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PREPARED
FOR
REGISTRATION

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KENNETH C. WILKINS

NORTH CAROLINA
WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR UMSTEAD VILLAGE
TOWNHOMES

THIS DECLARATION, made on OCTOBER 29, 1996 by UMSTEAD
VILLAGE LIMITED PARTNERSHIP, a North Carolina limited partnership, (the "Declarant").

RECITALS

Declarant owns that certain property located in Wake County, North Carolina, which is more particularly described in Exhibit A attached (the "Property"). Declarant will convey the Property subject to the protective covenants, charges, conditions and restrictions described below (together the "Protective Covenants"). The Property is made subject to the Protective Covenants for the purpose of insuring the best use and most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection of poorly designed or proportioned structures and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of the Property; to encourage and secure the erection of attractive structures with appropriate locations on the Lots; to secure and maintain proper set backs from streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in the Property and thereby to enhance the values of investments made by the Owners. THEREFORE, Declarant declares that all of the Property, together with such additions as may subsequently be added, shall be held, sold, transferred, conveyed, occupied and used subject to the Protective Covenants which shall run with the land and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner thereof.

1. **DEFINITIONS.**

1.1. **"Additional Properties"** means any real property, other than the Property, subjected to the Protective Covenants pursuant to the terms of this document.

1.2. **"Articles"** means the Association's Articles of Incorporation.

1.3. **"Amenities"** means the recreational facilities, if any, constructed on the Common Areas for the common use of the Members.

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1.4. **"Association"** means Umstead Townhomes Association, Inc., a non-profit North Carolina corporation.

1.5. **"Association's Board"** means the Board of Directors for the Association.

1.6. **"Building"** means a multi-unit residential structure constructed on the Property.

1.7. **"Bylaws"** means the Association's Bylaws.

1.8. **"Common Area"** means all real property owned by the Association and the easements granted thereto for the common use and enjoyment of the Owners. The Common Area to be owned by the Association shall be described in deeds to the Association and designated as such on each recorded plat of the Property. Common Area shall also include all open space (designated as such on the recorded plat for the Subdivision), private streets, water lines, sewer lines, sewer easements, stormwater ponds, and water retention and detention devices located within the Property which are not otherwise dedicated to a governmental entity or serving only a single Lot.

1.9. **"Common Expenses"** means expenses of administration, maintenance, repair or replacement of the Common Area; expenses described elsewhere in this Declaration or the Bylaws as "Common Expenses"; expenses agreed by the Members to be "Common Expenses"; expenses for maintenance of the private streets, if any, within the Subdivision; premiums for insurance as the Declaration or the Bylaws may require the Association to purchase; ad valorem taxes and public assessment charges lawfully levied against Common Area expenses related to cablevision-type services provided to the Owners by the Association; and unpaid Assessments.

1.10. **"Declarant"** means Umstead Village Limited Partnership, a North Carolina limited partnership, and its successors and assigns specifically designated as Declarant.

1.11. **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Umstead Village Townhomes.

1.12. **"Improvements"** means any structure of any type or kind, including, but not limited to buildings, townhomes, outbuildings, parking areas, loading areas, screening walls, retaining walls, fences, hedges, mass plantings, sidewalks, poles, signs, and utility lines and facilities.

1.13. **"Lot"** means any tract of land described by a metes and bounds description shown upon any recorded subdivision plat of the Property with the exception of the Common Area.

1.14. **"Lot in Use"** means any Lot which has been conveyed by the Declarant to a subsequent purchaser. Except, however, where the Lot conveyed is a vacant lot, the Lot does not become a Lot in Use until such time as a certificate of occupancy for Improvements on the Lot is

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initially granted or six (6) months from the date of conveyance, whichever is earlier. In no event shall it mean a Lot owned by the Declarant on which no Improvements have been constructed.

1.15. **"Member"** means every Person who holds membership in the Association.

