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Workflow# 2646734
Buncombe County, NC
Otto W. DeBruhl Register of Deeds
BK 4611 PG 1406-1414

Prepared by and return to:
Goosmann Rose, P.A.
(08-2238 GFG/EMC)

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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

**DECLARATION OF TERMS, CONDITIONS,
RESTRICTIONS AND PROTECTIVE COVENANTS FOR
PATHWOOD SUBDIVISION**

This Declaration of Terms, Conditions, Restrictions and Protective Covenants for Pathwood Subdivision made and entered into this the 29th day of September, 2008 by and between Stone Mountain Investment Corporation, a North Carolina corporation (herein the "Declarant") and all Future Owners of Pathwood Subdivision property as hereinafter set forth.

WITNESSETH:

That Whereas, the Declarant is the owner of certain property located in Buncombe County, North Carolina being described by deed recorded in **Record Book 4538, at Page 728** in the Buncombe County, North Carolina Registry and shown as **Lots 1 through 5** on that plat of the Pathwood Subdivision recorded in **Plat Book 137, at Page 40**, of the Buncombe County, North Carolina Registry (herein "Plat"); the property shown on said Plat being and comprising the "Property" and/or "Subdivision"; and

Whereas, the Declarant desires for the protection and benefit of all persons who may hereafter become owners of Lots located within the Subdivision that the Property be developed with limitations, restrictions and uses for the purpose of developing and managing the Subdivision in an environmentally sensitive and conscientious manner. These covenants are to run with the land and be binding upon all parties purchasing Lots and all persons claiming by, through or under Declarant until January 31, 2028, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of majority of persons then owning Lots within the Subdivision it is agreed to change these covenants in whole or in part.

AGREEMENT:

Now Therefore, the Declarant does hereby make the following declaration as to limitations, restrictions and uses to which the above-described Property and Subdivision shall be and are hereby subjected:

**ARTICLE I
Definitions**

1. "Declarant" shall mean Stone Mountain Investment Corporation, a North Carolina corporation, and its successors and/or assigns.
2. "Dwelling" and/or "Residence" shall mean and refer to a building situated upon a Lot and intended for use and occupancy as a single family residence.
3. "Lot" and/or "Lots" shall mean and refer to any Lot or all Lots located within the Subdivision as shown the above-referenced Plat or on any plat(s) bearing the designation "Pathwood Subdivision" and designated for separate ownership or occupancy by a Lot Owner.
4. "Lot Owner" and/or "Lot Owners" shall mean and refer to the Declarant or other person who owns fee simple title to any Lot in the Subdivision, but does not include a person or entity having an interest in a Lot solely as security for an obligation.
5. "Restrictions" shall mean and refer to this Declaration of Terms, Conditions, Restrictions and Protective Covenants for Pathwood Subdivision, as the same may be released, amended or changed, either in whole or part, as provided for herein.
6. "Subdivision" and/or "Property" shall mean and refer to the Lots and Property as shown on the above-described Plat for Pathwood Subdivision. The Declarant shall not be deemed to have subjected any other property which the Declarant may now or hereafter own or acquire to the restrictions set forth herein until such time as a recorded instrument specifically subjecting such property is recorded in the Buncombe County, North Carolina Registry. The Declarant specifically reserves the right to subject any other property which the Declarant may now own or which Declarant may hereafter acquire to the restrictions set forth herein. It is contemplated that the North Carolina Planned Community Act (North Carolina General Statute 47F-1-101ff) will not apply to the Subdivision as it will not contain more than twenty (20) Lots.

**ARTICLE II
Terms, Conditions, Restrictions,
Protective Covenants and Other Matters**

1. **Uses.** All Lots in the Subdivision shall be used solely for single family residential purposes and no business or commercial activity will be permitted on or upon a Lot and no commercial structure or activity of any type shall be placed on any Lot or allowed within the Subdivision without the express written consent of Declarant. This provision shall not be construed so as to disallow private home offices so long as the use of

such office is pre-approved by the Declarant and does not generate pedestrian or vehicular traffic in conjunction with such office use.

