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WAKE COUNTY, NC 252
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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This instrument was prepared by:

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Jordan Price Wall Gray Jones & Carlton, PLLC

NORTH CAROLINA

WAKE COUNTY

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
TRYON VILLAS**

THIS DECLARATION, made on the date hereinafter set forth by YOUNGQUIST HOMES, INC., a North Carolina corporation with its principal office located at 501 Keisler Drive, Suite 101, Cary, Wake County, North Carolina (hereinafter, also, the "Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property (hereinafter, also, the "Property") located in or near the Town of Cary, County of Wake, State of North Carolina, which is more particularly described on "Exhibit A" attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, Declarant intends to develop on the Property a residential townhome community to be known as Tryon Villas; and

WHEREAS, Declarant proposes to subject the Property to this Declaration and the jurisdiction of the homeowners association, hereinafter described and hereinafter referred to as the "Association";

NOW, THEREFORE, Declarant hereby declares that all of the Property, including the Lots and Common Areas, are and shall be held, transferred, sold, conveyed, leased, mortgaged, occupied, used and otherwise disposed of subject to the following easements, restrictions, covenants, conditions charges and lien, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Property and Tryon Villas. These easements, restrictions, covenants, conditions, charges and liens shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Unless the context shall prohibit or otherwise require, each of the following words or terms, whenever used herein with an initial capital letter, shall have the following meanings in this Declaration, the Articles, and Bylaws:

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- (a) "Amenities" shall mean any facilities constructed, erected or installed on the Common Area, if any, for the use, benefit and enjoyment of Members.
- (b) "Architectural Control Committee" shall mean the Architectural Control Committee appointed by the Board of Directors, pursuant to the Bylaws, or, in the absence of such Committee, the Board of Directors.
- (c) "Articles" shall mean the Articles of Incorporation for the Association, including any amendments thereto, filed with the Office of the North Carolina Secretary of State.
- (d) "Assessment" and "Special Assessment" shall mean an Owner's share of the Common Expenses assessed from time to time, against the Owner and his Lot by the Association in the manner herein provided.
- (e) "Association" shall mean and refer to Tryon Villas Homeowners Association, its successors and assigns.
- (f) "Board of Directors" or "Board" shall mean the Association's board of directors which is the governing body of the Association.
- (g) "Building" shall mean and refer to a multi-unit structure containing Townhomes, constructed or erected on the Property.
- (h) "Bylaws" shall mean the bylaws, from time to time adopted by the Association, to govern the Association's administration and operation.
- (i) "Common Area" or "Common Areas" shall mean all real property together with all amenities and equipment, fixtures and personal property located thereon owned or leased by the Association for the common use and enjoyment of all Owners or Members or designated classes of Members of the Association, including but not limited to Limited Common Area and all land located within private streets, open space, all utility lines located outside public street rights-of-way and public utility easements, and not located on an individual Lot, all water lines located outside of the public street rights-of-way and all sewer lines located outside of public street rights-of-way, or Town of Cary sanitary sewer easements, except water and sewer lines located on any Lot, storm pipes and facilities serving more than one Lot and not accepted for maintenance by any governmental unit, any site or facility designated a common area on any recorded plat or in any declaration of covenant, and any Code required shared facility or open space not conveyed to the government.
- (j) "Common Expenses" shall mean and include:
- i. Expenses for administration of the Association;
 - ii. Expenses of administration, maintenance, repair, or replacement of the Common Areas and Limited Common Areas and Amenities and exterior maintenance of Townhomes and Lots as set forth in Article IX;
 - iii. Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
 - iv. Hazard, liability and such other insurance premiums as this Declaration or the Bylaws may require the Association to purchase;

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- v. Ad valorem taxes and public assessments or charges lawfully levied against the Common Areas and Limited Common Areas;
- vi. Expenses agreed upon by the Members to be common expenses of the Association;
- vii. Unpaid Assessments resulting from the purchase of a Townhome at a foreclosure sale (such Assessment shall be collectible from all Members of the Association, including the purchaser at the foreclosure sale, his successors and assigns), and all other expenses declared to be Common Expenses by the Members; and
- viii. Utilities used in connection with the Common Areas.

(k) "Declarant" shall mean and refer to Youngquist Homes, Inc., a North Carolina corporation, and any successor to or assignee of the rights, powers, and authorities of Youngquist Homes, Inc. as Declarant, hereunder, whether in or whole or in part.

(l) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Tryon Villas and all amendments thereto filed for record in the Office of the Register of Deeds of Wake County, North Carolina, as permitted hereunder.

(m) "Institutional Lender" shall mean any bank, savings and loan association, savings bank, credit union, insurance company, the U.S. Department of Veterans Affairs, the Federal Housing Administration, the Federal National Mortgage Association, and other reputable mortgage lenders, guarantors and insurers of first mortgages.

(n) "Limited Common Area" shall mean those portions of the Common Areas that serve only a single Lot or a limited number of Lots, and which may include, but specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, and such other similar areas as may be designated by a subdivision map of the Property or by the Association.

(o) "Lot" shall mean and refer to any numbered or lettered plot of land, as shown upon any recorded subdivision map of the Property, as such maps may from time to time be amended, which is zoned and intended for residential use and on which a Townhome will be constructed. The term "Lot" specifically excludes any Common Areas.

(p) "Lot in Use" shall mean and refer to any Lot on which a Townhome has been fully constructed and for which a certificate of occupancy has been issued by the Town of Cary. A Lot shall be a Lot in Use as of the first day of the month next following the day on which the certificate of occupancy has been issued for the Lot by the Town of Cary.

(q) "Member" shall mean and refer to every Owner of a Lot, including Declarant so long as it owns any Lot. No Owner shall have more than one membership per Lot.

(r) "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple or undivided fee simple interest in a Lot, as shown by the public records of Wake County, North Carolina, including contract sellers, but excluding Persons having such interest merely as security for the performance of an obligation.

(s) "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, limited liability company or other legal entity.

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(t) "Plat" shall mean that subdivision plat, entitled "Final Plat Tryon Villas" duly recorded on February 8, 2007, in Book of Maps 2007, at Pages 343 and 344, Wake County, North Carolina, Registry, and rerecorded on February 16, 2007, in Book of Maps 2007, at Pages 420 and 421, Wake County, North Carolina, Registry.

(u) "Property" shall mean and refer to that certain real property more particularly described on Exhibit A, and any additional real property made subject to this Declaration pursuant to Article XII, hereof, together with all improvements which may at any time be located thereon.