1.16. **"Owner"** means the record owner, whether one or more Persons, of a fee simple title to any Lot, except those having an interest merely as security for the performance of an obligation.

1.17. **"Person"** means an individual, a trust, an estate, a corporation, a partnership, a limited liability company, an unincorporated association, or other legal entity.

1.18. **"Property"** is as defined above, but shall also include any Additional Properties.

1.19. **"Subdivision"** means Umstead Village Townhome subdivision as shown on the recorded subdivision plat(s) of the Property.

1.20. **"Townhome"** means a residential dwelling constructed upon a Lot within the Property and constituting a part of a Building.

2. **PROPERTY RIGHTS.**

2.1. **Title to Common Area:** The Declarant shall convey fee simple title in the Common Area to the Association, subject to these Protective Covenants, current and subsequent years ad valorem taxes, and rights-of-way, restrictive covenants and easements of record. Conveyance of title to the Common Area to the Association shall be done promptly after the recording of the plat reflecting that particular Common Area and, in any event, prior to the sale by the Declarant of the first Lot included in that plat.

2.2. **Owners' Easement of Enjoyment:** Every Owner shall have a right and easement of use and enjoyment in and to the Common Area (the "Owners' Easement"), including specifically an easement for access, ingress and egress from and to public streets, common parking, and walkways. The Owners' Easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

A. **Dedication and Transfer of Common Area:** Subject to all applicable governmental ordinances, the Association's right to dedicate or transfer fee simple title to all or any part of the Common Area to any public agency, authority, utility, or non-profit corporation. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each Class of Members agreeing to the dedication or transfer has been recorded in the appropriate County Registry. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and egress to public streets, parking, and walkways.

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B. **Borrowing for Improvements:** The Association's right, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and to mortgage those properties to secure those borrowings; provided the mortgage is subordinate to the Owners' Easement.

C. **Rules and Regulations.** The Association's right to impose and enforce rules and regulations which may restrict the use and enjoyment of the Common Areas and/or Amenities.

D. **Additional Easements.** The Association and Declarant shall have the authority to grant and/or establish upon, over, under and across the Common Areas further easements (including, but not limited to those provided in these Protective Covenants) as are required for the convenient use and enjoyment of the Property.

E. **Admission and Other Fees:** Subject to all applicable governmental ordinances, he right of the Association to charge reasonable admission and other fees for the use of any Amenities.

F. **Suspension of Use of Common Area:** The right of the Association to suspend the voting rights and the right to use any Amenities by any Owner, his family, guests, etc., for any period during which any assessment against his Lot remains unpaid. The right to use the recreational facilities may also be suspended for a period, not to exceed one hundred twenty (120) days, for the infraction of its published rules and regulations; provided; however, that if the infraction is continuing in nature, the suspension may be enforced until such infraction is cured.

2.3. **Parking Rights.** Each Owner and its guests, in common with the other Owners and their guests, shall be entitled to the non-exclusive use of the automobile parking space(s) located within the Common Areas, together with the right of ingress and egress in and to those parking space(s). The Declarant or Association reserves the right to permanently assign parking spaces for each Townhome. Subject to all applicable governmental ordinances and approval of City of Raleigh, for so long as it holds Class B Membership, Declarant reserves the right to establish additional areas of parking within the Common Areas as Declarant, in its discretion, may determine are needed.

2.4. **Delegation of Use:** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to his members of his family and tenants who reside at his Lot and to his guests.

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3. MEMBERSHIP AND VOTING RIGHTS.

3.1. Ownership of a Lot shall be the sole qualification for membership in the Association. The Association's Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

3.2. The Association shall have two classes of voting membership:

(a) Class A Members shall be all Owners with the exception of the Declarant. Declarant may, however, be a Class A member upon the termination of Class B membership. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

(b) The Class B Member shall be the Declarant. Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of:

(i) the date the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided that the Class B membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B membership to Class A membership, additional lands are annexed to the Property by the Declarant as provided in the Declaration; or

(ii) December 31, 2005; or

(iii) the effective date of the Declarant's written consent to termination.

