

WAKE COUNTY, NC 184
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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR THE
THORNTON COMMONS TOWNHOMES**

CONTENTS

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| | Page |
|--|------|
| PREAMBLE | 4 |
| ARTICLE I - DEFINITIONS | 5 |
| Section 1 - Act | |
| Section 2 - Association | |
| Section 3 - Board of Directors | |
| Section 4 - Bylaws | |
| Section 5 - Builder | |
| Section 6 - Common Area | |
| Section 7 - Declarant | |
| Section 8 - Declarant Control Period | |
| Section 9 - FHA | |
| Section 10 - Lot | |
| Section 11 - Member | |
| Section 12 - Owner | |
| Section 13 - Properties | |
| Section 14 - Stormwater Control Measures | |
| Section 15 - Unit or Dwelling | |

ARTICLE II - PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION..... 6
 Section 1 - Existing Property
 Section 2 - Additions to Existing Property
 Section 3 - Conveyance of Common Area in Annexed Property

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS 7
 Section 1 - Membership
 Section 2 - Voting Rights
 Section 3 - Vacant/Leased Dwellings

ARTICLE IV - PROPERTY RIGHTS 8
 Section 1 - Owners' Easements of Enjoyment and Access
 Section 2 - Delegation of Use
 Section 3 - Conveyance of Title to the Association
 Section 4 - Regulation and Maintenance of Common Area and Common Area Easements

ARTICLE V - COVENANT FOR MAINTENANCE ASSESSMENTS 10
 Section 1 - Creation of the Lien and Personal Obligation of Assessments
 Section 2 - Purposes of Assessments
 Section 3 - Maximum Annual Assessment
 Section 4 - Annual Assessments; Ratification of Budgets; Certificate of Payment
 Section 5 - Special Assessments
 Section 6 - Notice and Quorum for Any Action Authorized Under Sections 3(c) & 5
 Section 7 - Effect of Nonpayment of Assessments; Remedies
 Section 8 - Subordination of the Lien to Mortgages
 Section 9 - Exempt Property
 Section 10 - Working Capital Fund
 Section 11 - Lien to the City of Raleigh

ARTICLE VI - RIGHTS OF LENDERS 14
 Section 1 - Books and Record
 Section 2 - Notice to Lenders
 Section 3 - Approval of Owners and Holders of First Deeds of Trust
 Section 4 - Payment of Taxes and Insurance Premiums

ARTICLE VII - MAINTENANCE OF LOTS AND UNITS 15
 Section 1 - Association's Responsibility
 Section 2 - Owner's Responsibility: Remedy for Owner's Failure to Maintain
 Section 3 - Assessment of Cost
 Section 4 - Access at Reasonable Hours

ARTICLE VIII - EASEMENTS 16
 Section 1 - Access and Utility Easements
 Section 2 - Easements for Governmental Access
 Section 3 - Easement for Support
 Section 4 - Owner's Easement and Right of Entry for Repair, Maintenance and Reconstruction
 Section 5 - Easement over Common Area

- Section 6 - Easement for Encroachments
- Section 7 - Association's Easement Upon Lots

| | |
|--|---------------|
| ARTICLE IX - PARTY WALLS | 17 |
| Section 1 - General Rules of Law to Apply | |
| Section 2 - Sharing of Repair and Maintenance | |
| Section 3 - Destruction by Fire or Other Casualty | |
| Section 4 - Easement and Right of Entry for Repair, Maintenance and Reconstruction | |
| Section 5 - Weatherproofing | |
| Section 6 - Right to Contribution Runs With Land | |
| Section 7 - Certification by Adjoining Property Owner That No Contribution Is Due | |
| ARTICLE X - USE RESTRICTIONS | 18 |
| Section 1 - Use of Lots and Common Area | |
| Section 2 - Use of Accessory Structures | |
| Section 3 - Nuisances | |
| Section 4 - Animals | |
| Section 5 - Signs | |
| Section 6 - Parking | |
| Section 7 - Antennae and Roof Structures | |
| Section 8 - Leased Units | |
| Section 9 - Garbage; Unsightly Storage . | |
| Section 10 - Fines | |
| ARTICLE XI - ARCHITECTURAL CONTROL | 20 |
| ARTICLE XII - INSURANCE | 21 |
| ARTICLE XIII - DAMAGES, RECONSTRUCTION, REPAIR..... | 24 |
| ARTICLE XIV - GENERAL PROVISIONS | 25 |
| Section 1 - Enforcement | |
| Section 2 - Severability | |
| Section 3 - Amendment | |
| Section 4 - Deleted | |
| Section 5 - Non--Liability of Governmental Entities | |
| Section 6 - Subdivision of Lots | |
| Section 7 - Declarant's Right to Change Development | |
| Section 8 - Insurance | |
| Section 9 - Rules and Regulations; Enforcement | |
| Section 10 - Professional Management | |
| Section 11 - Failure to Maintain Stormwater Control Measures | |
| Section 12 - Evidence of Member Approval | |

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS,
EASEMENTS, CHARGES AND LIENS
FOR THE THORNTON COMMONS TOWNHOME ASSOCIATION, INC.**

THIS DECLARATION is made on the date hereinafter set forth by Puckett Bynum Development, LLC, a North Carolina limited liability company (hereinafter "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of approximately 5.58 acres of land located in the City of Raleigh, Wake County, North Carolina, more fully described in the deed recorded in Book 9869, Page 244, Wake County Registry;

WHEREAS, Declarant desires to create on such property an exclusive residential community of attached single-family townhomes to be known as Thornton Commons Townhomes (hereinafter sometimes referred to as the "Subdivision");

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

WHEREAS, Declarant has deemed it advisable to create an organization to own; maintain and administer the Common Area, to administer and enforce covenants and restrictions exclusively applicable to the Subdivision, and to collect and disburse the assessments and charges hereinafter created, and Declarant has therefore incorporated under North Carolina law as a nonprofit corporation; the Thornton Commons Townhome Association, Inc. for the purpose of exercising the aforesaid functions;

NOW, THEREFORE, Declarant declares that the real property described in EXHIBIT A to this Declaration and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed, mortgaged, used and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the real property and be binding on all parties owning any right, title or interest in said real property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Any defined term used in this Declaration shall have the meaning set forth below or, if not specifically defined in this Article I, the meaning of such term as set forth in the Act or in any other provision of this Declaration.

Section 1. "Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes, known as the North Carolina Planned Community Act, and any successor laws.

Section 2. "Association" shall mean and refer to the THORNTON COMMONS TOWNHOME ASSOCIATION, INC., a North Carolina nonprofit corporation, its successors and assigns.

Section 3. "Board of Directors" and "Board" shall mean and refer to the Board of Directors of the Association elected or appointed to manage the affairs of the Association as provided in Article V of the Bylaws.

Section 4. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 5. "Builder" as used herein shall mean Anderson Homes, Inc., any entity to which it assigns its rights recorded in the Wake County Registry, and any other commercial builder which purchases from the Declarant one or more Lots and owns a Lot within the Subdivision for the purpose of constructing upon it a single family residence to be sold.