(v) "Townhome" shall mean and refer to a residential dwelling unit constructed upon a Lot, and constituting a part of a Building, including any garage or storage building, whether attached to the Building or unattached.

ARTICLE II MEMBERSHIP AND PURPOSE OF ASSOCIATION

Every person or entity who is record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessments by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership per Lot. Membership in the Association is mandatory for each original purchaser and each successive Owner of a Lot. Membership in the Association is appurtenant to, and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. The Board may make reasonable rules relating to the proof of ownership of a Lot. Immediately and automatically upon any person ceasing to be a Lot Owner, the membership of such Person in the Association shall also immediately and automatically terminate. Provided, however, such termination shall not, to any extent, extinguish, relieve or reduce any accrued liabilities or obligations of the former Member to the Association, or impair any rights, remedies or recourse which the Association or any other Member has with respect to the former Member.

The Association is and shall be responsible for the ownership, management and operation of the Common Areas and Limited Common Areas, the enforcement of the covenants and restrictions set forth in this Declaration, the collection of all assessments provided for in Article VI of this Declaration, and the performance of such other duties and the provision of such services as the Board of Directors shall deem to be in the best interests of the Members. The Association shall have all the power and authority provided in the Association by the provisions of Section 47F-3-102 of the North Carolina Planned Community Act.

ARTICLE III VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership (which shall be non-cumulative) as follows:

Class A. Class A Members shall be all those Owners as defined in Article II with the exception of the Declarant; the Declarant shall be a Class A Member following cessation of Class B membership. The Class A Member shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot. Fractional voting shall not be allowed.

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Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot in which he holds the interest required for membership by Article II, including Lots later added pursuant to annexation of additional property as set forth in this Declaration, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; but provided that the Class B membership shall be reinstated if thereafter and before the time stated in Subparagraph (b) below, such additional lands are annexed to the Property without the consent of Class A Members on account of development of such additional lands by the Declarant, or
- (b) Ten years from the date of conveyance of the first Lot by Declarant, or earlier at the election of Declarant.

Section 2. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Bylaws of the Association and according to the provisions of Article IV, Section 1 (c) of this Declaration.

ARTICLE IV PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a perpetual right and easement of use and enjoyment in and to the Common Areas and a right and easement of access, ingress and egress on, over and through the Common Areas, including the drives, walkways and parking areas of the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- (a) The right of the Association to limit the number of guests of Members;
- (b) Subject to the ordinances of the Town of Cary, the right of the Association to charge reasonable admission and other fees for the use of any of the Amenities;
- (c) The right of the Association to suspend the voting rights and right to use of the Amenities by an Owner and his family, tenants and guests for any period during which an Assessment against his Lot remains unpaid, and for a period not to exceed 60 days for any infraction of its published rules and regulations; however, suspension shall not restrict the right to use private streets, parking spaces, drainage rights and/or use of sidewalks as allotted in this Declaration;
- (d) The right of the Association, in accordance with its Articles and Bylaws, and with the consent of two-thirds (2/3) of the Members of each class of membership, to borrow money for the purpose of improving the Common Areas, Amenities and facilities and in aid thereof to mortgage the Common Areas and the rights of such mortgagee in said Common Areas shall be subordinate to the rights of the Owners hereunder;
- (e) The Association shall be empowered and have the right to dedicate, sell, lease or transfer Common Areas, or any interest therein, to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed upon by the Members. Notwithstanding the foregoing, the Association shall have a right to participate in an equal

exchange of open space as permitted by local government ordinances. No such dedication, sale or transfer shall be effective unless it has been approved by two-thirds (2/3) of each class of Members after having received written notice of proposed action not less than thirty (30) days nor more than sixty (60) days in advance and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify that two-thirds (2/3) of each class of Members have approved the dedication, sale, lease, or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors or assigns; provided, however, conveyances for general utility purposes as specified herein may be made by the Association without consent of the Members;

- (f) The right of the individual Members to the use of parking spaces as provided in this Article;
- (g) The right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of Common Areas, Amenities and improvements thereon, which rules and regulations may further restrict the use of the Common Areas and Amenities and to create Limited Common Areas; and
- (h) The right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the initial Property and all lands included in subsequent phases.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of use and enjoyment to the Common Area, Amenities and facilities to the members of his family, tenants, contract purchasers, guests or invitees who reside on such Owner's Lot.

Section 3. Title to the Common Areas. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area located within the Property to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except encumbrances of utility, service, access, storm drainage and other similar service or utility easements to government authorities. Similarly, the Declarant or other person annexing land will convey to the Association Common Areas that are a portion of any additional property as the same is annexed in the future at the time of conveyance of the first Lot located on the additional property.

Section 4. Parking Rights. The Association shall regulate and may prohibit the parking of boats, trailers, campers, motorhomes, trucks, tractors or commercial vehicles on the Property or on the right of way of any streets adjoining the Property by any Lot Owner, its family members, tenants, guests or contract purchasers, except as may be permitted by Rules and Regulations to be parked in a closed garage. The repair or extraordinary maintenance for automobiles or other vehicles on Common Areas is prohibited.

Section 5. TV Antennas, Cablevision, Music. The Association may provide one or more central television or radio antennas for the convenience of the Members and may supply cablevision and/or piped-in music, and the cost of these may be included in Annual or Special Assessments. The Association may regulate or prohibit the erection of television, radio or other antennas, dishes or disks on individual Lots, as the case may be, consistent with this Declaration and applicable law.

ARTICLE V EASEMENTS

Section 1. Walks, Drives, Parking Areas and Utilities. All of the Property, including Lots and Common Area, shall be subject to such easements for private streets, driveways, walkways, parking areas,

water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, cablevision and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property, without approval of the membership as provided in the Articles of Incorporation and this Declaration.

Section 2. Adjoining Areas. Each Owner is hereby declared to have an easement, and the same is hereby granted by the Declarant, over all adjoining Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, or additional settlement or shifting of the Building or any other cause. There shall be valid easements for the maintenance of said encroachment, settlement or shifting provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of said encroachments for so long as they shall exist.

Section 3. Unintentional Encroachments. In the event that any Building on a Lot shall encroach upon any Common Areas or upon any other lot for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance and maintenance of such encroachment upon the Common Areas or other Lot for so long as such encroachment shall naturally exist; and, in the event any portion of the Common Areas shall encroach upon any Lot, then an easement shall exist for the continuance and maintenance of such encroachment of the Common Areas onto any such Lot for so long as such encroachment shall naturally exist.