2. **Architectural Control.** It is the desire of the Declarant that the Subdivision be developed in a manner that exercises awareness and conscientiousness as to the impact upon and interaction with the natural environment and the community and cultural environment through the encouragement of, among other things, water efficiency, energy efficiency, indoor air quality, and the use of recycled, green and/or local products and materials. To accomplish this desire, prior to the commencement of construction of any improvements, all plans, including elevations, specifications and landscape plans, shall be submitted as an application to the Declarant, its agent or its successors or assigns, for approval as to quality of materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. The Declarant reserves the right, in its sole and absolute discretion to either approve or not approve of any plans and specifications for any reason whatsoever. Construction shall thereafter be completed in strict conformity with such approved plans and specifications and the Declarant shall be entitled to stop any construction which is in violation of these restrictions. Improvements shall be constructed only by a builder which has been approved by the Declarant. The Declarant reserves the right to approve the builder and may from time to time compile a list of approved builders. A builder shall be approved or not approved in the Declarant's sole and absolute discretion.

3. **Dwelling Specifications.** The livable heated floor area provided in each Dwelling shall not be less than one thousand, five hundred (1,500) square feet. Basements, unfinished attic space, storage space, garages, porches, decks or any space not enclosed by the main structure shall not be counted as part of the required floor space. Every Dwelling shall have ceiling heights of not less than eight (8) feet in all enclosed, heated, habitable areas. An attached garage must be located on the Lot in compliance with the minimum yard setbacks set forth herein. All Dwellings or other improvements must be roofed with shingles or other coverings as approved by the Declarant.

4. **Prohibited Structures.** No trailer, basement, tent, shack, garage or other outbuilding shall, at any time, be used as a residence, either temporarily or permanently, nor shall any residence be moved onto a building Lot within the Subdivision. Specifically, no mobile homes, trailers, manufactured homes, modular homes or structures of similar construction shall be placed on or allowed to remain on any Lot. There shall be no prefabricated buildings placed upon any Lot or other property within the Subdivision, except prefabricated components such as window and door units, roof trusses, or other such components which shall be permitted and approved by Declarant.

5. **Completion of Construction.** Once begun, construction and clean-up of debris shall be completed within one (1) year from commencement of construction. A Dwelling shall not be occupied until completed, and a Dwelling shall be deemed completed upon final inspection and approval by the applicable governmental inspector. The Declarant reserves the express right to modify or amend the periods for completion of construction as Declarant, in its sole and absolute discretion, may determine.

6. **Nuisances and other Prohibitions.**

a. No noxious, offensive or illegal activity shall be allowed or carried on upon any Lot nor shall anything be done thereon which may become an annoyance or nuisance to the Subdivision. No disabled, abandoned or unlicensed vehicles shall be permitted on any Lot, nor shall any vehicle be stored thereon, nor shall any repairs be permitted upon any vehicle parked upon any Lot.

b. All fuel tanks or other similar storage receptacles, motor homes, boats or other recreational

vehicles, machines, satellite dishes, equipment, or any and all other articles or conditions deemed unsightly by the Declarant shall be screened, in a manner approved by the Declarant, from view from any and all roadways and adjoining Lots. In no event shall any pickup truck with a capacity to carry in excess of one (1) ton be kept on any Lot, such that no trucks, other than pickup trucks of less than one (1) ton, shall be kept on any Lot.

c. No oil, natural gas or other underground exploration operations of any kind, including but not limited to drilling, refining, quarrying or mining, shall be permitted upon any Lot and no derrick, pump or other structure designed for use in such exploration shall be erected, maintained, or permitted on any Lot. Additionally, no oil wells, tanks, tunnels, mineral excavations or under ground shafts of any kind shall be permitted on any Lot.

d. No hunting or discharge of firearms of any kind shall be allowed within the Subdivision. No motorcycles, minibikes or motorized two-wheel vehicles shall be allowed, other than licensed vehicles which are used exclusively for transportation purposes, and then only if properly managed, with it being further stipulated that such motorcycles, minibikes or motorized two-wheel vehicles which are licensed and used exclusively for transportation purposes shall be allowed to operate within the Subdivision only upon the regularly platted roads thereof. All vehicles kept and operated within the Subdivision shall have properly working mufflers.

e. Prior to the commencement of construction or installation of any fence, hedge, wall or other similar barrier, all plans shall be submitted as an application to the Declarant, its agent or its successors or assigns, for approval. The Declarant reserves the right, in its sole discretion to approve or not to approve of any plans and specifications for any reason whatsoever. No fence, hedge, wall or other similar barrier may be erected which shall in any way interfere with the vision of road and driveways so as to endanger the safety of pedestrians or drivers of vehicles.

f. No window type heating or air conditioning shall be installed without the approval of Declarant, and in no event shall any such window unit be in a location which is visible from the Subdivision road rights of ways.

g. No swimming pool may be erected without the prior approval of the Declarant. In any event, no swimming pool shall be located in front of a Dwelling or closer than twenty (20) feet from any side or rear Lot line, and shall not be located above ground. Any swimming pool placed upon any Lot shall be properly fenced in or enclosed in such a manner as approved by Declarant so as not to be unsightly or constitute a nuisance or hazard.