Section 6. "Common Area" shall mean and refer to the real property, together with any improvements thereon, owned by the Association, whether in fee or by easement, for the common benefit of the Owners of Lots within the Subdivision; and specifically including, but without limitation (i) all private streets and private walkways within the Subdivision, (ii) all private drainage easements and Stormwater Control Measures constructed thereon and which serve more than one Lot and are not maintained by any governmental authority, (iii) any and all easement rights, if any, granted to the Association on any other land owned by the Declarant, the City of Raleigh or any other person or firm, (iv) water and sewer lines (and easements associated therewith) which service more than one Lot that are not located within a public utility easement or public street right-of-way, and are not maintained by any governmental authority, and (v) any open space, common area, or common property shown on any recorded subdivision maps of the Properties. The Common Area shall be maintained by the Association or its successors in interest unless dedicated to public use and accepted by a public agency, authority or utility as set forth herein.

Section 7. "Declarant" shall mean and refer to Puckett Bynum Development, LLC, a North Carolina limited liability company. It shall also mean and refer to any person, firm or corporation to whom or which Declarant shall assign or delegate the rights and obligations of Declarant by an assignment of Declarant's rights recorded in the Wake County Registry.

Section 8. "Declarant Control Period" shall mean and refer to the period of time during which the Declarant may appoint or remove the members of the Board of Directors of the Association. The Declarant Control Period shall terminate upon the earlier of the following to occur:

- (a) December 31, 2014;
- (b) When the total number of votes held by the Class A Members equals the total number of votes held by the Class B and Class C Members; provided, however, that the Class B Membership shall be reinstated automatically from time to time as Declarant acquires sufficient additional votes through or following annexation of additional real property to the Declaration such that the total number of votes entitled to be cast by Declarant and the Builders exceeds the total number of votes entitled to be cast by the Class A members; or
- (c) Relinquishment or transfer of all Special Declarant Rights as provided in §47F-3-104 of the Act.

Section 9. "FHA" means the Federal Housing Administration.

Section 10. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown on any recorded subdivision map of the Properties; with the exception of Common Area owned in fee by the Association, any property owned by the City of Raleigh or other governmental entity, and any public street rights-of-way shown on such recorded map. In the event that any Lot is increased or decreased in size by recombination or resubdivision through recordation of a new subdivision plat, any newly-platted lot shall thereafter constitute a Lot.

Section 11. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers and owners of an equity of redemption, but excluding those having an interest in a Lot solely as security for the performance of an obligation.

Section 13. "Properties" shall mean and refer to the "Existing Property" described in Exhibit A to this Declaration and any additional property annexed pursuant said Article II.

Section 14. "Stormwater Control Measures" means detention ponds, wetlands, rip-rap, grass channels, timber checkdams and storm pipes situated within private drainage easements as shown on any recorded subdivision map of the Properties, which serve more than one Lot.

Section 15. "Unit" or "Dwelling" shall mean and refer to any building or portion thereof within the Properties which is designated and intended for use an occupancy as a residence by a single family, whether by the Owner of such Unit or by tenants or lessees of such Owner.

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION
AND WITHIN THE JURISDICTION OF THE
THORNTON COMMONS TOWNHOME ASSOCIATION, INC.**

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

Section 2. **Additions to Existing Property.** At any time prior to December 31, 2014, additional property may be annexed by the Declarant without the consent of the Members and therefore become subject to this Declaration by the recording by Declarant of a plat showing such property to be annexed and of a supplementary declaration extending the operation and effect of this Declaration to the property to be annexed, provided, however, that such property must be contiguous to property already subject to this Declaration (or separated from such property only by the right-of-way of a street or road) and must be approved by the City of Raleigh. The addition of such property pursuant to this Section may increase the cumulative number of Lots within the Properties and, therefore, may alter the relative maximum voting strength of the various types of Members.

Section 3. **Conveyance of Common Area in Annexed Property.** Prior to the conveyance of the first Lot within any newly annexed property to an Owner, the owner of the annexed property shall convey to the Association all Common Area located within the newly annexed property. Title to such Common Area shall be conveyed in the same manner as set forth in Section 3 of Article IV of this Declaration.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. **Membership.** Every Owner of a Lot that is subject to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

Section 2. **Voting Rights.** The voting rights of the membership shall be appurtenant to the membership of the Lots.

There shall be three classes of membership respect to voting rights:

(a) **Class A Members.** Class A Members shall be the Owners of all Lots except those owned by the Class B Member or Class C Member (as hereinafter defined). When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to their Lot shall be exercised as they, among themselves, determine; but fractional voting shall not be allowed; and in no event shall more than one vote be cast with respect to any Lot. Class A Members shall be entitled to one (1) vote for each Lot owned. Lots owned by Class A Members shall be "Class A Lots".

(b) **Class B Member.** The Class B Member shall be the Declarant. Subject to the provisions of this subsection. Declarant shall be entitled to three (3) votes for each Lot that it owns (each a "Class B Lot").

At any time that Declarant no longer has the right to appoint and remove the members of the Board of Directors (see Article I, Section 7 hereof), Declarant shall have one vote for each Class Lot that it owns; however, such Lots shall continue to be treated as Class B Lots for assessment purposes.

(c) **Class C Member.** The Class C Member shall be any Builder who purchases one or more Lots from the Declarant for the purpose of constructing single family residence(s) thereon (herein referred to as a "Builder"). Class C Lots shall be treated as Class B Lots for voting and assessment purposes.

Section 3. **Vacant/Leased Dwellings.** If the Owner of a Lot ceases to occupy the Dwelling constructed thereon as his own personal living quarters or if any residence within the Properties is leased for rental purposes to one or more tenants, the vote as expressed by the Owners of such vacant and rental units shall not be entitled to any weight greater than forty-nine (49) percent on any matter pending before the Association.

ARTICLE IV PROPERTY RIGHTS

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

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

(b) the right of the Association, after notice and an opportunity to be heard, to suspend the voting rights of an Owner and the right of an Owner to use to Common Area and facilities thereon for any period during which any assessment against his Lot remains unpaid for a period of 30 days or longer, or for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association, provided, however, that the Association may not suspend an Owner's right to use Common Area so as to prevent such Owner from gaining access or providing utilities to his Lot.

(c) the right of the Association, subject to the provisions of the Act (Section 3-112) to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Association, provided that such dedication or transfer shall have the approval of the FHA if its approval is required under its regulations; and provided, further, that this subsection shall not preclude the Board of Directors from granting easements for the installation and maintenance of sewage, utility and drainage facilities upon, over, under and across the Common Area without the assent of the Members when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of the Properties. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or to another nonprofit corporation for the aforementioned purposes.

(d) the right of the Association, subject to the provisions of the Act (Section 3-112), to mortgage, pledge, deed in trust, or otherwise encumber any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Owners as set forth herein.