4. ANNEXATION OF ADDITIONAL PROPERTIES.

4.1. **Annexation by Members:** Except as provided in 4.2, Additional Properties may be added and annexed to the Property only if two-thirds (2/3) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation.

4.2. **Annexation by Declarant:** Prior to December 31, 2005, the Declarant may, from time to time, annex Additional Properties to the Property without the consent of the Members, if the Declarant should develop an additional tract or tracts of land consisting of any property contiguous to the Property. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, approved by the Raleigh City Attorney, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. Subsequent to

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recordation of the Declaration of Annexation, the Declarant shall deliver to the Association one or more deeds conveying any property that will be designated as Common Area within the Additional Properties as such designated property is developed. Title to these Common Areas shall be conveyed subject to the same exceptions noted in Section 2.1. Upon annexation, the Additional Properties shall be deemed part of the Property and shall be subject to this Declaration.

4.3. **Reserved Declarant Rights.** Subject to all applicable governmental ordinances, as long as Class B membership exists, the Declarant reserves the following development rights: (i) to add real estate to the Property in accordance with Section 4.2 of this Declaration; (ii) to add Common Areas; (iii) to reallocate Lots within the Property; and (iv) prior to a conveyance of that real estate to an Owner, to withdraw real estate from the Property.

5. COVENANT FOR MAINTENANCE ASSESSMENTS.

5.1. **Lien of Assessments:**

5.1.1. The Declarant, for each Lot, covenants, and each Owner of any Lot by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay the Association Annual Assessments, Special Assessments, and Initial Assessment, all as described below, (together the "Assessments"). The Association shall also have the authority, through the Association's Board, to establish, fix and levy an individual assessment on any Lot to secure the liability of that Owner to the Association arising from Owner's breach of any of the provisions of this Declaration.

5.1.2. The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Association's Board and may be collected on a monthly or yearly basis as determined by the Association's Board. Annual Assessments shall be charged to each Owner of a Lot in Use. Special Assessments shall be charged to each Lot without regard as to whether or not it is a Lot in Use. Assessments, together with interest thereon and the costs of collection (including reasonable attorney fees), shall be a lien on the applicable Lot from the due date for the Assessment as set by the Association's Board, continuing until paid in full, as well as a personal obligation of the Person who was the Owner of the Lot at the time the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Owner's successors in title unless expressly assumed by the successor.

5.2. **Purpose of Assessments:** The Assessments shall be used exclusively for the purposes of these Protective Covenants as described in the Recitals, the payment of Common Expenses, the health, safety and welfare of the Owners, and the improvement and maintenance of the Common Area. The Association shall maintain a reserve fund for periodic maintenance, repair, and replacement of improvements to the Common Area.

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5.3. **Annual Assessments:**

5.3.1. On or before December 1st of each year, the Association's Board of Director's shall adopt the Budget (as defined below) for the upcoming Annual Assessment Period. The annual budget for the Association shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period - the "Anticipated Annual Assessments") and anticipated costs for the Association for the upcoming Annual Assessment Period (together the "Budget"). The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the Annual Assessment to be charged each Owner for the upcoming Annual Assessment Period.

5.3.2. Notwithstanding the above to the contrary:

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall be \$1320.00; and

(b) An annual increase in the Annual Assessments shall not be more than twenty (20%) percent except by approval by two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.3.3. As long as Declarant has a majority of the total votes, Declarant will loan the Association monies to the extent that Annual Assessments paid by the Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution. Declarant shall also be responsible for the payment of Assessments as otherwise required by this Article.