7. **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste and such shall not be kept outside except in sanitary or recycling containers kept from view. Such sanitary and recycling containers shall be placed at the curb only on the day garbage is to be collected.

8. **Cutting of Trees and Vegetation.** No clear cutting of the Lots or any portion thereof shall be allowed. No living tree greater than three (3) feet in height from the ground shall be cut or trimmed without the express written permission of the Declarant. This covenant shall not apply to the cutting of trees or limbs where such cutting is necessary for the safe installation and maintenance of any Dwelling, driveway, or parking areas constructed upon any Lot in conformity with landscape plans approved by the Declarant. Additionally, other than vegetation which constitutes a danger to person or property, no trees, shrubbery or other natural vegetation shall be removed from the area within ten (10) feet of the interior lines of each Subdivision Lot.

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9. **Signs.** No sign of any kind shall be displayed to the public view on any Lot except one (1) sign of not more than three (3) square feet utilized for advertising the property for sale during construction or any sales or rental period. The top of any such sign may not be more than five (5) feet above ground level. No sign shall be stapled, nailed or otherwise attached to any trees located within the Subdivision. All such signs must be located parallel to and within twenty (20) feet of the road rights of ways serving the Lot, but not within five (5) feet of such rights of ways. Such signs are permitted only until the Lot is sold or rented. Signs utilized by the Declarant or Declarant's agent shall be any of such size and placement as determined by Declarant to be appropriate in Declarant's sole and absolute discretion.

10. **Livestock, Poultry and Other Animals.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that animals commonly known as household pets may be kept on a Lot, provided that they are not kept, bred, or maintained for any purposes other than as household pets. Kennel operations shall not be permitted without the prior written approval of Declarant; a kennel is defined as housing for more than three (3) of the same animals. Pets must be kept in an approved house, lot, or leashed at all times. Dogs or other animals are not permitted to run unleashed through the Subdivision.

11. **Subdivision of Lot.** No Lot in the Subdivision shall be re-subdivided so as to create any additional building Lot.

12. **Limitation of Access.** Except as to Declarant, the private roadways shall not be used so as to provide access to any property except the Lots within the Subdivision or other properties currently vested with rights to utilize such Subdivision rights of ways. No part of a Lot shall be used for any access to any other property which lies outside of the Subdivision. No other easements, rights of ways or rights of access shall be deeded, granted, or in any way given by any Lot Owner to any other person through or over any Lot so as to permit any portion of a Lot or Subdivision property to be used for access to or from any adjoining property. This provision shall not be construed so as to prevent the Declarant from having the special right to re-designate a previously designated Lot as an easement or right of way for access to adjoining property whether now or hereafter owned by Declarant. The Declarant specifically reserves the right to establish such easements or rights of way as Declarant deems necessary or desirable for access to adjoining property whether now or hereafter owned by Declarant, and such rights of way within the Subdivision shall then be considered appurtenant to such adjoining property and such adjoining property shall thereafter be deemed to be benefited by road rights of way within the Subdivision.

13. **Declarant Control.** It is understood and agreed and subsequent Lot Owners expressly agree by acceptance of a deed conveying title to any Lot within the Subdivision, that any portion of these Restrictions may be released, changed, modified, amended or varied without the consent or joinder of any Lot Owner solely by: (1) the Declarant if prior to January 31, 2028 or upon the sale of the last Lot owned by Declarant (other than to a related entity) as shown on the Plat or any subsequently recorded plat adding property as an additional Phase to the Subdivision, whichever shall first occur (herein the "Control Period"); or (2) if after expiration of the Control Period, then by a favorable vote by a majority of the then existing Lot Owners of the Subdivision. After expiration of the Control Period, each Lot Owner shall have one (1) vote for each and every Lot then owned by that Lot Owner in the Subdivision. The written and recorded modification of these restrictions, signed by either the Declarant, or after the Control Period by at least the required percentage of the Lot Owners in the Subdivision as the case may be, shall be sufficient to constitute an amendment to these Restrictions without further notification to any person or persons.