(e) the right of the Association to exchange all or part of the Common Area for other property and consideration of like value and utility, provided, that:

(i) the acreage and configuration of the remaining Common Area (including the property to be received by the Association in such exchange) equal or exceed the requirements of the City of Raleigh; and

(ii) the exchange is approved by a majority of the votes of the Members present and voting at a meeting of the Members duly called for the purpose of approving such exchange,

provided, however, that Member approval shall not be required if the sole purpose of the exchange is to eliminate an encroachment; and

- (iii) the exchange is approved by the City of Raleigh, if required by its ordinances or code.

Section 2. Delegation of Use.

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

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

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

Section 3. Conveyance of Title To The Association. Declarant covenants, for itself, its successors and assigns, that, prior to the conveyance of the first Lot within any phase or section to an Owner, it will convey to the Association title to those portions of the Common Area to be owned in fee by the Association. Declarant reserves an easement over and across the Common Area, so long as it owns any Lots within the Properties or adjoining property, for the purpose of developing the adjoining property and constructing any improvements on the Common Area as it deems necessary or advisable, provided that following installation of improvements, the Common Area shall be restored to the extent practicable. Although not limiting the scope of this easement, this easement shall include the right to construct, maintain and dedicate any additional drainage easements, general utility easements and any additional sanitary sewer or water line easements across any of the Common Areas. This easement shall terminate upon the completion of the development of the adjacent property owned by Declarant or ten (10) years from the date hereof, whichever first occurs. Except as otherwise stated herein, all conveyances by Declarant to the Association shall be free and clear of all encumbrances and liens, including statutory liens of laborers and materialmen pursuant to Article 2 of Chapter 44A of the North Carolina General Statutes, except utility, drainage, greenway and other easements of record or shown on the recorded plats of the Subdivision and the Declaration. Any improvements placed on the Common Area by Declarant shall become the property of the Association upon completion of such improvements. Following conveyance of Common Area to the Association, Declarant and Builder shall be reimbursed by the Association for all expenses of the Association incurred by Declarant and Builder (including without limitation insurance and real estate taxes) not theretofore reimbursed to Declarant and Builder.

Section 4. Regulation and Maintenance of Common Area. It is the intent of the Declarant that the Common Area (whether owned by the Association in fee or by easement) be preserved to the perpetual benefit of the Owners within the Subdivision. To that end, Declarant, prior to the conveyance of the first Lot in any phase or section of the Subdivision to an Owner, will convey to the Association an easement over and across that portion of any Lot within such phase or section on which a Common Area easement lies for the purpose of enabling the Association to take actions permitted by subsections (b) and (c) of this Section 4.

(a) **Rights and Responsibilities of the Lot Owners.** Each Owner of a Lot upon which a Common Area easement lies shall pay all property taxes and other assessments levied against his

Lot, including that portion of such tax or assessment as is attributable to such Common Area. Notwithstanding any other provision of this Declaration, no Owner or other person shall, without the prior written consent of the Association: (1) remove any trees or vegetation within any Common Area; (ii) erect gates, fences, buildings or other structures on any Common Area; (iii) place any garbage receptacles on or in any Common Area; (iv) fill or excavate any Common Area or any part thereof; or (v) plant vegetation or otherwise restrict or interfere with the use, maintenance, and preservation of any Common Area.

It is the intent of the Declarant that a Common Area easement shall be maintained in the same state as when the Lot upon which such easement lies was conveyed to the Owner. If an Owner of a Lot on which a Common Area easement lies fails to maintain the easement area as provided herein, whether by act or omission, the Association shall have the right to enter upon such Owner's Lot for the purpose of maintaining same and shall have the right to charge such Owner with the costs of such maintenance, which costs, if not paid within thirty (30) days after demand for payment is made by the Association, shall be collected in the same manner and shall incur the same late charges, interest and costs of collection as set forth in Section 7 of Article V of this Declaration.

(b) **Rights and Responsibilities of the Association.** The Association shall have the right and obligation to ensure that the Common Area is preserved to the perpetual benefit of the Owners and; to that end, shall: (1) maintain the Common Area in its natural or improved state, as appropriate, and keep it free of impediments to its free use by the Owners; (ii) procure and maintain liability insurance in the amount of not less than one million dollars covering the Association and its Members against any loss or damage suffered by any person, including the Owner of the Lot upon which Common Area lies, resulting from use of the Common Area; and (iii) pay all property taxes and other assessments levied against all Common Area owned in fee by the Association; and maintain all Stormwater Control Measures in strict compliance with Stormwater Operations and Maintenance Manuel and Budget, which is attached to the Stormwater Replacement Agreement as exhibit C, hereafter called the "Maintenance Manuel."

(c) **Association's Right of Entry for Maintenance of Common Area Easements.** The Association and its employees, agents, contractors and subcontractors shall have a nonexclusive right and easement at all times to enter upon any portion of a Lot reserved or designated as a Common Area easement, and any other portion of the Lot to the extent necessary to gain access to the Common Area easement, for the purposes of: (1) installing and maintaining entrance signage and other signage; (ii) making such improvements to the Common Area easement as have been approved by the Association; and (iii) maintaining the Common Area easement in its natural or improved state, including, without limitation, removal of fallen trees and other debris and, in general, keeping the easement area free from obstructions and impediments to its use. No such entry shall be deemed a trespass. To the extent practicable, the Association shall give reasonable oral notice to the Owner or occupant of such Lot.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. **Creation of the Lien and Personal Obligation of Assessments.** Declarant, for each Lot that it owns within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be established and collected as hereinafter provided. All assessments which are unpaid when due, together with interest and late charges set forth in Section 7 of this Article V and all costs of collection, including reasonable attorneys' fees, shall be a charge on the land and, as provided in §47F-3-116 of the Act, shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest and costs of collection, including reasonable attorneys' fees, shall also be the

personal or corporate obligation of the person(s), firm(s) or corporation(s) owning such Lot at the time when the assessment fell due, but such personal and corporate obligation shall not be imposed upon such Owner's successors in title unless expressly assumed by them. Although unpaid assessments and charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, the unpaid assessments and charges shall continue to be a lien upon the Lot against which the assessment or charge was made.

It is the intent of the Declarant that any monetary fines imposed against an Owner pursuant to the provisions of the Bylaws shall constitute a lien against the Lot of such Owner to the same extent as if such fine were an assessment against such Lot.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and, in particular, for: (1) acquisition, improvement, and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area; (ii) maintenance, repair and reconstruction of the Common Area and improvements thereon, including, without limitation; stormwater drainage facilities, and., including, without limitation, the cost of repair, replacement and additions thereto and the cost of labor, equipment, materials, management and supervision thereof; (iii) payment of all fees and expenses necessary to provide the surety required by Section 12 of this Article V; (iv) maintenance of Lots and the exterior of Units as provided in Article VII hereof; (v) payment of taxes and public assessments levied against Common Area owned by the Association in fee; (vi) procurement of insurance; (vii) employment of attorneys, engineers, accountants and other persons or firms for Association business; (viii) payment of principal and interest on funds borrowed for Association purposes; and (ix) such other needs as may arise.