5.4. **Special Assessments:** In addition to the Annual Assessments, the Association may levy in any Annual Assessment Period a special assessment applicable to that year only (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any expenditures (including capital improvements and property acquisition costs) not otherwise included in the Budget. A Special Assessment shall require the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.5. **Initial Assessment:** At the closing of each sale by the Declarant of a Lot, a sum equal to two (2) monthly payments of the then applicable Annual Assessment (the "Initial Assessment") shall be collected from the purchaser and contributed to the Association. The Initial Assessment shall be used in the manner specified for Annual Assessments. The Initial Assessment shall not be considered an advance against Assessments to become due on and after transfer of title to the purchaser.

5.6. **Fines.** The Association's Board may impose fines against any Lot for a failure to comply with the Protective Covenants. These fines shall be treated as a Special Assessment

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otherwise due to the Association from that Owner. Fines shall be paid not later than thirty (30) days after notice of the assessment is given to the offending Owner. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled. Any fine paid by the offending Owner shall nevertheless be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from that Owner. Fines shall be as follows:

- (a) First non-compliance or violation: a fine not in excess of Fifty Dollars (\$50.00).
- (b) Second non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).
- (c) Third and subsequent non-compliance or violation, or violations that are of a continuing nature: a fine not in excess of One Hundred Dollars (\$100.00) for each week of continued violation or non-compliance.

5.7. **Uniform Rate of Assessment.** Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots in Use or Lots, as the case may be. Provided, however, that the Association shall also have the authority, through the Board of Directors, to establish, fix and levy a Special Assessment on any Lot to secure the liability of that Owner to the Association arising from that Owner's breach of any of the provisions of this Declaration. As a matter of information, it is a part of the original plan of the development to construct a variety of Townhomes with a variety of exteriors for the good of the entire Subdivision. As a result, some Townhomes will require more maintenance than others because of the type of exterior exposures. Nevertheless, it is believed that all Members will be benefited by the variety of exteriors and therefore the Association should provide exterior maintenance and make a uniform rate of charge without regard to differences in the cost of maintenance of each Townhome.

5.8. **Date of Commencement of Annual Assessment/Due Dates.** The Annual Assessments shall commence as to all then existing Lots in Use on the first day of the month following the conveyance of the Common Area to the Association. Thereafter, the Annual Assessments shall commence as to a Lot on the first day of the month following the date it becomes a Lot in Use. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of each Annual Assessment Period. The due date shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

5.9. **Non-Payment of Assessment Remedies of the Association.** Any Assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any Assessment due and payable if any installment thereof becomes delinquent. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late charge of \$25.00 and bear interest from the date of delinquency at the greater of the rate set by the Association's Board and eight percent (8.0%) per annum. The Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable Lot. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of the delinquent Assessment. Each Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property. Each Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Area or abandonment of his Lot.

5.10. **Subordination of the Lien.** The lien of the Assessments shall be subordinated to the lien of the first mortgage on a Lot. Except in those instances described below, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments. Provided the Association is given prior written notice of such, the sale or transfer of a Lot pursuant to the foreclosure of a first mortgage or pursuant to a deed in lieu given in satisfaction of a first mortgage shall extinguish the lien of the delinquent Assessments for that Lot. In no event, however, shall a sale or transfer relieve the Lot from liability for any Assessments subsequently becoming due or from the lien thereof.

5.11. **Exempt Property.** All Lots dedicated to and accepted by a local public authority and the Common Area shall be exempt from the Assessments.

6. **INSURANCE.**

6.1. **Association Coverage.** The Association's Board or its duly authorized agent may have the authority to and shall obtain insurance for all Improvements owned by the Association against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of the Improvements. The Association shall also obtain a broad-form public liability policy (in an amount not less than \$1,000,000) covering all Common Area and all damage or injury caused by the negligence of the Association or any of its agents. This insurance may include coverage against vandalism. All persons responsible for or authorized to expend funds or otherwise deal in the Association's assets shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties. This coverage shall be in an amount equal to at least one-half the Annual Assessment plus

reserves accumulated. The Association shall also obtain such other insurance coverage as it deems desirable and necessary.

