

**If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a “Restrictive Covenant Modification” form, together with a copy of the attached document with the unlawful provision redacted to the county recorder’s office. The “Restrictive Covenant Modification” form can be obtained from the county recorder’s office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status. Gov. Code Sec. 12956.1(b)(1)**

Any person who believes that this document contains an unlawful restrictive covenant as described above may submit to the County Recorder a completed Restrictive Covenant Modification form. A complete copy of the original document must be attached to the Restrictive Covenant Modification form, with the unlawful language redacted. After submission to the Recorder, the form and attached document will be reviewed by County Counsel, and if the attached document properly redacts an unlawful covenant, the form and attached document will be recorded. If you submit a request to record a modification document, you must provide a return address in order for the County Recorder to notify you of the action taken by the County Counsel regarding the form. Gov. Code Sec. 12956.2(a)(1), (b)(1), (c)

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

THIS SPACE FOR RECORDER'S USE ONLY

### RESTRICTIVE COVENANT MODIFICATION

The following reference document contains a restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in Section 12955 of the Government Code, or ancestry, that violates state and federal fair housing laws and is void. Pursuant to Section 12956.2 of the Government Code, this document is being recorded solely for the purpose of redacting and eliminating that restrictive covenant as shown on page(s) \_\_\_ of the document recorded on \_\_\_\_\_(date) in book \_\_\_\_\_ and page \_\_\_\_\_ or instrument number \_\_\_\_\_ of the official records of the County of \_\_\_\_\_, State of California.

Attached hereto is a true, correct and complete copy of the document referenced above, with the unlawful restrictive covenant redacted.

This modification document shall be indexed in the same manner as the original document being modified, pursuant to subdivision (d) of Section 12956 of the Government Code.

The effective date of the terms and conditions of the modification document shall be the same as the effective date of the original document.

Signature of Submitting Party: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, hereby states that it has determined that the original document referenced above contains an unlawful restriction and this modification may be recorded.

Or

\_\_\_\_\_ County Counsel, or their designee, pursuant to paragraph (1) of subdivision (b) of Section 12956.2 of the Government Code, finds that the original document does not contain an unlawful restriction, or the modification document contains modifications not authorized, and this modification may not be recorded.

\_\_\_\_\_  
County Counsel

By:

Date:

DOCUMENT: 18833920

Pages: 6



Fees	22 00
Taxes	
Copies	
AMT PAID	22 00

Recording Requested By, and When Recorded, Mail to:

Banco Popular North America  
7900 Miami Lakes Drive  
Miami Lakes, Florida 33016

BRENDA DAVIS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
Grantee

RDE # 001  
3/07/2006  
2:03 PM

**COLLATERAL ASSIGNMENT OF ASSESSMENTS AND LIEN RIGHTS**

This Assignment of Assessments and Lien Rights ("Assignment") is made by Stonegate Homes Association, Inc., a California nonprofit mutual benefit corporation ("Assignor"), in favor of Banco Popular North America, a New York banking corporation ("Assignee").

**RECITALS**

A.. Assignor is the entity charged with managing the Stonegate Homes planned development in San Jose, California (the "Development").

B. The Development is subject to that certain Declaration of Covenants Conditions and Restrictions recorded on February 10, 1970 in Book 8824 at page 691, as Instrument No. 3761273, Santa Clara County Records, including that certain Declaration of Annexation to Tract No. 4759 (Stonegate Garden Homes) recorded on October 8, 1970 in Book 9081 at page 180, Instrument No. 3885105, Orange County Records and as subsequently amended in instruments recorded on February 26, 1977 in Book 8838 at page 745, Instrument No. 3768363, and on April 21, 1970 in Book 8895 at page 641, Instrument No. 3794983, respectively, Santa Clara County Records (collectively, the "Declaration"), and the owners of lots within the Development are Assignor's members and subject to Assignor's Amended Articles of Incorporation and Amended Bylaws (with the Declaration, collectively, the "Governing Documents"). As more fully set forth in the Declaration, Assignor has the power to levy assessments ("Assessments"), both regular and special, for common expenses and to collect and enforce such Assessments by the exercise of lien rights and the personal obligation of Assignor's members;

C. Pursuant to California Civil Code sections 1366, 1367, 1367.1 and 1367.4, Assignor further possesses the power and authority to levy Assessments sufficient to meet its obligations and to enforce its assessment rights by liens secured against lots within the Development and the personal obligation of Assignor's members;