Section 3. Maximum Annual Assessment. Until December 31, 2005, the Maximum Annual Assessment shall be \$960.00 for each Class A Lot. The Maximum Annual Assessment for a Class B Lot and for a Class C Lot shall be one-third (1/3) of the Maximum Assessment for a Class A Lot.

(a) From and after January 1, 2006, the Maximum Annual Assessment may not be increased by the Board of Directors in excess of the previous year annual assessment unless such increase is ratified as set forth in Section 4, next to last paragraph.

(b) All regular and special assessments shall be levied equally against all Owners, except:

- (i) regular assessments levied on Lots owned by a Class A Member shall be a maximum of \$960.00 per annum for the first assessment year, and regular assessments levied on Lots owned by a Class B and a Class C Member shall be a maximum of \$320.00 per annum for the first assessment year;
- (ii) the ratio of the regular assessment and special assessments for Lots owned by Class A Members to the regular assessment and special assessments established for Lots owned by Class B and Class C Members for all subsequent years shall be three (3) to one (1); and

(c) The Maximum Annual Assessments for Class A Lots may be increased without limitation if such increase is ratified by not less than two-thirds (2/3) of the votes cast by the entire membership. The provisions of this subsection shall not apply to, nor be a limitation upon, any change in the maximum annual assessment or actual annual assessment pursuant to a merger or consolidation as provided in §47F-2-121 of the Act.

Section 4. Date of Commencement of Annual Assessments Amount of Assessments Ratification of Budgets; Certificate of Payment. Unless a different commencement date is set by the Board of Directors, the annual assessments provided for herein shall commence as to all Lots in any Phase of the Properties, as shown on a recorded plat, on the first day of the month next following the first conveyance from that Phase of a Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence. The first assessment year shall be the period commencing on the date regular annual assessments commence and ending on the December 31 next following. The regular annual assessment for the first assessment year shall be prorated from the amounts fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. Assessments of Lots within each Phase of the Property which is annexed in accordance with the provisions of Section 2 of Article II above shall commence on the first day of the month next following the first conveyance from that Phase of a Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence.

Subject to the provisions of this Section, the Board of Directors may fix the annual assessment for Class A Lots at any amount not in excess of the Maximum Annual Assessment in effect for the appropriate assessment year. Except as otherwise provided in this Section, the assessment established for each Class B Lot and each Class C Lot shall always be one-third (1/3) of the assessment for a Class A Lot. A Class B or C Lot that contains a dwelling that is occupied as a residence shall be assessed at the Class A rate. All other Class B and Class C Lots (including, without limitation, a Lot containing a dwelling used as a model and/or sales center) shall be assessed at the Class B rate.

Unless a lower amount is set by the Board of Directors, the initial annual assessment shall be the "Maximum Annual Assessment" set forth in Section 3 of this Article and shall be prorated according to the number of months remaining in the calendar year.

Annual assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

The Association shall within 10 business days after written demand, and for such reasonable charge as the Board of Directors may determine, furnish a certificate signed by an authorized agent of the Association setting forth whether the assessments on a specified Lot have been paid. If such certificate states that an assessment has been paid; such certificate shall be conclusive evidence of payment.

The Board of Directors shall adopt a proposed budget for the Association at least annually. Within 30 days after adoption of the proposed budget, the Board of Directors shall send a copy of the proposed budget and shall give written notice to the Members of a meeting of the Members to consider ratification of the budget, such meeting to be held not sooner than 10 days nor more than 60 days after the mailing of such notice. Such meeting may, but need not be, combined with the annual meeting of the Members. Except as provided in Section 6 below, there shall be no requirement that a quorum be present in order to vote on ratification of the budget (although a quorum must be present to vote on other matters). The budget shall be deemed ratified unless at that meeting Members having two-thirds or more of the votes of the entire membership vote to reject the budget. Notwithstanding the foregoing, if the budget provides for annual assessments not greater than 10% larger than the assessment in effect for the immediately preceding year, such budget shall be deemed ratified unless Members having at least 80% of the votes of the entire membership vote to reject the budget. If the proposed budget is rejected, the budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent budget proposed by the Board.

Subject to the provisions of this Section, at least twenty (20) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot. At least ten (10) days before January 1 of each year, the Board of Directors shall send written notice of such assessment to every Owner subject thereto.

Section 5. **Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, for repayment of indebtedness and interest thereon, or for any other purpose, provided that any such assessment shall have the same assent of the Members as provided in Section 4 of this Article and shall be in the ratios provided in Section 3(b) of this Article. Special assessments shall be fixed at a uniform rate for all Lots within each Class and may be collected on a yearly, semiannually, quarterly, or monthly basis, as determined by the Board of Directors.

Section 6. **Notice of Quorum for any Action Authorized Under Sections 3(c) and 5.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3(c) or 5 shall be sent to all Members not less than fifteen (15) days nor more than thirty (30) days prior to the meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of each Class of Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement; and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. **Effect of Nonpayment of Assessments, Remedies.** An assessment not paid within ten (10) days after the due date shall incur such late charge as the Board of Directors may from time to time establish, and, if not paid within thirty (30) days or longer after the due date, shall constitute a lien on that Lot when a claim of lien is filed of record in the Office of the Clerk of Superior Court, County of Wake, as set forth in G.S. 47F-3-116, and shall also bear interest from the due date at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is less. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same and/or foreclose the lien as set forth in G.S. 47F-3-116 against the Lot for which such assessment is due. Interest, late payment charges, costs and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 8. **Subordination of the Lien to Mortgages.** The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien; however, the sale or transfer of a Lot pursuant to foreclosure of a first mortgage or deed of trust, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of any assessments which became due prior to the date of such conveyance. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 9. **Exempt Property.** All property dedicated to and accepted by a public authority and all property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. Notwithstanding the foregoing, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 10. **Working Capital Fund.** At the time of closing of the initial sale of each dwelling constructed on each Lot; a sum equal to one-sixth (1/6) of the annual assessment for the

appropriate Class A Lot in effect at the time of such sale or occupancy shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to pursuant to this Section shall not be considered as an advance payment of any regular assessment.

ARTICLE VI RIGHTS OF LENDERS

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

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

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

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

- (a) By act or omission seek to abandon, partition, subdivide; encumber, sell, or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. Neither the granting of easements for utilities or other purposes nor the exchange of real property as provided in Section 1(c) of Article IV hereof shall be deemed a transfer within the meaning of this clause. Notwithstanding anything herein to the contrary, the property owned by the Association, whether in fee, by easement; or otherwise, shall be preserved to the perpetual benefit of the Owners or of the public in general and shall not be conveyed except to the City of Raleigh or to another nonprofit corporation for the aforementioned purposes.
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot;
- (c) Fail to maintain hazard insurance on insurable improvements on the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value; or
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement, or reconstruction of the damaged improvements.

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

Section 5. **Consent of Mortgagee.** With respect to any provision in this Declaration requiring the consent or written approval of a Mortgagee, any Mortgagee who does not respond within thirty (30) days' request by the Association for such consent or written approval shall be deemed to have approved such request.