6.2. **Owner's Coverage.** It shall be the responsibility of each Owner, at his own expense, to obtain hazard insurance in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction to his Townhome from any hazard. The hazard insurance shall be with a company, in an amount, and in a form which is acceptable to the Association's Board and shall include a loss payable clause listing the Association as an additional insured. Each Owner shall satisfy the Association's Board that at all times his property is covered by the required hazard insurance.

6.3. **Repair/Reconstruction.**

6.3.1. In the event of damage to an Owner's property, the Owner shall contract to rebuild or repair such damaged portions of the property in as good condition as formerly. In the event the Owner fails to promptly commence and thereafter diligently pursue the repair or rebuilding of its property to the same condition as formerly, the Association's Board, upon obtaining the required Member approval, shall have the power to purchase the Owner's property, to repair and rebuild the same and the adjoining party wall(s), and to levy a Special Assessment against all Members to pay the purchase price and the costs of repairing and/or rebuilding. In the event the Association exercises its repair/rebuild rights under this Section, the Association shall be entitled to receive and use any and all insurance proceeds payable under the policy required under Section 6.2 to the extent necessary to repair/rebuild the damaged property.

6.3.2. In the event of damage to any property covered by insurance written in the name of the Association, the Association's Board shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair the damage to as good condition as formerly. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding to the same condition as formerly, the Association's Board shall, upon obtaining the required Member approval, levy a Special Assessment against all Members to make up any deficiency.

6.4. **Ownership/Proceeds.** All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive any proceeds as are paid and to hold them in trust for the purposes stated in these Protective Covenants. The proceeds received by the insurance trustee shall be distributed to or for the benefit of the appropriate beneficiary(ies).

6.5. **Premiums.** Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be included in Common Expenses.

6.6. **Prohibited Acts.** No Owner shall do or keep anything on the Property which shall cause an increase in the premiums for or the cancellation of any insurance maintained by the Association.

7. **PARTY WALL.**

7.1. **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Townhome and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls. To the extent not inconsistent with the provisions of this Article, 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 shall apply.

7.2. **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.

7.3. **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. If other Owners make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use; subject, however, to the right of any Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

7.4. **Construction or Reconstruction.** The Owner may construct or reconstruct a party wall subject to and within the limitations of architectural control and other limitations of this Declaration with the right to go upon the adjoining Lot to the extent reasonably necessary to perform the construction. The construction shall be done expeditiously. Upon completion of the construction, the Owner shall restore, as is reasonably practicable, the adjoining Lot to as near the same condition which prevailed on or before the commencement of the construction.

7.5. **Weatherproofing.** Notwithstanding any other provisions of this Article, an Owner who, by his negligence or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against those elements.

7.6. **The Right to Contribution Runs with the 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 the Owners' successors in title.

7.7. **Contribution Certification by Adjoining Property Owner.** If any Owner desires to sell his Townhome, he may, in order to assure a prospective purchaser that no adjoining Owner(s) has a right of contribution as provided in this Article, request that the adjoining Owner(s) provide a certification that no right of contribution exists. It shall be the duty of each adjoining Owner to make such certification immediately upon request and without

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charge; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. In the event an adjoining Owner refuses or neglects to provide such certification, it shall be deemed a waiver to proceed against such Owner or his successors for any contributions which may have accrued to that date.

8. EXTERIOR MAINTENANCE.

8.1. **Maintenance Responsibility.** In addition to maintenance of the Common Area, the Association shall provide exterior maintenance for each Lot in Use as follows: Paint, repair and replace exterior Building surfaces, roofs, gutters and downspouts; maintenance of trees, shrubs, grass, walks, and driveways within the Common Area; and maintenance of all other exterior Improvements initially installed by Declarant. This exterior maintenance shall not include any maintenance specifically designated as the Owner's responsibility elsewhere in this Declaration. In order to enable the Association to accomplish the foregoing, it is reserved to the Association the right to unobstructed access over and upon each Lot and each Townhome at all reasonable times to perform maintenance as provided in this section. The Owner shall not place any furniture, place or construct any Improvements, or plant any vegetation in the front yard or, except with the prior approval required by Article 11, in the rear yard of a Lot. After receiving the required approval, the Owner may plant flowers and grass in his rear yard and may also maintain portions or all of his rear yard, provided that such maintenance by the Owner does not hinder the Association in performing its exterior maintenance obligations. In that event, the Owner shall maintain such plantings or other maintenance. No such maintenance by an Owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any Owner fails to maintain his rear yard in a neat and orderly manner, the Association may perform the required maintenance and assess Owner for those costs.