ARTICLE III
Easements, Rights of Ways and Utilities

1. **Utilities.** The Declarant reserves the right to subject the Property to a contract with Progress Energy, Carolina Power and Light Company or other utility company for the installation of electric cables and/or the installation of street lighting. This right shall also apply to the suppliers of other utility services including telephone and, if available, gas and cable television hook-ups. All utility services from a Lot line to the residence shall be installed underground.

2. **Road Rights of Way.** The Subdivision property is serviced by those certain road rights of way shown on the Plat and commonly known as Old Stewart Road and Pathwood Lane; which rights of ways lead from Parker Cove Road (North Carolina State Route 2106) to the various Lots within the Subdivision as shown on the Plat. Declarant does hereby dedicate said rights of ways as shown on the Plat as private roadways. As such, and pursuant to North Carolina General Statutes §136-102.6, all future Lot Owners acknowledge that the rights of ways as shown on the Plat are private road rights of way and shall not necessarily be developed to North Carolina Department of Transportation specifications.

a. **Old Stewart Road.** Except as to the Declarant and Subdivision Lot 1, and until such time as the North Carolina Department of Transportation assumes the obligation for the maintenance of such road right of way, if ever, all future Owners of Lots 2, 3, 4, and 5 in the Subdivision, and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of the road right of way of Old Stewart Road from the point it leads from Parker Cove Road (North Carolina State Route 2106) to the point of its intersection with the road right of way of Pathwood Lane as shown on the Plat. Except as to the Declarant and the Subdivision Lot 1, each Lot Owner (for each Lot owned) shall be obligated to pay a pro rata share of said annual maintenance for that portion of Old Stewart Road, which share shall be determined by dividing the total cost of the annual maintenance, upkeep and repair expenses by the total sum of the number of Lots located in the Subdivision (less and excepting Lot 1).

b. **Pathwood Lane.** Except as to the Declarant and Subdivision Lot 1 and Lot 2, and until such time as the North Carolina Department of Transportation assumes the obligation for the maintenance of such road right of way, if ever, all future Owners of Lots 3, 4, and 5 in the Subdivision and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of the road right of way of Pathwood Lane from the point of its intersection with Old Stewart Road to the point that said Pathwood Lane passes the southernmost corner of Lot 5 as shown on the Plat. Except as to the Declarant, Lot 1 and Lot 2, each Lot Owner (for each Lot owned) shall be obligated to pay a pro rata share of said annual maintenance for that portion of Pathwood Lane, which share shall be determined by dividing the total cost of the annual maintenance, upkeep and repair expenses by the total sum of the number of Lots located in the Subdivision (less and excepting Lots 1 and 2).

These covenants of maintenance shall be covenants running with the Subdivision forever and may be enforceable as a lien against a defaulting owner of a Lot as if said lien were a Statutory Lien enforceable in accordance with Article 2, of Chapter 44-A of the North Carolina General Statutes. This Section shall in no manner be construed so as to impose upon any Lot Owner the obligation to pay for any improvements to the road rights of ways described herein without the consent of that benefitted Lot Owner to such improvement. Furthermore, a Lot Owner shall be responsible for any and all damage and repairs to the rights of ways which results from construction trucks or equipment utilized for construction upon that owner's property. During the

time which the Declarant owns any Subdivision Lot, the Declarant shall not be obligated to contribute toward the maintenance or upkeep of such Subdivision rights of ways.

3. **Utility Reservation.** In addition to any easements noted on the recorded Plat or Plats of the Subdivision, Declarant hereby reserves easements of fifteen (15) feet in width along all exterior Subdivision Lot lines and on either side of the centerline of all interior front, side and rear Lot lines for the installation, maintenance and repair of any utility services and drainage facilities for the benefit of all Lots within the Subdivision.

ARTICLE IV
General Matters

1. **Adjoining Properties and Governmental Actions.** All purchasers of Lots do hereby acknowledge that Declarant has made no representations as to uses of adjoining properties and such purchasers have been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Lot within the Subdivision, such Lot Purchasers do hereby covenant and agree to hold Declarant harmless from any and all claims, damages and costs in any way relating to or arising out of any use of any property adjoining the Subdivision. The purchaser of any Lot acknowledges that he, she or it has investigated on his, her or its own accord how such uses may affect the Subdivision and are satisfied that it does not materially or substantially affect the value, use or enjoyment of any Lot.