D. Concurrently with this Assignment, Assignor has executed a Secured Promissory Note in favor of Assignee in a sum not to exceed Four Million Two Hundred Thousand and 00/100 Dollars (\$4,200,000.00) (the "Loan), subject to terms and conditions required by Assignee. The purpose of the Loan is to pay for roofs, siding, window trim, carport renovation, landscaping and other miscellaneous repairs and replacements of improvements within the Development;

E. The approval of Assignor's members, to the extent required under the Governing Documents, was secured, authorizing Assignor to borrow money and to enter into the Loan, which Loan is to be secured by, among other things, the following:

All rights of Assignor to levy and collect Assessments, including but not limited to Assessments levied by Assignor against each of the lots in the Development for repayment of the Loan by Assignor; all rights of Assignor to receive payments from owners, present or future, of lots within the Development; all rights of Assignor to enforce the payment of Assessments by lien with power of sale and in any other manner authorized by Assignor's Governing Documents and by law (collectively, the "Lien Rights"); and all proceeds of the foregoing in whatever form (collectively, the "Collateral");

F. As security for the timely and complete payment and performance of the obligations of the Assignor evidenced by the Note, Assignor has agreed to assign, convey and set over unto Assignee all of Assignor's right, title and interest in and to the Collateral.

NOW THEREFORE, for value received, Assignor does hereby assign, convey, set over, and deliver to Assignee all of Assignor's rights to the Collateral, for the benefit and protection of Assignee as payee and holder of the Note and for the benefit and protection of Assignee under the Loan and Security Agreement ("Agreement") of the same date as this Assignment, and under any of the Loan Documents as defined hereafter. This is a present assignment, not an assignment for security purposes only, subject to the license granted herein by Assignee to Assignor to collect and receive all Assessments and exercise all Lien Rights. This Assignment shall remain in full force and effect until all indebtedness evidenced by the Note is fully paid and satisfied.

To protect this assignment, it is covenanted and agreed as follows:

1. License. Assignee confers on Assignor a license ("License") to collect and retain Assessments as they become due and to exercise all Lien Rights until the occurrence of an Event of Default as set forth in the Note, this Assignment and the other Loan Documents. Upon an Event of Default, this License may be revoked upon Assignee's written notice or demand to the Assignor, after which Assignee may exercise any remedy authorized in this Assignment and may collect and retain Assessments.

2. Representations and Warranties of Assignor. All warranties of Assignor set forth in the Agreement are hereby incorporated by reference and affirmed. Assignor further represents and warrants that:

(a) Assignor has good title to the Collateral and has good right to assign them, and no other person, firm, or corporation has any right, title, or interest in it;

(b) Any Assessments due and issuing from the Development or from any part of it for any period subsequent to the date of this Assignment have not been collected and payment of them has not otherwise been waived, released, discounted, set off, or otherwise discharged or compromised, except as otherwise disclosed and acceptable to Assignee; and

(c) No owner of a lot is delinquent in the payment of Assessments, except as otherwise disclosed and acceptable to Assignee.

3. Covenants of Assignor. All covenants of Assignor set forth in the Agreement are hereby incorporated by reference and affirmed. Assignor further covenants and agrees as follows:

(a) To duly observe, perform, and discharge all obligations, terms, covenants, conditions, and warranties set forth in the Agreement and other Loan Documents and to give prompt notice to Assignee of any failure of Assignor to observe, perform, and discharge them;

(b) To appear in and defend any action or proceeding in any manner connected with the Declaration which has or may have an adverse effect on Assignee's security or the obligations of Assignor to Assignee under the Loan Documents;

(c) To levy and collect Assessments sufficient to tender timely payment of all indebtedness evidenced by the Note;

(d) To use all funds collected by Assignor to the maximum extent necessary for the purpose of satisfying the interest, principal and other sums due under the Note;

(e) At Assignor's sole cost, to:

(i) Enforce all remedies available to Assignor in the event of delinquency by owners in the payment of Assessments;

(ii) Prosecute and defend any action, arbitration, or other controversy relating to the imposition or collection of Assessments; and

(iii) Give Assignee prompt notice of any delinquency in the payment of Assessments, delinquency in this case meaning more than sixty (60) days past due; and

(f) Except with Assignee's prior written consent, not to:

(i) Execute any other assignment relating to the collection or enforcement of Assessments;

(ii) Except in the ordinary course of business, grant concessions, forgiveness, forbearance or other relief from the obligation of owners to pay Assessments or other sums due; or

(iii) Discharge owners from any obligation to pay Assessments.