8.2. **Cost of Maintenance.** In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family guests, tenants, contractors, employees or invitees, or is caused by any hazard covered under a North Carolina Standard Fire and Extended Coverage Insurance policy, the cost of such maintenance or repair shall be added to and become a part of the Assessment to which the Lot is subject.

8.3. **Maintenance Procedures.** The Association shall establish regulations governing the procedure for exterior maintenance. In the event any Owner desires to expend a sum greater than that sum authorized by the Association, he/she shall advance to the Association, prior to the commencement of work an amount necessary to cover the additional expenses and a lien shall be established against the Owner's Lot for any deficiency.

9. EASEMENTS.

9.1. **Blanket Utility Easement.** A blanket easement upon, across, over, and under all of the Common Area is reserved for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, electricity,

and a master antenna system. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Area except as approved by the Declarant or, after the termination of Class B membership, the Association. Should any utility furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant or, after the termination of Class B membership, the Association will have the right and authority to grant such easement. The easement provided for in this Article shall in no way affect other recorded easements on the Property.

9.2. **Association Easement.** An easement is granted to the Association, its officers, agents, employees, and to any management company retained by the Association to enter in or to cross over the Common Area. Every Lot shall be subject to an easement for entry by the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Area.

9.3. **Temporary Construction Access and Disturbance Easement.** An easement over, through and to the Common Area is reserved and established in favor of Declarant and all Owners for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should that Person fail to restore the disturbed land as required, the Association may restore the land to the required condition and that Person shall indemnify the Association for the reasonable expense incurred in performing that restoration. This easement shall be restricted to that Common Area which shall be reasonably servient and proximate to the Lot(s) upon which the construction is taking place.

9.4. **Repair, Maintenance and Reconstruction Easement.** If any Townhome is located closer than five (5) feet from its lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his Townhome. The repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore, to the extent reasonably practical, the adjoining Lot to as near the same condition as that which existed prior to the commencement of the work. Should the Owner fail to restore the adjoining Lot as required, the adjoining Lot Owner and/or the Association may, at the other Owner's expense, complete the required restoration.

9.5. **Drainage Easement.** For a period of eighteen (18) months following the initial conveyance of a Lot to an Owner by the Declarant, that Lot shall be subject to an easement for

entry and encroachment by the Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, the Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

9.6. **Easement for Minor Encroachments.** All Lots and the Common Area shall be subject to a perpetual easement for the encroachment of initial Improvements constructed on Lots to the extent that such initial Improvements actually encroach. These authorized encroachments shall include, but not be limited to, such items as overhanging eaves, roofs, gutters, downspouts, exterior storage rooms, bay windows, stoops, decks, patios, porches, steps and walls. In the event a Building is partially or totally destroyed and then rebuilt, the Owners of the Townhomes so affected agree that minor encroachments of part of the adjacent Townhome units or Common Areas due to construction shall be permitted and that a valid easement for this encroachment and the maintenance thereof shall exist.

9.7. **Governmental Easements.**

9.7.1. Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Area and over an area five (5) feet behind the curb line of any street or roadway in the Property existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

9.7.2. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the Subdivision's streets and the Common Area in the performance of their duties.