Section 4. Overhanging Roofs and Eaves. Each Lot and Owner within the Property is hereby declared to have an easement, and the same is hereby granted by the Declarant, over each adjoining Lot and/or the Common Areas, as the case may be, for overhanging roofs, eaves, gutters, and downspouts and the maintenance thereof.

Section 5. Easement for Benefit of Governmental Authorities. An easement is hereby established over all Common Areas and private streets, if any, for the benefit of the Town of Cary, or other applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities, and for governmental agencies acting for other purposes consistent with the public safety and welfare. In no case shall the Town of Cary, or other responsible agency, be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to an inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owner or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the Town of Cary's or other agency's responsibilities.

Section 6. Easement for Benefit of Utility Company. The Declarant reserves the right to subject the Property, including the Common Areas, to a contract with Progress Energy Corporation for the installation of underground electric or communication cables and facilities and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy Corporation by the Owner of each Lot.

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Section 7. Priority of Easements. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Lots, and the Common Areas, as the case may be, superior to all other encumbrances that may hereafter be applied against or in favor of the Property or any portion thereof.

Section 8. Declarant Easement. If any encroachment shall occur subsequent to subjecting the Property to this Declaration as a result of settling or shifting of any Building or as a result of any permissible repair, construction, reconstruction or alteration, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 9. Structural Support. Every portion of a Townhome that contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the Building.

Section 10. Emergencies. Every Lot and Townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome and that endangers any Building or portion of the Common Area, or any adjoining Lot.

Section 11. Maintenance Easement. The Association reserves an easement over and across every Lot for the purpose of performing the maintenance requirements of the Association as prescribed herein.

Section 12. Easement and Right of Entry for Repair, Maintenance and Reconstruction. Each Lot Owner shall have a perpetual access easement over the adjoining Lot and Common Areas to the extent reasonably necessary to perform repair, maintenance or reconstruction of his Townhome. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same conditions as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 13. Temporary Construction Easement. Subject to such reasonable rules and regulations as may be established by the Association for the protection of the Common Area, a temporary easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and each Owner to be used for the conduct of construction activities on a Lot or the Common Area, including the storage of construction materials. This easement shall be used only as and when necessary to facilitate the construction by Declarant or an Owner, of improvements on a Lot or the Common Area. In using and taking the benefits of this easement, Declarant or its agent, and Owners shall use their best efforts to minimize any land, improvements, or vegetation disturbance activities within the Common Area, and shall restore such land, improvements, and vegetation therein to as near the same condition as prevailed prior to such disturbance as is reasonably practicable. Should Declarant or its agent or an Owner fail to restore the disturbed Common Area as required herein, the Association may restore the land and vegetation to the required condition and Declarant, its agent or the responsible Owner, whichever is applicable, shall indemnify the Association for the reasonable expenses incurred in performing such restoration. Where any Owner seeks to take advantage of the easement herein conveyed, such Owner's rights to use shall be restricted to that Common Area that shall be reasonably servient and proximate to his Lot.

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Section 14. Easement to Amenities. Every Lot Owner, their guests and assigns shall have a perpetual access easement over and across the driveways and walkways in order for Owners, their guests and assigns to utilize any Amenities.

ARTICLE VI
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants and each Owner of any Lot in Use by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: (i) Annual Assessments or, charges; (ii) Special Assessments for extraordinary maintenance and capital improvements; and (iii) Special Assessments for purchase and reconstruction of Townhomes as hereinafter provided.

The Annual and Special Assessments, together with interest, costs and fines and reasonable attorneys' fees incurred by the Association in connection therewith, shall be a charge and continuing lien upon the Lot in Use against which such Assessment is made, and also the personal obligation of the Owner of the Lot at the time when such Assessment came due. The personal obligation of an Owner for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them. All Assessments shall be shared equally by the Owners of each Lot in Use, except as otherwise provided in this Section.

Section 2. Purpose of Assessment. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents and the Property; enforcing this Declaration and the rules of the Association; improving and maintaining the Property and the exterior of Townhomes and Lots as set forth in Article IX, paying all Common Expenses; and such other purposes as the Association may from time to time determine.

Section 3. Bases and Maximum of Annual Assessments. Through December 31, 2006, the maximum annual Assessment shall not be in excess of Two Thousand Seven Hundred Dollars (\$2,700.00) per Lot in Use, the exact amount of which shall be determined by the Board of Directors.

(a) From and after December 31, 2008, the maximum annual Assessment may be increased effective January 1 of each year by the Board of Directors, without a vote of the membership, provided the increase is not more than ten percent (10%) above the maximum Assessment for the previous year.

(b) From and after December 31, 2008, the maximum annual Assessments may be increased by a percentage greater than ten percent (10%) by a vote of two-thirds (2/3) of Members who are voting in person or by proxy at a duly called special meeting for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting, although the amount of the proposed Assessment need not be stated. The presence at this meeting of Members entitled to cast, or proxies entitled to cast thirty percent (30%) of the votes of the Members shall constitute a quorum present or represented.

(c) The Association may at its option establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas including private streets, and such other areas and structures which the Association may be obligated to maintain. The reserve fund shall be funded out of annual Assessments for Common Expenses as provided for in this Article. In establishing the annual Assessment for any Assessment year, the Board of Directors may consider (i) all current costs and expenses of the Association, including any accrued debts; and (ii) reserves for future needs.

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(d) The Board of Directors may decrease the annual Assessment from time to time if in its opinion such decrease is prudent.

Section 4. Special Assessments for Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy in any Assessment year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or any other extraordinary expense of the Association, provided that any such Assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting, although the amount of the proposed Assessment need not be stated. The presence at this meeting of Members entitled to cast, or proxies entitled to cast thirty percent (30%) of the votes of each class of Members shall constitute a quorum present or represented.

Section 5. Special Assessments for the Purchase and/or Reconstruction of Townhomes. In the event that any Townhome located on the Property is substantially destroyed by fire or other hazard, the Owner shall give written notice to the Association, within sixty (60) days following destruction, of whether he intends to repair or reconstruct the Townhome; and if the Owner fails to give such notice to the Association, it shall be conclusively considered, for purposes of this Section, as notice that he does not intend to repair or reconstruct the Townhome. For purposes of this Section, "substantially destroyed" shall mean that the costs of replacement or repair equal to at least fifty percent (50%) of the appraised value of the improvements on the Lot before they were damaged. If the Owner elects not to repair or reconstruct the Townhome, the Association shall have the first right and option to purchase such unit in the manner hereinafter provided. The purchase option shall be effective for a period of one hundred twenty (120) days following notice of the Owner's election not to repair or reconstruct.

