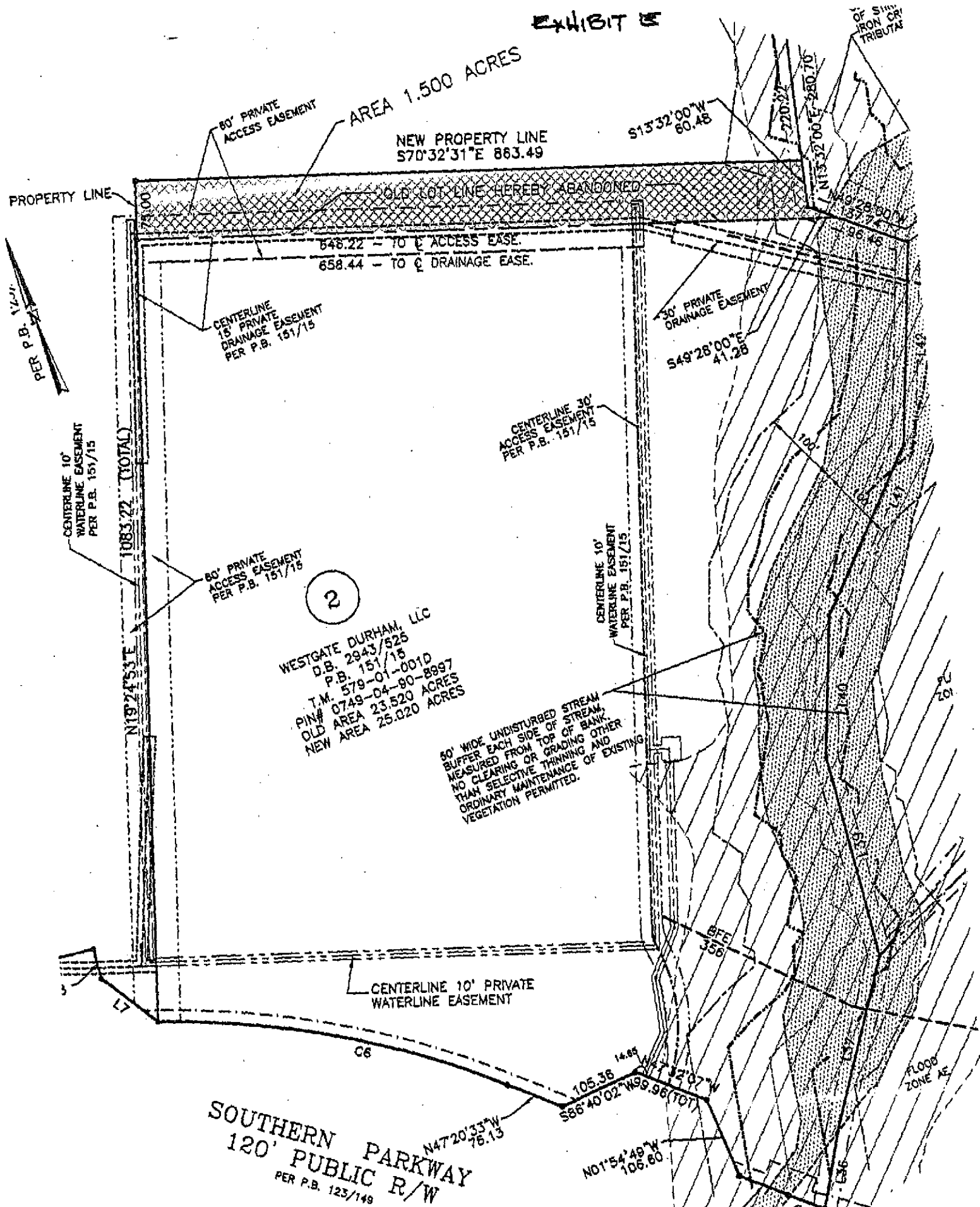
**Easement for Monument Signs**



**Exhibit E**

**Lot 2 Plat Identifying Water & Fire Protection Easements**

EXHIBIT E



AREA 1.500 ACRES

NEW PROPERTY LINE  
S70°32'31"E 863.49

PROPERTY LINE

OLD LOT LINE HEREBY ABANDONED

648.22 - TO E ACCESS EASE.  
658.44 - TO E DRAINAGE EASE.

CENTERLINE 15' PRIVATE DRAINAGE EASEMENT PER P.B. 151/15

30' PRIVATE DRAINAGE EASEMENT  
S49°28'00"E 41.28

CENTERLINE 30' ACCESS EASEMENT PER P.B. 151/15

CENTERLINE 10' WATERLINE EASEMENT PER P.B. 151/15

1083.22 (TOTAL)

80' PRIVATE ACCESS EASEMENT PER P.B. 151/15

2

WESTGATE DURHAM, LLC  
D.B. 2943/525  
P.B. 151/15  
T.M. 579-01-0010  
PIN# 0749-04-80-8997  
OLD AREA 23.520 ACRES  
NEW AREA 25.020 ACRES

50' WIDE UNDISTURBED STREAM BUFFER EACH SIDE OF STREAM, MEASURED FROM TOP OF BANK, NO CLEARING OR GRADING OTHER THAN SELECTIVE THINNING AND ORDINARY MAINTENANCE OF EXISTING VEGETATION PERMITTED.

CENTERLINE 10' WATERLINE EASEMENT PER P.B. 151/15

CENTERLINE 10' PRIVATE WATERLINE EASEMENT

SOUTHERN PARKWAY  
120' PUBLIC R/W  
PER P.B. 123/149



WILLIE L. COVINGTON  
REGISTER OF DEEDS , DURHAM COUNTY  
DURHAM COUNTY COURTHOUSE  
200 E. MAIN STREET  
DURHAM, NC 27701

\*\*\*\*\*  
Filed For Registration: 09/11/2002 03:51:34 PM  
Book: RE 3570 Page: 136-188  
Document No.: 2002042725  
DECL 53 PGS \$167.00

Recorder: CYNTHIA Y FRAZIER

\*\*\*\*\*  
State of North Carolina, County of Durham

The foregoing certificate of KATINA K WOODBURY , ELLA P HUBBARD Notaries are certified to be correct.  
This 11TH of September 2002

WILLIE L. COVINGTON , REGISTER OF DEEDS

By:   
Deputy/Assistant Register of Deeds



2002042725