ARTICLE VII MAINTENANCE OF LOTS AND UNITS

Section 1. **Association's Responsibility.** In addition to maintenance of the Common Area and the improvements and facilities located thereon, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed by the Declarant, Association or a Builder of each Lot, and any Yard improvements installed by an Owner on his Lot with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping). The Association shall also be responsible for certain exterior maintenance of the Units; including the painting, repair; replacement and care of exterior building surfaces (including exterior doors installed as part of the initial construction of the Unit), roofs, gutters and downspouts, sidewalks, stoops, and parking areas. The Association shall not be responsible for maintenance or repair of glass surfaces or for any improvements not part of the original construction unless the architectural approval granted by the Association for such subsequent improvements specifically provides that the Association will maintain such improvements. Furthermore: (1) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence installed; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements or the exterior of any Unit when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity; and (iv) the Association shall not be responsible for repairing any damage caused by the negligent or willful act or omission of the Owner of such Unit or the members of such Owners family or their respective guests, invitees and licensees, except to the extent the cost of repairing such damage is paid to the Association by reason of insurance obtained by the Association.

Section 2. **Owner's Responsibility; Remedy for Owner's Failure to Maintain.** Any maintenance on a Lot that is not the responsibility of the Association, whether by the terms of this Declaration or by written acceptance of same; shall be the responsibility of the Owner of such Lot. Each Owner shall keep his Lot and Unit in an orderly condition and shall keep the improvements thereon in a suitable state of repair. If an Owner does not make any repair or perform any maintenance required of such Owner, the Association shall have the right (but not the obligation), through its agents and employees, by the affirmative vote of not less than two-thirds (2/3) of the Board of Directors, to enter upon such Lot and to repair, maintain and restore the Lot or exterior of the Unit erected thereon, and the cost of such exterior maintenance, plus a surcharge of 15% for administration, shall be assessed in accordance with Section 3 of this Article. Prior to such entry; the Association shall give written notice to the Owner stating: (i) the specific item(s) needing maintenance; (ii) the corrective action to be taken; (iii) a time, not less than 15 calendar days from the date of the notice, in which the Owner is to perform the necessary maintenance; and (iv) a statement that, if the Owner fails to perform the maintenance within such time period, the Association will exercise its right to perform the maintenance and that the Owner will be assessed with the costs thereof as provided in this Article VII.

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

Section 4. **Access at Reasonable Hours.** As provided in Section 7 of Article VIII of this Declaration, the Association, through its duly authorized agents or employees, shall have the right, after reasonable oral or written notice to the Owner, to enter upon any Lot at reasonable hours on any day.

ARTICLE VIII EASEMENTS

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

For a period of ten (10) years from the date hereof, Declarant reserves an easement and right of ingress; egress and regress on, over and under the Properties to maintain and correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees; bushes or shrubbery, make any gradings of the soil, or take any other similar action that it deems reasonably necessary or appropriate. After such action has been completed, Declarant shall grade and seed the affected property and restore the affected property to its original condition to the extent practicable, but shall not be required to replace any trees, bushes or shrubbery necessarily removed. Declarant shall give reasonable notice of its intent to take such action to all affected Owners.

The foregoing notwithstanding, no easement shall be permitted that interferes with any Stormwater control measure located upon the Common Areas.

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

Section 3. **Easement for Support.** Every Lot and Unit which contributes to the lateral and/or vertical support of any adjoining Unit(s) shall be burdened with an easement of support for the benefit of such adjoining Unit(s).

Section 4. **Easement and Right of Entry for Repair, Maintenance and Reconstruction.** If any dwelling is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of such dwelling. Such work shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as nearly the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 5. **Easement Over Common Area.** A perpetual, nonexclusive easement over the Common Area is hereby granted to each Lot and its Owners; family members and tenants of such Owners, the occupants of such Lot, and guests and invitees of such Owners, tenants or occupants, for the purpose of providing access, ingress and egress to and from the Common Area and for the use thereof.

Section 6. **Easement For Encroachments.** In the event that any structure erected on a Lot encroaches upon any other Lot or the Common Area, and such encroachment was not caused by the purposeful act or omission of the Owner of such Lot, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Area or other Lot for so long as such encroachment shall naturally exist. In the event that any structure erected principally on the Common Area encroaches upon any Lot, then an easement shall exist for the continuance of such encroachment of such structure onto such Lot for so long as such encroachment shall naturally exist. The foregoing shall not be construed so as to allow any extension or enlargement of any existing encroachment or to permit the rebuilding of the encroaching structure, if destroyed, in a manner so as to continue such encroachment.

Section 7. **Association's Easement Upon Lots.** The Association shall have a right, license and easement to go upon any Lot for the purpose of fulfilling its obligations under this Declaration, the restrictive covenants applicable to the Subdivision, and any other laws, ordinances, rules and regulations, public or private, which the Association is obligated or permitted to enforce. Such easement shall include, without limitation, the right to go on any Lot to correct, repair or alleviate any condition that, in the opinion of the Board of Directors of the Association or of the manager employed by the Association, creates or may create an imminent danger to the Common Area or improvements thereon.

ARTICLE IX PARTY WALLS

Section 1. **General Rules of Law to Apply.** The general rules of law regarding party walls, lateral support, and liability for property damage due to negligence or willful acts or omissions shall apply to each wall which is built as part of the original construction of the Dwellings within the Properties and which is placed on the dividing line between Lots, and to all reconstruction or extensions of such walls, to the extent not inconsistent with the provisions of this Article.

Section 2. **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who or which uses the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. **Easement and Right of Entry for Repair, Maintenance and Reconstruction.** Every Owner shall have an easement and right of entry upon the Lot of any other Owner and the Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of a party wall and those improvements belonging to his Lot which encroach on an adjoining Lot or Common Area. Such repair; maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot(s) and Common Area to as nearly the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 5. **Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who, by his negligence or willful act or omission, causes the party wall to be exposed to the elements, shall bear the entire cost of furnishing the necessary protection against such elements.

Section 6. **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. **Certification by Adjoining Property Owner That No Contribution Is Due.** If any Owner desires to sell his Lot, such Owner, in order to assure a prospective purchaser that no Owner of an adjoining Lot has a right of contribution as provided in this Article, may request the adjoining property Owner to make a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request, and without charge; provided, however that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

ARTICLE X USE RESTRICTIONS

Section 1. **Use of Lots and Common Area.** All Lots shall be used for residential purposes only. No trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, Builders, real estate brokers, Owners and their agents may show Lots for sale or lease. Notwithstanding the foregoing; the Declarant and each Builder and the agents and employees of each, shall have the right to: (1) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices. (ii) maintain spot-lighted model homes which may be open to the public for inspection 7 days per week for such hours as the Declarant or Builder deems appropriate or necessary, (iii) conduct any other activities on Lots to benefit sales and construction efforts; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

Section 2. **Use of Accessory Structures.** No shack, barn, or other building, other than a Dwelling; its garage and outbuildings incident to residential use, shall be erected on a Lot. No structure of a temporary nature may be used temporarily or permanently as a residence. Notwithstanding the foregoing, the Declarant and, with the approval of the Declarant, a Builder, may use temporary buildings, offices or facilities in connection with the marketing, sale and construction of Units.

