

DECLARATION OF RESTRICTIONS

OF

Boone Homes, Inc. of Roanoke  
(Owner)  
Roanoke, Virginia

THIS DECLARATION OF RESTRICTION COVENANTS, is made this 29<sup>th</sup> day of December 2005, by Boone Homes, Inc. of Roanoke, Owner.

WHEREAS, Boone Homes, Inc. of Roanoke is the owner of the Property more fully described on Exhibit A attached hereto; it being the same property conveyed to Boone Homes, Inc. of Roanoke f/k/a Boone, Boone & Loeb, Inc. by deed from Edwin O. Grisso, Trustee of the Edwin O. Grisso Revocable Trust Agreement dated March 19, 2002, dated December 23, 2002, and duly recorded in the Clerk's Office of the County of Roanoke as Instrument Number 200328922.

WHEREAS, Boone Homes, Inc. of Roanoke desires to impose on said Property restrictive covenants expressing Boone Homes, Inc. of Roanoke's intent to preserve approximately 7.0 +/- acres of said property as shown on Exhibit B and as described as Areas I, II, and III riparian buffer zones on an unnamed tributary to Mudlick Creek and the main stem of Mudlick Creek in perpetuity in its natural state as detailed below. These covenants are imposed by Owner freely and voluntarily, in order to assure that the intent of the Virginia Department of Environmental Quality (DEQ) Special Order by Consent dated August 29, 2005 shall be met.

NOW THEREFORE THIS DECLARATION WITNESSETH: Boone Homes, Inc. of Roanoke does hereby declare, covenant and agree, for itself and its successors and assigns, that said Property described as Areas I, II, and III along an unnamed tributary to Mudlick Creek and the main stem of Mudlick Creek shown on Exhibit B shall be hereafter held, leased, transferred, and sold subject to the following conditions and restrictions which shall run with the land and be binding on all parties and persons claiming under them.

**Covenants and Restrictions.**

The Property described as Areas I, II, and III along an unnamed tributary to Mudlick Creek and the main stem of Mudlick Creek shown on Exhibit B attached hereto shall be preserved in perpetuity in its natural state, by prohibiting the following activities:



1. Destruction or alteration of the preservation area shown on Exhibit B.
2. Construction, maintenance or placement of any structures or fills including but not limited to buildings, mobile homes, fences, signs other than those which currently exist with the following exceptions:

A utility crossing *will* be allowed as shown on Exhibit B being 80 feet wide in Area III in a location to be determined for public water, public sewer, public storm drain, and public utilities (cable TV, telephone, electricity, gas) to accommodate future development.

Boardwalks, wildlife management structures, observation decks, one informative sign, and unpaved foot trails may be placed within the preservation area provided that any such structure permits the natural movement of water and preserves the natural contour of the ground and subject to prior written approval by DEQ.

3. Ditching, draining, diking, damming, filling, excavating, grading, plowing, flooding/ponding, mining, drilling, placing of trash and yard debris or removing/adding topsoil, sand, or other materials (except as may be necessary on a case-by-case basis with prior written approval by DEQ).
4. Permitting livestock to graze, inhabit or otherwise enter the preservation area.
5. Cultivating, harvesting, cutting, logging, planting, and pruning of trees and plants, or using fertilizers and spraying with biocides (except as may be necessary on a case-by-case basis with prior approval by DEQ).

#### **Amendment**

The covenants contained herein shall not hereafter be altered in any respect without the express written approval and consent of the Owner or its successor in interest and the USACE and DEQ. The Owner or its successor may apply to the USACE and DEQ for vacation or modification of this declaration; however, after recording, these restrictive covenants may only be amended or vacated by a recorded document signed by the USACE and DEQ and the Owner or its successor in interest.

#### **Compliance Inspections and Enforcement**

The USACE, DEQ, and its authorized agents shall have the right to enter and go upon the Property to inspect the Property and take actions necessary to verify compliance with these restrictive covenants. The restrictive covenants herein shall be enforceable by any proceeding at law or in equity or administrative proceeding by the USACE or DEQ or

any owner of a lot within the Stone Manor subdivision. Failure by any agency (or owner) to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

### **Separability Provision**

The provisions hereof shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision thereof.

### **Consent of Lender and Trustee (if applicable)**

Owner is the maker of a note dated December 23, 2002, secured by, among other things, a deed of trust dated December 23, 2002, from Owner to David C. Helscher and Deborah A. Oehlschlaeger, as trustees, recorded in the Clerk's Office as Instrument Number 2002265523, for the benefit of the Edwin O. Grisso Revocable Trust dated March 19, 2002 (the "Grisso Deed of Trust"), Deborah A. Oehlschlaeger, trustee, joins herein for the sole purpose of subordinating the lien, dignity and priority of the Grisso Deed of Trust to these restrictive covenants. The Edwin O. Grisso Revocable Trust dated March 19, 2002, joins herein for the sole purpose of consenting to trustee's action. Additionally, Owner is the maker of a note dated November 14, 2003, secured by, among other things, a Deed of Trust dated November 17, 1994, recorded in the Clerk's office at Deed Book 1462, Page 1505, as amended August 8, 2003, recorded in the Clerk's office as Instrument Number 200324860, and modified November 14, 2003, and recorded in the Clerk's Office as Instrument Number 200328922, for the benefit of Wachovia Bank, National Association (the "Wachovia Deed of Trust"). TRSTE, Inc., trustee of the Wachovia Deed of Trust, joins herein for the sole purpose of subordinating the lien, dignity and priority of the Wachovia Deed of Trust to these restrictive covenants. Wachovia Bank, National Association joins herein for the sole purpose of consenting to trustee's action.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**