(a) Exercise of Option. The Board of Directors shall appoint a committee, or shall designate an existing committee of the Association, to determine whether failure to reconstruct the damaged Townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining Property. The committee may employ such persons, including, but not limited to, real estate appraisers, real estate agents, architects, and engineers, as are reasonably necessary to make its determination, and shall report its conclusions, with supporting data, in writing, to the Board within fifteen (15) days. The report shall set forth such matters as the Board and committee deem pertinent and shall contain estimates of the pecuniary injury and diminution in value along with an estimate of the cost of purchase and reconstruction of the Townhome. In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

If the Board determines that it would be advantageous to the Association and/or to the remaining Property to purchase and reconstruct the Townhome, it shall call a special meeting by giving written notice thereof, setting forth the purpose of the meeting, to all Members within fourteen (14) days following submission of the committee report. The special meeting of Members shall be held not less than seven (7) days or more than fifteen (15) days following notice to Members. Upon an affirmative vote of at least seventy-five percent (75%) of the membership present and voting, the Board will be authorized to purchase and reconstruct the Townhome and to assess all Lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of the Townhome. The Board of Directors may require that the Assessment be paid in a lump sum, in installments during an Assessment year, or over a period of two (2) or

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more Assessment years, as the Board, in its discretion, shall determine to be appropriate. Such an Assessment shall be in addition to, and not in lieu of, any other annual or Special Assessment provided for in this Declaration and levied by the Association.

(b) **Determination of Value.** The Owner of the Townhome shall convey marketable title thereto to the Association upon payment to the Owner by the Association of the fair market value of the Lot and Townhome in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the Owner. If they cannot otherwise agree on a fair market value or method of determining fair market value, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The fair market value as determined by any two of these appraisers shall be final and binding on all parties. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (1/2) of the fee of the third appraiser. If the Board of Directors and the Owner agree upon a single appraiser, each shall pay one-half (1/2) the cost of the appraisal.

(c) **Application of Insurance Proceeds.** The Owner of the Townhome, prior to conveyance to the Association, shall apply, or cause to be applied, so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the Townhome as shall be necessary to pay all liens, mortgages, deeds of trust, taxes and encumbrances upon the Lot so that the fee simple marketable title thereto may be conveyed free and clear of all liens and encumbrances, and obligations upon the Lot. The purchase price shall be reduced by an amount adequate to pay any such deficiency.

(d) **Failure to Exercise Option.** If the Association does not exercise the purchase option herein provided for, the Owner may retain the Lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a site of an attached, single-family Townhome unit. The reconstructed or repaired Townhome unit, unless a change shall be approved by the Board, shall be constructed in conformity with plans submitted to and approved by the Board prior to reconstruction.

(e) **Retention by Owner.** If a Townhome is not habitable by reason of damage, and the Owner gives notice of his election to repair or reconstruct the Townhome, the obligation of the owner to pay annual Assessment installments shall not be suspended. In the event a Townhome is damaged or destroyed, and the Owner does not begin repair or reconstruction within ninety (90) days following the damage or destruction, he shall remove or cause to be removed, at his expense, all debris from the Lot, so that it shall be placed in a neat, clean, and safe condition and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Townhome and its Lot until paid by the Owner, unless the Lot is thereafter acquired by the Association.

(f) **Reconstruction by the Association.** Upon acquisition of title to the Townhome, the Association is authorized to arrange such financing and execute such notes, mortgages, deeds of trust, and other instruments, to enter into such contracts, and to do and perform such other matters and things as are necessary to accomplish the reconstruction of the Townhome; provided, however, that only that Townhome which is to be reconstructed shall stand as security for any liens, mortgages, or obligations arising out of the purchase and/or reconstruction of the Townhome, and no other portion of the Property, including the Common Area and facilities, shall be pledged, hypothecated, mortgaged, deeded in trust, or otherwise given as security for any obligations arising out of said purchase and/or reconstruction, and no Member shall be required to become personally obligated therefor.

The Association shall hold title to the Lot and improvements for the benefit of all Members. The Board of Directors may lease or sell the Lot and improvements upon such terms and conditions as it, in its sole discretion, deems most advantageous to the Members. The rental income shall be applied in the following order of priority: (i) to the payment of all rental costs and fees, if any, and all taxes, Assessments, liens, encumbrances and obligations on or secured by the Lot; (ii) to the maintenance, upkeep,

and repair of the Townhome; (iii) to payment or repayment to the Members, pro rata, of the Special Assessment, if any, for purchase and reconstruction of the Townhome; and (iv) to the Association's general operating fund for Common Expenses of the Association. In the event the Lot is sold, the purchase price shall be applied in the following order of priority: (i) to the payment of all costs and fees from the sale, and all taxes, Assessments, liens, encumbrances, and obligations on or secured by the Lot; (ii) to payment or repayment to the Members, pro rata, of the Special Assessment, if any, for purchase and reconstruction of the Townhome; and (iii) to the Association's general operating fund for Common Expenses of the Association. Any payment or repayment to Members of the Special Assessment may be in cash or may be applied to the annual Assessment due or to become due.

(g) Application of Declaration and Bylaws. Any Townhome (including the Lot on which it was constructed) which is destroyed and not subsequently restored or reconstructed and any Townhome which has been destroyed in whole or in part, by fire or other casualty, and is subsequently restored or reconstructed, shall continue to be subject to the provisions of this Declaration and to the Bylaws of the Association.

Section 6. Uniform Rate of Assessment. Annual and Special Assessments must be fixed at a uniform rate for all Lots in Use on a per Lot in Use basis, with the exception of Lots in Use owned by the Declarant as provided hereinabove, and may be collected monthly.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual Assessments provided for herein shall commence for all Lots on the first day of the month next following the day on which the certificate of occupancy has been issued for the Lot by the City, which coincides with the Lot becoming a Lot in Use. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual Assessment against each Lot at least 30 days in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand at any time, furnish a certification in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been made and shall be binding upon the Association as of the date of its issuance.