Violation of any of these covenants shall constitute an Event of Default under this Assignment.

4. Effect of Assignment. This assignment will not impose on Assignee any duty to impose or collect Assessments, exercise any Lien Rights, or cause Assignee to be responsible for performing any of the obligations of Assignor in its capacity as an association of owners created to manage the Development, for any dangerous condition of the Development, or for any negligence of management, upkeep, repair or control of the Development.

Assignee will not be liable to Assignor or any other party as a consequence of the exercise of the rights granted to Assignee under this Assignment or the failure of Assignee to perform any obligation of Assignor arising under the Declaration or by virtue of law.

5. Emergency Assessments. In the event the Assessments imposed by Assignor are not sufficient to enable Assignor to tender when due any of the payments required under the terms of the Note, then Assignor shall to the greatest extent permitted by law levy additional Assessments on an emergency basis.

6. Remedies. In addition to any other remedies in the Note, this Assignment or any other Loan Document, on or after the date of closing of the Loan Assignee will have the following rights and remedies upon the occurrence of an Event of Default:

(a) To receive Assessments and any other amounts arising under the Declaration or from the Development, whether accruing prior to or following execution of the Note and this Assignment;

(b) To collect, sue for, settle, compromise, and give releases for Assessments and pursue any remedies for the enforcement of Assessments or Assignor's rights thereto permitted by law or in the Declaration;

(c) To the same extent and in the same manner as Assignor, to enforce the obligation of owners to pay Assessments. Upon Assignee's request, Assignor shall deliver to Assignee all proceeds realized from Assessments levied before the closing date of the Loan to repay the Loan or any Assessments levied on or after the closing date of the Loan and from Assignor's collection activity, and shall execute and deliver to Assignee or file any further documents or assignments necessary to perfect the transfer of such funds and to enable Assignee to enforce liens by Assignor's power of sale or by suit for foreclosure or to collect Assessments in any other manner permitted by law;

(d) To cause the board of directors of Assignor to impose Assessments, including but not limited to additional Assessments on an emergency basis, to the maximum extent permitted by law without a vote of Assignor's members; and

(e) As a matter of right, to apply to any court having jurisdiction to appoint a receiver to take financial control of the operations of Assignor. The receiver shall collect all Assessments and other sums due to Assignee and shall apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the State of California. In all events, Assignor shall be liable for all reasonable costs and expenses of

collection and enforcement hereof, including court costs and attorneys' fees, whether or not suit is instituted, and including all costs and fees of appellate proceedings.

7. Agents and Employees in Collection. Assignee may, after the occurrence of an Event of Default, from time to time appoint and dismiss such agents or employees, including professionals, as shall be necessary for the collection and enforcement of Assessments and to do all acts relating to the collection of the Assessments by exercise of the Lien Rights. Assignee shall have the sole control of such agents or employees, and such agents or employees shall be paid from the proceeds of the Assessments as a cost of collection. Assignor hereby expressly releases Assignee from any liability to Assignor for the acts of such agents or employees so long as they exercise reasonable care. The costs and expenses of any agents utilized by Assignee shall be borne exclusively by Assignor.

8. Waiver. Assignee's collection and application of the proceeds of the Assessments to the indebtedness evidenced by the Note shall not constitute a waiver of any default which might, at the time of application or thereafter, exist under the Note, this Assignment or the other Loan Documents, and the payment of the indebtedness may be accelerated in accordance with the terms of the Note, notwithstanding such application.

9. Rights Cumulative. Nothing in this Assignment shall be construed to limit or restrict in any way the rights and powers granted to Assignee in the Agreement or any other Loan Document executed by Assignor in favor of Assignee to evidence or further secure payment of the Note, and the rights herein shall be in addition thereto.

10. Cross Default. This Assignment is executed to secure payment of the indebtedness evidenced by the Note and by the other Loan Documents. A default on the part of the Assignor under any one of the Loan Documents shall be and shall constitute a default under this Assignment. Conversely, a default under this Assignment shall be and shall constitute a default on the part of the Assignor under the terms, conditions and provisions of each of the other Loan Documents.