2. **Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other property owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of these covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorneys' fees as part of any such action.

3. **Amendment and Modification.** The Declarant does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. During the Control Period, the Declarant hereby reserves the absolute right to modify and/or to amend these Restrictions in whole or in part in Declarant's sole and absolute discretion as the Declarant deems proper or appropriate. After the Control Period, an amendment to these Restrictions shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the then existing Lot Owners, a majority of the existing Lot Owners vote in favor of such amendment, and once made, shall become effective once duly recorded in the Buncombe County, North Carolina Registry. Whenever herein the Declarant has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Declarant. Nothing herein shall require or shall be construed so as to require the Declarant or its related persons or entities to subject all or any part of its remaining adjoining property to these Restrictions.

4. **Invalidation.** Should any covenant, restriction, article, paragraph, subparagraph, sentence, clause, phrase or term herein contained be declared to be void, invalid, illegal or unenforceable, for any reason whatsoever, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, then such judgment shall in no way affect any other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

5. **Consent and Subordination of Mortgagee:** The Consent and Subordination of the Property Mortgagee attached hereto as Exhibit "A" is incorporated herein by reference.

In Witness Whereof, the Declarant has hereunto set its hand and seal as of the day and year first above written.

DECLARANT

Stone Mountain Investment Corporation,
a North Carolina corporation

Keith C. Swigart
Keith C. Swigart, President

State of North Carolina
County of Buncombe

The undersigned, a Notary Public of the County and State aforesaid, does hereby certify that **Keith C. Swigart** personally appeared before me this day and acknowledged that he is President of Stone Mountain Investment Corporation., a North Carolina corporation, and that as President, being authorized to do so, he executed the foregoing on behalf of the Corporation. Witness my hand and Notarial stamp or seal, this the 27 day of Sept 2008.

John R. Rose
Notary Public
Buncombe County, NC

John R. Rose
Notary Public
Commission Expiration: 4.18.2011

The foregoing certificate(s) of _____ is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

By: _____
Buncombe County Register of Deeds
Deputy/ Assistant - Register of Deeds

EXHIBIT "A"
CONSENT OF PROPERTY MORTGAGEE

Consent and Subordination to
Declaration of Covenants, Conditions and Restrictions for
Pathwood Subdivision

Western North Carolina Service Corporation, as Trustee and HomeTrust Bank, a national banking association, as Beneficiary of the indebtedness secured by that certain Deed of Trust recorded in Book 4538, at Page 724 of the Buncombe County, NC Register of Deeds Office ("Deed of Trust"), which Deed of Trust shall encumber all or any portion of the Property as described in the Declaration of Covenants, Conditions and Restrictions for Pathwood Subdivision ("Declaration") hereby consents to the creation of the Property as the same is subjected to this Declaration, the recording of this Declaration, and subordinates the lien of the Deed of Trust to this Declaration and to the terms, conditions, covenants, easements and restrictions contained in and imposed by this Declaration.

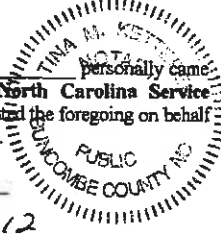
TRUSTEE: Western North Carolina Service Corporation, as Trustee
By: Keith Pope
Keith Pope

BENEFICIARY: HomeTrust Bank, N.A.
By: Keith Pope
Keith Pope

State of North Carolina
County of Buncombe

I, a Notary Public of the County and State aforesaid, certify that Keith Pope personally came before me this day and acknowledged that he is SVP of Western North Carolina Service Corporation, Trustee, and that he, as SVP being authorized to do so, executed the foregoing on behalf of the company. Witness my hand and official seal this the 13th day of September, 2008.

Tina M. Kettner
Notary Public
My Commission Expires: 6/21/2012



State of North Carolina
County of Buncombe

I, a Notary Public of the County and State aforesaid, certify that Keith Pope personally came before me this day and acknowledged that he is SVP of HomeTrust Bank, N.A. and that he, as SVP being authorized to do so, executed the foregoing on behalf of the company. Witness my hand and official seal this the 13th day of September, 2008.

Tina M. Kettner
Notary Public
My Commission Expires: 6/21/2012