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year (or, if the assessment has not been established at the time an Owner purchases such Owner's Lot, at least thirty (30) days prior to the due date of the first installment in the case of the initial budget). Notwithstanding the foregoing, however, in the event the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any Assessments which are not paid when due shall be delinquent. If the Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may, as by law provided, file a lien against the Lot for all sums due, and foreclose on said lien; and also may bring an action at law against the Owner personally obligated to pay the same either for a money judgment without foreclosing or waiving the lien or for a deficiency money judgment following foreclosure, and interest, costs, and reasonable attorney's fees of any such action shall

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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 abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein on any Lot shall be subordinate to the lien of any first mortgage on such Lot. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot which is subject to any such mortgage, pursuant to foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 10. Fines. The Board may impose fines against any Lot for violation of this Declaration, the Articles or Bylaws. Fines shall be paid not later than thirty (30) days after notice of the levying of the fine. Fines shall be levied by the Association only after following the statutory procedure set forth in N.C. Gen. Stat. § 47F-3-107.1. These fines shall not be construed to be exclusive remedies to which the Association may otherwise be legally entitled; however, any fine paid by an Owner shall be deducted from or offset against any damages that the Association may be otherwise entitled to recover from said Owner.

Section 11. Exempt Property. The following properties subject to this Declaration shall be exempt from the Assessments created herein: (a) all properties dedicated to and accepted by a local public authority (b) the Common Area. However, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

ARTICLE VII PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the Townhomes upon the Property and placed on the dividing lines between the Lots and all reconstruction or extensions of such walls, and shall be governed by and subject to the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions, to the extent not inconsistent with 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 has used 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, subject 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 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 or Lots and Common Area to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

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Section 5. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who, by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole 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 property, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article VII, request of the adjoining Owner a certificate that no contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request without charge; provided, however, that where the adjoining Lot Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, such dispute shall be settled by arbitration pursuant to the laws of the State of North Carolina, relating to arbitration, as may then exist.

ARTICLE VIII ARCHITECTURAL AND APPEARANCE CONTROL AND INSPECTION

The Board of Directors shall appoint an Architectural Control Committee consisting of at least three (3) Owners, who may also be Members of the Board of Directors.

No site preparation (including, but not limited to, grading, elevation work, sloping or tree work) or construction, erection or installation of any exterior improvements, including, but not limited to, a Townhome, outbuilding, sign, fence, screen (whether by vegetation or structures) outside lighting, walk, storm door, mail box, solar panel, window treatment, decorative lawn ornaments, number, name, sign or other structure or planting, shall be constructed, erected, installed or planted upon any Lot or the exterior of the Townhome or any structure thereon until the completed plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme and location with respect to topography and finished ground elevation, and other specifics thereof, shall have been submitted to, and approved in writing, by a majority of the Architectural Control Committee.

The Architectural Control Committee may refuse to approve any such exterior alterations or additions to a Lot unless such alterations or additions are in harmony with existing structures and improvements within Tryon Villas, as to style, shape, color and size. Moreover, the Architectural Control Committee shall not approve any plantings or the construction of fences, walls, screens, and other such structures if, in the opinion of a majority of the Architectural Control Committee, such construction or planting constitutes an unreasonable obstruction of the view of another Owner or interferes with the exterior maintenance of the Townhome and/or any adjoining Townhome. In no event shall the Architectural Control Committee be required to approve a proposed alteration or addition even though it meets the criteria set forth herein.

In the event the Architectural Control Committee shall fail to specifically approve or disapprove the plans and specifications submitted in final, accurate and complete form within thirty (30) days after its receipt thereof, such completed plans and specifications shall be deemed approved.

There is specifically reserved unto the Architectural Control Committee the right of entry and inspection upon any Lot for the purpose of determining whether the work being undertaken conforms to the approved plans and specifications, is in a good and workmanlike manner, and is of good quality materials.

The Association is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be allowed to recover all court costs, expenses and reasonable attorney's fees in connection therewith. The Association, Declarant, Architectural Control Committee or any officer, employee or member thereof shall not be liable for damages to any persons submitting plans and specifications for approval by reason of mistake in judgment negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans and specifications. Every person who submits plans and specifications for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the Association, Declarant, or Architectural Control Committee to recover any such damages.

Any reference to "Association" in this Article shall mean the Board or the Architectural Committee, if vested with approval by the Board.

ARTICLE IX EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance by Association. In addition to maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Lot and Townhome which is subject to Assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, awnings, exterior window and door sills, frames and hardware, chimneys, any other exterior Building surfaces, trees, plantings, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefore), and other exterior improvements. Such exterior maintenance shall not include gas grill repair or repair and replacement of glass surfaces, windows, screens for windows and doors, underground waterproofing, rear patios and steps, patio water features, or HVAC condensers or other mechanical systems, including, but not limited to, water and sewer lines which serve only one unit, or the repair or reconstruction of any improvements on any Lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect.

The Owner of any Lot may, at his election and at his own expense, plant and maintain trees, shrubs, flowers and grass in his rear yard, provided that such plantings and maintenance by the Owner do not hinder the Association in performing its maintenance of the exterior of the Townhome, the remaining yard spaces or the Common Area. No such maintenance by a Lot Owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one (1) year and the Association shall perform maintenance during the revocation period at the expense of the Owner. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

Section 2. Damage by Owner. In the event that the need for maintenance or repair or replacement is caused through the willful or negligent act of the Owner, his family, guests, invitees, tenants, contract purchasers or contractors; or is caused by defects in the original construction on the Lot, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles or smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies, or for the purpose of correcting, repairing or alleviating any emergency condition provided for in Article V, Section 10 hereof (but only if such would normally be an expense of the Lot

Owner), then in any such event the Association shall have the option to repair the property after seven (7) days written notice to the Owner. Funds to pay for the full cost of such maintenance or repairs or replacement shall be levied by Special Assessment. The full amount of the Special Assessment shall be the Owner's sole responsibility; if the Owner does not repay to the Association the full amount of this Special Assessment, it shall become a lien and continuing charge on the Owner's Townhome in accordance with Article VI of this Declaration.

Section 3. Inspection Rights Reserved. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association, its agents, employees or contractors, the right to unobstructed access over and upon each Lot at all reasonable times for inspection and to perform maintenance as provided in this Article.

ARTICLE X LOT USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors and the Architectural Control Committee shall, from time to time, formulate, publish, amend and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot, the Amenities, and the Common Areas. Such rules and regulations may provide for imposition of fines or penalties for violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration. Such rules and regulations, along with all policy resolutions and actions taken by the Board of Directors shall be recorded in the Book of Rules, Regulations, and Resolutions which shall be maintained in a place convenient to the Owners and available to them to inspect during normal business hours.

Section 2. Use of Property. No portion of the Property, including, but not limited to, each Building, Lot, Townhome and all Common Areas (except for a temporary office of the Declarant, subject to Code requirements, and/or model used by Declarant or an Owner's home occupation as defined by the City's Code of Ordinances) shall be used except for single-family residential purposes, and for purposes incidental or accessory thereto. For purposes of this Article, "single family" shall mean and refer to a group related by blood, marriage or adoption living together, or a group of not more than three (3) unrelated persons living together.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances.