11. No Amendment without Prior Written Consent of Assignee. As long as this Assignment remains in effect and if any such modification, amendment, change or release would negatively affect Assignee's rights under this Assignment, Assignor agrees as follows:

(a) The resolutions of the Board of Directors of Assignor, including representations as to notice and approval of the Loan identified in this Assignment, may not be modified, amended or changed nor may any liability be released or any changes made in connection with payment terms or any other changes, amendments or modifications made of any kind whatsoever, without the prior written consent of Assignee; and

(b) Assignor shall not amend or modify the terms and provisions of the Governing Documents if such amendment would adversely affect in any manner the rights of Assignee under this Assignment without the consent of Assignee, which consent shall not be unreasonably withheld. If Assignee fails to respond to Assignor's request for such consent within sixty (60) days following delivery to Assignee by certified mail or other form of delivery evidencing Assignee's receipt of Assignor's request, such consent shall be deemed to have been granted.

12. Notices. Any notice, demand, request or other communication given hereunder or in connection with this Assignment shall be deemed sufficient if in writing and either hand delivered, sent through a recognized overnight delivery service, or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the party to receive such notice at such address as each party has provided to the other as set forth in the Agreement. Notice shall be deemed received when delivered if by hand delivery, on the next business day if sent by overnight delivery service, or three (3) business days after sent postage prepaid, certified mail, return receipt requested. Notwithstanding the foregoing, routine communications required by this Assignment, such as ordinary distribution checks, copies of documents, etc., may be sent by ordinary first class mail or facsimile.

13. Successors and/or Assigns. This Assignment shall inure to the benefit of Assignee and its successors and assigns and shall be binding upon the successors and assigns of Assignor.

14. Applicable Law; Severability; Captions; Plurality. This Assignment is being delivered and is intended to be performed in the State of California and shall be construed and enforced in accordance with and be

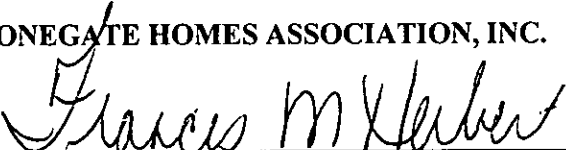
governed by the laws of such State. In the event of any inapplicability or unenforceability of any provision of this Assignment, then such inapplicability or unenforceability shall not affect, limit or impair the validity or operation of all other provisions of this Assignment. The captions used herein are used for convenience only and shall not affect the interpretation of this Assignment. At all times, any word used in the singular herein shall also include the plural, and vice versa.

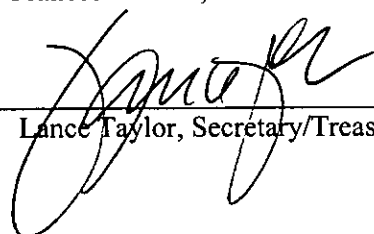
15. Enforcement. If any attorney is engaged by Assignee to enforce or construe any provision of this Assignment or as a consequence of any Event of Default, with or without the filing of any legal action or proceeding, then Assignor will immediately pay to Assignee on demand all attorneys' fees and other costs reasonably incurred by Assignee, together with interest from the date of the demand until paid at the Default Rate (as defined in the Note). In any action brought to enforce this Assignment or any of the Loan Documents, the prevailing party shall be awarded reasonable attorneys' fees and costs.

16. Waiver of Right to Jury Trial. **EXCEPT AS PROHIBITED BY LAW, BOTH ASSIGNOR AND ASSIGNEE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THAT EITHER MAY HAVE TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS LOAN.**

Executed this \_\_\_\_ day of February, 2006.

STONEGATE HOMES ASSOCIATION, INC.

By:   
Frances Herbert, President

By:   
Lance Taylor, Secretary/Treasurer

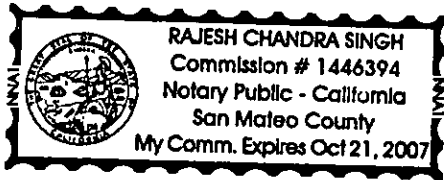
4354-41/395373.2

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SANTA CLARA )

On 02/21, 2006, before me, RAJESH CHANDRA SINGH, NOTARY PUBLIC, personally appeared LANCE TAYLOR, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



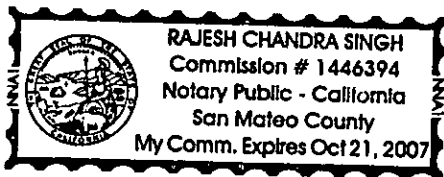
[Signature]  
Notary Public

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SANTA CLARA )

On 02/21, 2006, before me, RAJESH CHANDRA SINGH, NOTARY PUBLIC, personally appeared FRANCES MARGARET HERBERT, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
Notary Public