Section 3. **Nuisances.** No noxious or offensive trade or activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No automobile or other vehicle mechanical repairs or like activity shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices shall not be permitted.

Section 4. **Animals.** No animals, livestock or poultry of any kind shall be kept on any Lot, except that a reasonable number of cats, dogs, and other household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose and that they do not become a nuisance to the neighborhood. No person owning or having custody of a permitted animal shall allow the animal to stray or go upon another Owner's Lot without the consent of such other Owner. No animals shall be permitted on or in the Common Area at any time except as permitted by the rules and regulations of the Association or by applicable law. All animals shall be on a leash when outside the Owner's Dwelling. The owner of a

permitted animal shall be responsible for removing and cleaning up the excrement deposited by such animal on any Lot or the Common Area.

Section 5. Signs. No signs shall be displayed on any Lot with the exception of unit identification signs as required by the Raleigh City Code, and one "For Sale" or "For Rent" sign not exceeding 36" x 24" in size and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. The Association may develop uniform sign standards and specifications to which all Owners must adhere. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant and, with the consent of and upon such conditions as Declarant, in its sole discretion, might impose, a Builder shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

Section 6. Parking. The Association shall provide and maintain at least the minimum number of parking spaces required by the City of Raleigh for the Subdivision. The Board of Directors of the Association shall have the right and authority (but shall not be obligated) to assign parking spaces to Owners on an equal, non-discriminatory basis. The Owner of each Lot shall provide the Association with the make, model, color and license plate number of each vehicle owned or normally driven by the Owner and his family, any person regularly residing with the Owner, and/or any lessee or sublessee of such Owner.

No Owner or a member of his family, lessee or sublessee or guest of an Owner shall: (1) park any vehicle on the street within or adjoining the Subdivision except in a designated paved parking space; (ii) park or keep on any Lot or street within or adjoining the Subdivision any abandoned, partly dismantled or inoperative vehicle; or (iii) park or keep on any Lot or any street within or adjoining the Subdivision any boat or boat trailer, motor home, camper, bus, truck in excess of one ton weight, commercial vehicle, truck or van, or anything else other than normally intended to be a private passenger vehicle within the Subdivision. For the purpose of the preceding sentence, the term "keep" shall mean present for either a period of more than ten (10) hours or overnight, whichever is less.

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

Section 7. Antennae and Roof Structures. No television, radio or other electrical towers; aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S. Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) is integrated with the Dwelling and surrounding landscape; and (iv) is approved by the Association pursuant to Article VIII hereof.

Section 8. **Leased Units.** An Owner may lease or sublet his Unit; provided, however, that any lease or sublease must be for at least six (6) months, in writing and contain the following provision:

"Tenant shall obey, adhere to and be bound by all provisions of the Declaration Of Covenants, Conditions and Restrictions for Thornton Commons Townhome Association, Inc., recorded in the Wake County Registry. Tenant acknowledges that he has received of a copy such Declaration and the rules and regulations of the Association and is familiar with the provisions of same."

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

Section 9. **Garbage, Unsightly Storage.** All trash and rubbish shall be kept in garbage cans stored behind the Unit in such a manner as not to be visible from the street upon which the Unit fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot, provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

Section 10. **Fines.** Following notice, a hearing and opportunity to present evidence, the Board of Directors shall have the right and authority to levy fines or penalties for the violation of any provision of this Declaration and/or the rules and regulations hereafter promulgated by the Board pursuant thereto. Any monetary fine or penalty shall be deemed a Special Assessment against the Lot of the Owner against whom such fine or penalty is assessed.

ARTICLE XI ARCHITECTURAL CONTROL

After occupancy of the dwelling constructed on a Lot pursuant to a certificate of occupancy or other certificate issued by the appropriate governmental entity, no building, fence, sign (including unit identification signs) wall or other structure shall be commenced, constructed, erected or maintained upon such Lot, nor shall any exterior addition to or change or alteration thereof be made, nor shall a building permit for such improvement or change be made, nor shall any major landscaping or relandscaping be commenced or made (such construction, alteration and landscaping are hereinafter referred to as the "Improvements") until plans and specifications showing the nature, kind, shape, heights, materials, color and location of same shall have been submitted to and approved in writing by the Declarant. If the Declarant fails to approve or disapprove such proposed Improvements within thirty (30) days after the plans and specifications have been received by it, approval will not be required, and this Article shall be deemed to have been complied with. Declarant shall have the right to charge a reasonable fee, not to exceed \$125.00, for receiving and processing each application. Declarant shall have the right (but not the obligation) to promulgate and from time to time amend written architectural standards and construction specifications (hereinafter the "Architectural Guidelines") which may establish, define and expressly limit the standards and specifications which will be approved, including, but not limited to, architectural style,

exterior color or finish, roofing material, siding material; driveway material, landscape design and construction technique. Declarant shall not approve any Improvements that it determines, in its discretion, not to be in harmony of external design, construction and/or location in relation to the surrounding structures, topography or the general plan of development of the Subdivision.

Declarant may, at any time, delegate the review and approval authority contained in this Article XI to the Board of Directors of the Association, which, in turn, may delegate such authority, to an Architectural Committee composed of three or more persons appointed by the Board. Such delegation shall be made by the Declarant by recording in the Wake County Registry an Assignment Of Declarant's Rights. Declarant shall delegate such authority no later than the date upon which Declarant no longer owns any Lots within the Properties, or December 31, 2014, whichever is earlier.

Any use of the term "Declarant" in this Article XI shall be deemed to apply to Declarant and, when appropriate, to the Board of Directors or the Architectural Committee. Nothing herein shall be construed to permit interference with the development of the Lots by Declarant in accordance with its general plan of development.

ARTICLE XII INSURANCE

Section 1. **Insurance Requirements under the Act.** Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds, requires certain provisions for property and liability insurance and governs repairs made with insurance proceeds. In the event the insurance requirements of this Article 10 conflict with, or fail to incorporate, the provisions of Sections 47F-3-113 of the Act, the provisions of the Act shall apply and govern.

Section 2. **Association May Provide Insurance Covering Dwellings and Owners' Liability.** The Association, upon and to the extent approved by the Board of Directors, may also procure, pay for, and maintain full replacement value hazard insurance covering the cost of reconstructing Dwellings built within the Properties and sold to and owned by Members. The Premiums of such insurance, if provided by the Association, shall be a common expense of the Association, paid from the annual assessments provided in Article V of this Declaration, despite the fact that the insurance covers improvements owned by the Members and not by the Association. Insurance policies carried pursuant to this Section 2 must provide that:

- (a) Each Owner is an insured person under the policy to the extent of the Owner's insurable interest and with respect to liability arising out of his interest in the Common Areas or membership in the Association;
- (b) The insurer waives its right to subrogation under the policy against any Owner or members of his household;
- (c) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will preclude recovery under the policy;
- (d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and
- (e) The insurer agrees: (i) to issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee, or beneficiary under a deed of trust on any part of the Property; and (ii) that the policy may not be canceled or not renewed until 30 days after notice of the proposed cancellation or nonrenewal has

been mailed to the Association, each owner and each Mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

If for any reason the Association is unable or unwilling to obtain the casualty insurance coverage described in this Section, written notice that the Association is not providing such insurance shall be hand-delivered or mailed to all Owners.