Section 5. Insurance. Nothing shall be kept, and no activity shall be conducted on the Property, within a Townhome or on a Lot or the Common Area that will increase the rate of insurance, applicable for residential use, for the Property, a Townhome, Lot or the Common Area or the contents thereof. No Owner will do or keep anything, or cause or allow anything to be done or kept, in his Townhome or on the Common Areas that will result in the cancellation of any such insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation of any governmental unit, the Association or the Architectural Control Committee. No waste of the Common Areas, Amenities and facilities shall be permitted or committed.

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Section 6. Nuisances. No immoral, improper or unlawful use shall be made of the Subdivision or any part thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof shall be observed. No Person shall engage in any use, practice or activity within the Subdivision which is or may be offensive or a nuisance or annoyance to the Owners or their tenants or which unreasonably interferes with the peaceful possession and proper use of the Subdivision by any Owner and/or tenants. No exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on a Lot. No Owner or other Person shall allow rubbish, refuse or garbage to accumulate on his Lot, nor permit a fire hazard to exist. No Owners shall permit any permanent commercial signs to be placed on the property

Section 7. Structural Integrity. Nothing shall be done in or to any Lot or Townhome or the Common Area that will impair the structural integrity of any Building, Townhome or portion of the Common Area, or which would impair or alter the exterior of any Building or Townhome, or portion thereof, except in the manner provided in this Declaration.

Section 8. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any part of the Property, except that the Declarant or its agent may use any unsold Townhome for sale or display purposes.

Section 9. Signs. No sign of any kind shall be displayed to the public view on any Lot except for signs that are allowed by law and are approved by Declarant, and which are for one or more of the following purposes: (i) advertising the Lot for sale or rent, (ii) advertising the building contractor constructing improvements on the Lot during the initial construction and sales period, (iii) identifying the rental or sales office and/or model home of a building contractor who owns the Lot, (iv) identifying the subdivision or phase name and/or identifying the Lot number of a Lot; and (v) any other purpose approved by the Declarant (or by the Architectural Control Committee after the Class B membership terminates); provided however, the foregoing limitations shall not act to restrict or prohibit Declarant or the Association or any applicable governmental entity from erecting, maintaining, repairing and replacing (and Declarant hereby reserves for itself, the Association and such governmental entities the right to erect, maintain, repair and replace) on a Lot or on the Common Area, landscaped rights-of-way, roadway medians and in any easements reserved or granted for such purposes, signs and billboards advertising the Properties or portions of the Properties, or signs identifying various subdivisions or phases of the project, or regulatory, street and directional signs. Notwithstanding the foregoing, all signs erected and maintained on any Lot must conform to all applicable governmental requirements.

Section 10. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except at the direction or with the express consent of the Association.

Section 11. Common Area Use. The Common Areas shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Townhomes, subject to any rules or regulations that may be adopted by the Association pursuant to the Bylaws.

Section 12. Screens. No Owner shall utilize window screens on the front or sides of any Townhome except with the express consent of the Association.

Section 13. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. No burning of any trash and no unreasonable or unsightly accumulation or storage of litter or trash of any kind shall be permitted on any Lot, within any Townhome or upon the Common Area. Waste of any nature shall not be kept on any part of the Property except on a temporary basis in sanitary containers.

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Section 14. Boats and Campers. Neither a motorboat, houseboat or other water-borne vehicle not any "camper" vehicle may be maintained, stored or kept on any portion of the Property, except on a temporary basis not to exceed fifteen (15) days.

Section 15. Garbage Disposal. All garbage shall be stored within the residence of each Owner or in the storage facilities, if any, provided for said residents at the time same is constructed. No Owner may change or supplement the garbage disposal facilities provided for such Owner's residence on the date of completion of the construction thereof, unless the Architectural Control Committee of the Association shall first approve in writing the change or addition to the method of storage. It is provided, however, that if the public health authorities, or other public agencies, shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners with obligatory public rules and regulations.

Section 16. Clothes Lines and Clothes Drying. No Owner shall locate upon a Lot an outside clothes line. Furthermore, no drying or airing of any clothing or bedding shall be permitted outdoors on any Lot or in any other enclosed area (including patios) within the Property.

Section 17. Yard Sales. No yard sale shall be confuted upon the Property at any time whatsoever.

Section 18. Attachments. No permanent attachments of any kind or character whatsoever (including, but not limited to, television and radio antennas and satellite dishes) shall be made to the roof or exterior walls of any Townhome on a Lot, unless such attachments shall have been first submitted to and approved by the Architectural Control Committee.

Section 19. Disabled Vehicles. No vehicle of any type that is either abandoned or remains inoperative for more than two (2) weeks shall be stored or kept on any Lot in such manner as to be seen from any other Lot or any street within the Property, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot. Any disabled, unlicensed or inoperable vehicle must be stored in a closed garage.

Section 20. Leases. No Owner may lease his Townhome for less than a three (3) month term or for purposes of occupancy by other than a single family as defined above. No portion of any Townhome (other than the entire Townhome) may be leased and no transient tenants may be accommodated. Each lease shall be in writing on forms approved by the Association. Any Owner who leases his Townhome shall, promptly following the execution of any such lease, forward a conformed copy thereof to the Association. Each such lease shall contain a provision to the effect that the rights of the tenant to use and occupy the Townhome shall be subject and subordinate in all respects to the provisions of this Declaration, to the Bylaws, and to such rules and regulations relating to the use of the Common Area as the Board may from time to time promulgate. Every lease shall contain a provision that failure of the tenant to comply with the terms of this Declaration and the Bylaws and rules and regulations shall constitute an incident of default under the lease. Failure to contain this language in the lease shall not waive the terms of this provision. The provisions of this subsection shall not apply to any Institutional Lender that comes into possession of any Townhome as a result of a foreclosure sale or as a result of any proceeding in lieu of foreclosure, or to any Townhome owned by Declarant.

Section 21. Antennas and Satellite Dishes. No satellite dish, television antenna or other communications equipment may be located on any Lot other than one (1) satellite dish equal to or less than one (1) meter in diameter and such dish must be located in the rear of the Townhome and appropriately screened so as not to be visible from the street or a neighboring Lot. No satellite dish or antenna shall be affixed to the roof or exterior siding of any of the Townhome buildings unless such attachments shall have been first submitted to and approved by the Architectural Control Committee.