10. **ARCHITECTURAL COMMITTEE.**

10.1. **Members.** The Architectural Committee shall consist of one (1) or more persons designated by the Declarant. At such time as Declarant no longer owns any real property within the Property (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), the Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Committee. Upon this assignment, the Board shall appoint three (3) or more persons as the members of the Architectural Committee. Prior to December 31, 2005, this provision shall not be amended or revoked without the Declarant's written consent.

10.2. **Powers.** The Architectural Committee shall have the right to refuse to approve any plans and specifications for Improvements proposed to be constructed on a Lot (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider the purposes of

the Protective Covenants as discussed in the Recitals, including the suitability of the proposed Improvements and materials to be used in those Improvements, the site upon which it is proposed to be erected, and the effect of the Improvements on adjacent or neighboring property. There is specifically reserved unto the Architectural Committee the right of entry and inspection upon any Lot for the purpose of determining whether there exists any construction of any Improvements which violates the terms of any approval by the Architectural Control Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. The Architectural Committee and the Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. 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 entitled to recovery of all court costs and expenses (including reasonable attorney's fees).

11. ARCHITECTURAL CONTROL AND USE RESTRICTIONS.

11.1. **Building Sites.** Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for single-family, residential purposes only. The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant (as long as Class B Membership exists), or, thereafter, the Association's Board or the Architectural Committee, and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one Lot may be used as one Building Site provided the location of any structure permitted thereon is approved in writing by the Architectural Committee or the Declarant, its successors or assigns, and said Lot is recombined as provided in N.C. General Statute 160A-376(1). In no event, however, shall a Lot or group of Lots be resubdivided or recombined in violation of any applicable zoning or other laws in force at the time of the change.

11.2. **Setbacks.** Except as contemplated by the party walls, no structure shall be located on any Building Site nearer than eighteen (18) feet to the front lot line, nearer than fifteen (15) feet to any side street line, nearer than thirty (30) feet to an interior lot line, or nearer than twenty (20) feet to the rear lot line. For the purposes of this covenant, eaves, steps, carports and open porches shall not be considered as a part of a Building, provided, however, that this shall not be construed to permit any portion of a Building on a Building Site to encroach upon another Lot. Provided it otherwise complies with the applicable zoning ordinances and the setbacks, if any, shown on the applicable recorded plat, the Declarant and/or the Architectural Committee may approve by written waiver a violation of these requirements.

11.3. **Structures.** Improvements on any Building Site shall be restricted solely to residential dwellings for residential use. All Improvements erected upon a Lot shall be of new construction and no building or structures, other than the Amenities constructed by the Declarant or the Association and single-family Townhome buildings joined by a common exterior roof and foundation, shall be constructed. No residential structure, which has a minimum area of less than 1200 square feet of heated area exclusive of porches, basement and garage, shall be erected

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or placed on any Building Site. No building or structures shall exceed three (3) stories in height. No structures of a temporary character, manufactured home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Property at any time as a residence, either temporarily or permanently.

11.4. **Approval of Plans & Specs.** No Improvement shall be commenced, erected, or maintained upon the Property, nor shall an Improvement be repaired or rebuilt after destruction by any hazard until completed Plans & Specifications, showing the nature, kind, space, height, materials, and location of the Improvement shall have been submitted to and approved in writing by the Architectural Committee. A failure to approve or disapprove completed Plans & Specifications within forty-five (45) days after they have been submitted shall be deemed to be an approval of those Plans & Specifications. Neither the Association, the Association's Board, the Declarant, the Architectural Committee or any officer, employee, director or members thereof shall be liable for damages to any persons 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 & Specifications. Every person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages.

11.5. **Declarant Facilities.** Notwithstanding any provision in this Article to the contrary, during the period of development and sale of the Lots and Townhomes the Declarant is permitted, subject to the laws of the applicable governmental authority, to maintain such facilities and conduct such sales activities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots and Townhomes. These facilities/activities shall include but not be limited to sales tours, sales parties and promotions at the Amenities, a business/sales office, storage area, construction yards, model units, and signs. Prior to December 31, 2005, this provision shall not be amended or revoked without the Declarant's written consent.