Section 3. Common Areas Insured By Association. The Association shall procure and maintain insurance coverage as follows:

(a) **Common Areas.** All insurance policies upon the Common Area shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of Owners.

(b) **Coverage.** All buildings and improvements upon the Common Area and all personal property of the Association included in the Common Areas or otherwise owned by the Association shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing form waiver of subrogation.

(c) **Liability.** Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary, including, but not limited to, directors and officers errors and omissions insurance coverage.

Section 4. Insurance Provided by Association under Sections 2 and 3. The following provisions will be applicable to all insurance policies purchased by the Association under Sections 2 and 3 of this Article XIII of the Declaration:

(a) **Premiums.** Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the annual assessment described in Article Nine above.

(b) **Proceeds.** All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association or to an authorized agent of the Association (including any Trustee or successor Trustee with whom the Association may enter into an insurance trust agreement each of which will be referred to as "Insurance Trustee" under this Declaration), who shall have the exclusive right to negotiate losses and receive payments under such policies. Any loss covered by the insurance obtained by the Association shall be adjusted with the Association, but the insurance proceeds for that loss shall be paid to the Association or to an Insurance Trustee designated for that purpose. The Association or Insurance Trustee shall hold any insurance proceeds in trust for the Association, Owners and lienholders as their interest may appear. The proceeds shall be distributed first for repair or restoration of the damaged property, and the Association, Owners and lienholders are not entitled to payment of any prortion of the proceeds unless there is a surplus of proceeds after the property

has been completely repaired or restored. Any such surplus will be distributed as follows: If the Association designates an Insurance Trustee to receive and disburse insurance proceeds, the fees charged and costs incurred by the Insurance Trustee in performance of its duties will first be paid from the surplus and any remaining proceeds will be distributed to the Association, the Owners and the lienholders as their interests may appear. Fees and expenses of the Insurance Trustee, not paid from surplus insurance proceeds, will be paid as a common expense of the Association.

(c) Subrogation. Each insurer shall waive its right to subrogation under any policy purchased by the Association against any Owner or member of Owner's household.

(d) Act or Omission of Owner. No act or omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under any policy purchased by the Association.

(e) Other Insurance. If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary insurance.

(f) Issuance of Certificates; Cancellation. Any insurer that has issued an insurance policy to the Association shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or Mortgagee. Any insurer issuing an insurance policy to the Association may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non renewal has been mailed to the Association, each Owner and each Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

Section 5. Insurance Provided By Owners. UNLESS INSURANCE IS PROVIDED BY THE ASSOCIATION, UNDER ITS RIGHT TO PROVIDE INSURANCE UNDER SECTION 2 OF THIS ARTICLE XIII, each Owner shall procure and maintain fire and extended coverage insurance as follows:

(a) Coverage. Improvements upon a Lot shall be insured in an amount equal to one hundred percent (100%) insurable replacement value. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;
- (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and
- (iii) Such policies shall contain clauses providing for waiver of subrogation.

(b) Liability. Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand and No/100 (\$300,000.00) Dollars per occurrence.

All such policies shall name the Association as an additional insured as its interest appears and copies of said policies and renewals thereof shall be furnished to the Association. Upon failure by any Owner to promptly obtain the required coverage, naming the Association as an additional insured, or to pay the premiums due on such policy, the Association may, but is not required to, obtain the required coverage, naming the Association as one of the additional insureds, and add the cost of the premium and all other costs of obtaining such coverage to the annual assessment against the subject Lot. Such cost shall be due and payable on or before the first day of the calendar month following payment of same by the Association.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

Section 6. Obligation to Rebuild. Any portion of the Property for which insurance is provided under Section 2 or required under Section 3 of this Article XII that is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense, and the cost thereof may be recovered by one or more special assessments levied by the Board equally against all Owners. If any portion of the Common Area is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition compatible with the remainder of the Property, and (ii) the remainder of the proceeds shall be distributed to all the Owners or lien holders, as their interests may appear.

Any portion of the Property for which insurance is required under Section 5 of Article XII shall be promptly and diligently repaired, replaced, and restored by the Owner thereof, unless (i) this Declaration is terminated, or (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance.

ARTICLE XIII

DAMAGES, DESTRUCTION & REPAIR

Section 1. Damage to Lots. Restoration and repair of damage to any Lot (including, in accordance with the definition of "Lot," the improvements thereon) shall be made by and at the expense of the Owner thereof, except for damage covered by insurance provided by the Association under Section 2 of Article XIII.

Section 2. Damage to Common Area. Restoration and repair of damage to any Common Area shall be made at the expense of the Association unless, under the provisions of Section 47F-3-113(8) of the Act, the repair or restoration is not required to be effected. If the work is to be accomplished, the Association shall promptly contract for the repair, restoration or reconstruction and, if necessary, collect from the Insurance Trustee any proceeds of insurance as received in accordance with Section 3 of Article XIII. The difference, if any, between the insurance proceeds, payable by reason of such repairs, and the cost thereof may be recovered by one or more special assessments levied by the Board equally against all Owners.

Funds collected and held by the Insurance Trustee shall be disbursed by the Insurance Trustee for the purpose of repair, restoration or reconstruction in accordance with the terms and conditions of repair or reconstruction contract(s) between the Association and Persons engaged to perform the work. Funds from any special assessment shall be delivered to and held in trust by the Association or the Insurance Trustee and shall be held and disbursed for repair, restoration and reconstruction in the same manner as insurance proceeds. The Insurance Trustee may invest and reinvest funds held by it in a manner consistent with its duties as trustee. The Insurance Trustee shall be entitled to a reasonable fee for its services.

Section 3. Reconstruction of Residences. If the Association does not provide insurance under Section 2 of Article XII, then in the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original Plans; provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the ACC to reconstruct or repair his or her residence in accordance with revisions in the Plans. The ACC shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Property in a manner generally consistent with the plan and development thereof.

ARTICLE XIV
GENERAL PROVISIONS

Section 1. **Enforcement.** The Association and each Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, rules, regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the Act, the Bylaws or rules and regulations adopted by the Association. Failure by the Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions, or any case in which the Board reasonably determines that the cost of enforcement outweighs the benefit to be gained by enforcement. Any such determination shall not be construed as a waiver of the right to enforce such provisions under other circumstances or to estop the Association from enforcing any other covenant, restriction or rule.