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Section 22. Governmental Regulations. All governmental laws, rules, regulations and ordinances applicable to a Lot shall be observed, at all times, by the Owner. In the event of any conflict between any provision of such governmental laws, rules, regulations or ordinances, and any provision of this Declaration, the more restrictive shall prevail.

ARTICLE XI
RIGHTS RESERVED TO INSTITUTIONAL LENDERS

So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- (a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, prepared by an independent Certified Public Accountant designated by the Association, including a detailed statement of annual carrying charges or income collected and operating expenses, such Financial Statement and Report to be furnished within 120 days of the end of each calendar year;
- (b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration or the Articles of Incorporation or Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings;
- (c) To be given notice of default in the payment of Assessments by any Owner of a Lot of sixty (60) days or more encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it may designate in writing to the Association;
- (d) To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours;
- (e) To be given notice by the Association of any substantial damage to any part of the Common Area;
- (f) To be given notice by the Association if any portion of the Common Area is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.
- (g) To be given notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (h) Any proposal requiring consent of the mortgage holders.

Whenever any Institutional Lender desires any of the benefits of the provisions of this section, such Institutional Lender shall serve written notice of same upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by it, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which

may be held by it or them, and which notice shall designate the notice requested and where and to whose attention it is to be sent.

ARTICLE XII
ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members. Except as provided in Section 2 of this Article, and subject to the approval of the Town of Cary, additional properties may be added and annexed to the Property only if two-thirds (2/3) of all the votes entitled to be cast by Class A Members and two-thirds (2/3) of all the votes entitled to be cast by Class B Members are cast in favor of annexation, subject to the approval of the Town of Cary Attorney. A meeting shall be duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days in advance of the meeting. The annexation will be accomplished by recording with the Wake County Register of Deeds a Declaration of Annexation, duly annexed by Members comprising no less than two-thirds (2/3) of Members entitled to cast votes in favor of annexation, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances.

For the purpose of such meeting, the presence of Members or authorizing proxies entitled to cast two-thirds (2/3) of the votes of Members shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirements set forth herein and in the Articles and in the Bylaws, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation, and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting at which he is entitled to vote either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

Section 2. Annexation by Declarant. If within Ten (10) years from the date of conveyance by the Declarant of the first Lot, Declarant develops additional land located either contiguous to or across a public or private street from the property described in Exhibit A attached hereto, Declarant may, subject to the approval of the Town of Cary Attorney, annex such land to the Property without the consent of Members. The annexation will be accomplished by recording with the Wake County Register of Deeds a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances.

Section 3. Conveyance of Common Area Properties. Subsequent to recordation of the Declaration of Annexation, but prior to conveyance of the first Lot, Building or Townhome within the newly annexed property, whichever shall first occur, Declarant or any other record Owner of newly annexed land shall deliver to the Association, in accordance with Article IV, Section 3 of this Declaration, one or more deeds conveying any property that will be designated as Common Area within the annexed property as such designated property is platted, and conveying same in fee simple without any encumbrances except drainage, greenway, and utility easements.

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Section 4. Common Area Reserved. Open space common areas and private streets shall be preserved for the perpetual benefit of the owners of the residential sites within the development, and it shall be restricted against private or public ownership for any other purpose. No Common Area shall be subdivided or conveyed except as provided in this Declaration.

ARTICLE XIII INSURANCE

Section 1. Common Area Policies. All insurance policies upon the Common Area shall be for the benefit of the Association, the Owners and their mortgagees, as their interests may appear.

Section 2. Association Coverage. The Board shall procure and maintain public liability and property damage insurance insuring each Board member, the officers and the Association against any liability to the public or to Owners (and their invitees, tenants, agents and employees) arising out of or incident to the ownership and/or the use of the Common Areas, or such areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the right of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board, but in no event, shall be less than One Million Dollars (\$1,000,000.00) per occurrence with regard to the Association and each individual director and officer. The Board of Directors shall also obtain such other insurance coverage as it determines, from time to time, to be desirable and reasonable including, without limitation, fire and other hazards insurance, with extended coverage endorsement, equal to the maximum insurable replacement value on the Common Area, any Townhome or other building owned by the Association, as well as directors' and officers' liability coverage. Premiums upon insurance policies obtained by the Board of Directors shall be a Common Expense.

In the event the Association becomes the Owner of any Buildings or other improvements, or personal property located within the Common Areas or such other areas that the Association is responsible for, the Board shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the Board with the assistance of the insurance company providing such coverage, and in no event less than 80% of the replacement cost of the property insured, less excavation and foundations. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to Buildings and properties similar in construction, location and use.

There shall also be obtained such other insurance coverage as the Board shall determine from time to time to be desirable and necessary, including, but not limited to a directors and officers liability policy. Premiums upon insurance policies purchased by the Board shall be paid as a Common Expense of the Association.

Section 3. Fidelity Bonds. Where the Association has delegated some or all of its responsibility for the handling of funds to a management agent, fidelity bonds shall be required for such management agent's officers, employees and agents handling or otherwise responsible for funds belonging to or administered on behalf of the Association.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the management agent at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three (3) months' aggregate Assessments on all Lots and Lots in Use plus reserve funds.

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Section 4. Proceeds. The proceeds of all contracts of insurance purchased by the Association shall be payable to the Board of Directors as insurance trustee under this Declaration.

Section 5. Owners' Coverage. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the insurable value of his Townhome except that the amount shall not be required to exceed the replacement cost of the Townhome. An Owner shall exhibit to the Board, upon demand, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board of Directors, and the cost of such insurance shall be included in the annual Assessment of the Owner and shall constitute a lien against his Lot until paid. The maximum annual Assessment set forth in Article VI, Section 3 shall not bar the Association from including the cost of said insurance in the annual Assessment.

[Recommendation to Owners -If a Townhome is damaged by fire or other casualty, and if such damage results in damage to an adjacent attached unit, there may be prolonged disputes between the insurance carriers of the adjacent damaged units (which may, in turn, delay the settlement of the claims) unless the insurance protection on both units is provided by the same carrier. It is therefore recommended that the Owners of all Townhomes located within the same Building purchase their fire and casualty insurance from the same insurance carrier.]

ARTICLE XIV MERGER OR CONSOLIDATION

Upon a merger or consolidation of the Association with another organization, the Association's properties, rights and obligations may be transferred to another surviving or consolidated homeowner's association or, alternatively, the properties, rights, and obligations of another homeowner's association may, by operation of law, be added to the properties, rights and obligations of this Association as a surviving corporation pursuant to a merger, provided however, no such merger shall be effective until it is approved by the Town of Cary Attorney. The surviving or consolidated homeowner's association may administer the covenants and restrictions established by this Declaration, together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocations, changes or additions to the covenants and restrictions, as the same may be established in this Declaration or any subsequent amendment hereto, except as may be herein provided.