Section 2. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 3. **Amendment.** The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of the Owners as set forth below. This Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no Amendment affecting any rights granted to or reserved by the Declarant in the Declaration may be made without the written consent of the Declarant. No amendment shall be effective unless it has been approved, if required, by the Federal Housing Administration ("FHA") or Secretary of Veterans Affairs ("VA"), and is recorded in the office of the Register of Deeds of Wake County. Furthermore, Declarant shall have the right, without approval or joinder of any Owner, to amend this Declaration during the Declarant Control Period to correct clerical or typographical errors and to ensure compliance with the

requirements of any governmental entity with jurisdiction over the Property or the Subdivision. No amendment affecting Stormwater Control Measures, payment to the City of Raleigh, or lien rights of the City of Raleigh shall be effective without the prior written approval of the Raleigh City Attorney or his/her deputy.

Section 4. **Deleted.**

Section 5. **Non-Liability of the City.** The City of Raleigh shall not be responsible for failing to provide any emergency or regular fire, police, or other public service to the Properties, any Lot, or any Owner or occupant thereof when such failure is due to the lack of access to the Properties or any Lot thereof due to inadequate design or construction of such access, blocking of access routes, or any other factor within the control of the Declarant, the Association, an Owner, or an occupant of any Lot. In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the Association.

Section 6. **Subdivision of Lots.** No Lot within the Subdivision may be subdivided by sale or otherwise so as to reduce the total Lot area shown on a recorded plat of the Subdivision, except with the consent of the Declarant and, if required, by the City of Raleigh.

Section 7. **Declarant's Right To Change Development.** With the approval of the City of Raleigh, Declarant shall have the right, without consent or approval of the Owners, to create dwelling units, add Common Area, change unit types and reallocate units within, and withdraw real property from the development.

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

Section 9. **Rules and Regulations.** The Board of Directors shall have the authority to adopt additional rules and regulations governing the use of the Common Area and the Lots within the Subdivision and shall furnish a written copy of said rules and regulations to the Owner(s) of each Lot at least fifteen (15) days before such rules and regulations become effective. Any violation of such rules shall be punishable by fine and/or suspension of voting rights as provided in this Declaration.

In addition to any other rights and remedies that the Association may have under this Declaration, the Association may impose sanctions for violations of this Declaration, the Bylaws of the Association, the rules and regulations adopted Association, or the Restrictive Covenants applicable to the Properties, in accordance with procedures set forth in the Bylaws, which sanctions may include, but are not limited to, reasonable monetary fines, which fines shall constitute a lien upon the Lot of the violator, and suspension of the right to vote and the right to use any recreational facilities within the Common Area, provided, however, that the Association shall not have the right to suspend the right to use Stormwater Control Measures to drain an Owner's Lot and to use private streets providing access to an Owner's Lot.

In addition, pursuant to procedures provided in the Bylaws, the Association may exercise self-help to cure violations (specifically including, but not limited to, the towing of Owner and tenant vehicles that are in violation of parking rules) and may suspend the right of an Owner to use any open space and recreational facility within the Properties if the Owner is more than 30 days delinquent in paying any assessment or other charge due to the Association.

The Association shall at all times have the right and easement to go upon any Lot for the purposes of exercising its rights hereunder, including, but not limited to, enforcement of the architectural guidelines applicable to the Properties. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass. All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce its rights and remedies, the party prevailing in such action shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

Section 10. **Professional Management.** In the event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the Property, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract for cause or without cause upon thirty (30) days' written notice without payment of a termination fee.

Section 11. **Failure to Maintain Stormwaer Control Measures.** Failure to Maintain Stormwater Control Measures required by the City in its approval of this townhouse development is a violation of the Raleigh City Code, potentially subjecting each Lot owner to significant daily civil penalties and other enforcements actions.

Section 12. **Tree Disturbing Activities.** Pursuant to Z-30-99, trees are required to be maintained on the Property, and any tree disturbing activity as defined in Part 10, Chapter 2 of the Raleigh City Code in violation of this zoning condition is a violation of th Raleigh City Code subjecting the landowner and the person engaging in unlawful tree disturbing activities to significant financial consequences.

Section 13. **Evidence of Member Approval.** In the event that any action requires evidence of consent of the Members or a specified percentage of the Members, such approval shall be conclusively presumed if a supported by a Certification signed by the President or Secretary of the Association in substantially the following form:

CERTIFICATE OF THORNTON COMMONS TOWNHOME ASSOCIATION, INC.

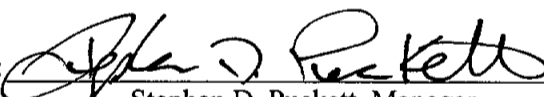
This is to certify that, upon proper notice given a [the] Special [Annual] Meeting of the Members of Thornton Commons Townhome Association, Inc., was held on [Date and Year] at Time]. The purpose [One of the purposes] of the meeting, as set forth in the Notice of Meeting, was to: [State action for which Member approval is required.]

At such meeting, at which a quorum was present, in person or by proxy, a total of _____ votes were cast: _____ votes were cast in favor of such action, and _____ votes were cast against such action. Accordingly, the motion to approve [described the action approved] was approved by at least _____% of the Members as required by the Declaration and Bylaws of the Association.

[President/Secretary]

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed as of the date set forth in the notary acknowledgment below.

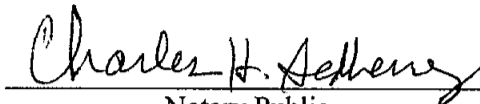
Puckett Bynum Development, LLC,
a North Carolina limited liability company

By: 
Stephen D. Puckett, Manager

STATE OF NORTH CAROLINA -- COUNTY OF WAKE

I, the undersigned Notary Public, certify that Stephen D. Puckett personally appeared before me this day and acknowledged that he is a Manager of Puckett Bynum Development, LLC, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the limited liability company.

Witness my hand and official stamp or seal, this the 28th day of April, 2005.


Notary Public

My commission expires: May 30, 2009

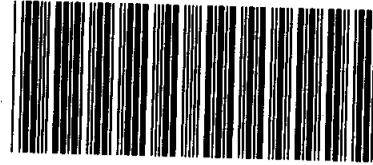
CHARLES H. SEDBERRY
NOTARY PUBLIC
WAKE COUNTY, N.C.
My Commission Expires May 30, 2009.

EXHIBIT A

Lying and being in the City of Raleigh, Wake County, North Carolina, containing approximately 3.18 acres of land, and being more particularly described as follows:

BEING All of Lots 1 through 23, inclusive, the areas designated "Open Space 12,163 sq. ft.", "Open Space 4,484 sq. ft.", "Open Space 1,916 sq. ft.", and the private street areas designated as Thornton Knoll Way and Noah Lane (two areas), and strip of land approximately five (5) feet in width lying west of Lot 20 and south of Thornton Knoll Way, all as shown on that certain plat entitled "Final Plat, Thornton Commons Townhomes, Phase I," recorded in Book of Maps 2005, Page 842, Wake County Registry.

C:\thornton townhomes\declaration.045



BOOK:011334 PAGE:02240 - 02269

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina – Wake County

The foregoing certificate of Charles H Sedberry

_____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: Janet Morgan
Assistant/Deputy Register of Deeds

This Customer Group _____ # of Time Stamps Needed

This Document _____ New Time Stamp
30 # of Pages