ARTICLE XV GENERAL PROVISIONS

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

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. General Amendments. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association and by the Owner of any Lot subject to this Declaration, his respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said

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covenants shall automatically renew for successive periods often (10) years. Except as otherwise provided in this Declaration, the covenants, conditions and restrictions of this Declaration may be amended during the first 20 year period by the affirmative vote of the Owners of not less than ninety percent (90%) of the Lots, and thereafter by the affirmative vote of the Owners of not less than seventy-five percent (75%) of the Lots; provided, however, that the Board of Directors may amend this Declaration, without the consent of the Owners, to correct any obvious clerical error or inconsistency in drafting, typing, or reproduction. Except as provided herein, this Declaration may not be revoked or amended without the express written consent of the Cary Town Attorney or his designee; the failure to obtain such consent renders any amendment now revocation void ab initio.

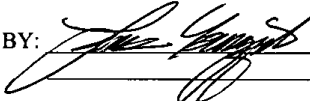
If any amendments to this Declaration are enacted by such affirmative vote, each such amendment shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors shall, within 30 days, attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the name and manner that deeds are executed, and shall cause the amendment to be registered in the Office of the Register of Deeds for Wake County. All amendments shall be effective from the date of recordation in the Wake County Registry. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT
TO
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
TRYON VILLAS

By authority of its Board of Directors, Tryon Villas Homeowners Association hereby certifies that the foregoing instrument has been duly approved by its Members, and is therefore, a valid amendment to the existing Covenants, Conditions, and Restrictions of Tryon Villas.

This the ____ day of _____, 200__.

TRYON VILLAS HOMEOWNERS
ASSOCIATION

BY:  _____, President

(Corporate Seal)

ATTEST:

Secretary

Section 4. Responsibility for Maintenance of Private Streets and Driveways. The maintenance responsibility of the private streets and driveways, if any, as shown on any recorded map of the Property shall rest with the Association. In no case shall any governmental authority having jurisdiction over the Property be responsible for failing to provide any emergency or regular fire, police or other public service to the Property and/or occupants when the failure is due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, or Owners.

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In no case shall the Town of Cary or State of North Carolina or any other governmental authority having jurisdiction over the Property be responsible for maintaining any private street. Such responsibility shall rest with the Association and Owners in that such private streets will not be necessarily constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Section 5. Amendments Permitted Without Membership Approval. The following amendments may be effected by the Declarant, or the Board, as the case may be, without consent of the Members:

- (a) Prior to the sale of the first Lot, this Declaration may be amended by the Declarant;
- (b) Declarant may amend this Declaration by annexation of additional lands as specified in Article XII, Section 2, herein;
- (c) The Declarant, so long as it shall retain control of the Association, shall have the right to amend this Declaration:
 - (i) If such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination that shall be in conflict therewith;
 - (ii) If such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Property or any Lots subject to these Protective Covenants;
 - (iii) If such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, but without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Property or any Lots subject to these Protective Covenants; or
 - (iv) If such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Property or any Lots subject to these Protective Covenants;

Provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Owner shall consent thereto in writing;

- (d) The Declarant, so long as it shall retain control of the Association, and thereafter the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Property, or any portion thereof, for tax-exempt status; or
- (e) The Declarant, so long as it shall retain control of the Association, and thereafter the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to correct any obvious clerical error or inconsistency in drafting, typing, or reproduction.

Section 6. Governmental Authority Amendments. No amendment that would change or delete any provision herein shall become effective until submitted to the Cary Town Attorney or his designee; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days

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after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

Section 7. FHA/VA/FNMA Approval. Notwithstanding any provision of this instrument to the contrary, if Declarant desires to qualify sections of this Property for Federal Housing Administration, Veterans Administration or Federal National Mortgage Association approval (but not otherwise) the following actions will require the prior approval of Federal Housing Administration, Veterans Administration or the Federal National Mortgage Association, to wit; dedication of Common Areas, amendment of this Declaration, mergers and consolidations, mortgaging of Common Area, annexation of additional lands and dissolution.

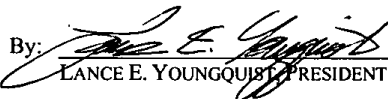
Section 8. Recordation. No amendment shall be effective until recorded in the Wake County Registry.

Section 9. Gender. As used herein, the masculine shall include the feminine and neuter genders as appropriate.

Section 10. Headings. Headings used herein are for convenience only and are in no way intended to define or limit the content hereof.

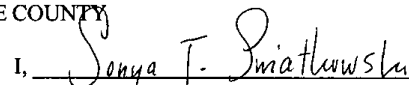
IN WITNESS WHEREOF, the undersigned, Declarant herein, hereby executes this instrument by and through its duly authorized representatives this the 16th day of March 2007.

YOUNGQUIST HOMES, INC.,
A North Carolina Corporation

By: 
LANCE E. YOUNGQUIST, PRESIDENT

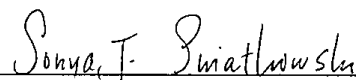
NORTH CAROLINA

WAKE COUNTY

I, , Notary Public for Wake County, North Carolina, certify that LANCE E. YOUNGQUIST personally came before me this day and acknowledged that he is President of YOUNGQUIST HOMES, INC., a North Carolina corporation, and that he, as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official stamp or seal, this the 16th day of March, 2007.




NOTARY PUBLIC

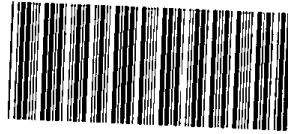
My commission expires: 11/27/2010

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EXHIBIT A
PROPERTY OF YOUNGQUIST HOMES, INC.

All that certain real property situated in the Town of Cary, Swift Creek Township, Wake County, North Carolina, and more particularly described as follows:

Being all of that certain real property shown on that plat entitled "Final Plat Tryon Villas", prepared by Bass, Nixon & Kennedy, Inc., dated January 25, 2007, and duly recorded on February 8, 2007, in Book of Maps 2007, at Pages 343 and 344, Wake County, North Carolina, Registry, and rerecorded on February 16, 2007, in Book of Maps 2007, at Pages 420 and 421, Wake County, North Carolina, Registry, to which plat reference is hereby made for a more particular description of same.



BOOK:012450 PAGE:01554 - 01580

**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**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ **27** New Time Stamp
_____ # of Pages