11.6. **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Lots, except that a reasonable number of domesticated, household pets may be kept, provided they are not maintained for commercial purposes.

11.7. **Screening.** All equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate Improvements so as to screen them from view from the street and adjoining Lots. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate. No clothes lines, whether screened or not, shall be allowed outside of the Owner's Townhome.

11.8. **Leasing.** No Lot or any portion of the Improvements thereon shall be leased for transient or hotel purposes, except that an Owner may lease not less than the entire residential structure on its Lot; provided that each lease must be in writing, must be for a period of not less than one (1) year, and must provide that it is subject to this Declaration and the Bylaws and that any failure by a tenant to comply with such shall be a default under the lease. The Owner shall

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promptly provide the Association with copies of any and all leases entered into by the Owner.

11.9. **Utility Devices.** Without the prior written approval and the authorization of the Declarant (as long as Class B Membership exists), the Association's Board or the Architectural Committee, no exterior television or radio antennas, satellite dishes or solar panels or other utility devices, of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Improvements to be located upon the Property. The Declarant and the Association, for the common benefit of the Owners, reserves the right to install within the Property such utility devices necessary to provide cable TV or similar services.

11.10. **Business/Obnoxious Activity.** No business activity of any kind or any obnoxious or offensive activity shall be carried on the Property or Improvements thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb an Owner or his tenants or invitees. No "For Sale" signs (except as otherwise specifically authorized by the Association), advertising signs or rent signs, bill boards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property, and in no event in the Common Area. The foregoing covenants shall not, however, apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agent and assigns, during the construction and sales period for the Umstead Village Townhomes. This right of the Declarant shall nevertheless be subject to the laws of the City of Raleigh.

11.11. **Vehicles.** No boats, recreation vehicles, campers, motorcycles, tractors, trucks (other than one pick-up truck rated one-half ton or less), or trailers (the "Vehicles") of any Owner or member of his family, his tenants, guest or contract purchasers shall be parked within the Common Area, or within the right-of-way of any street in or adjacent to the Subdivision. All Vehicles shall be stored either within the Owner's garage or other facilities not located on the Subdivision. No Owner shall park or store an inoperative or abandoned Vehicle or automobile on any Lot or on the streets or Common Areas in the Subdivision.

11.12. **Tanks.** Other than hot tubs or similar devices approved by the Architectural Committee, no above or below-ground tanks or pools will be permitted for the storage of fuel or water or any other substance. The installation of such tanks shall be subject to reasonable screening requirements established by the Architectural Committee.

11.13. **Lawn Ornaments.** No decorative lawn ornaments shall be placed on any Lot without the prior written approval of the Architectural Committee.

11.14. **Parking.** Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles and Vehicles owned by that Owner. Owners shall not be permitted to park their automobiles and Vehicles on the streets or Common Areas in the Subdivision.

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11.15. **Maintenance.** Maintenance, upkeep, and repairs of any patio, deck, porch decking, screens and screen doors, exterior doors, and windows and window fixtures and other hardware shall be the sole responsibility of the individual Owner of the Lot and not in any manner the Association's. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Areas and all exterior and roofs of the Townhomes, including, but not limited to, recreation and parking areas and walks, shall be taken by the Association or by its duly delegated representatives. All fixtures and equipment installed with a Townhome commencing at a point where the utility lines, pipes, wires, conduits, or systems are within the Townhome's exterior walls, including the courtyards, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act, nor any work that will impair the structural soundness or integrity of another Townhome, nor impair any easement or hereditament, nor do any act or allow any condition to exist which will adversely affect the other Townhomes or their Owners. All private utility systems (other than those serving a single Lot) located outside the exterior walls and/or within the Common Areas shall be maintained by the Association. All public utility systems located outside the exterior walls and/or within the Common Areas shall be maintained by the appropriate utility company or governmental authority.

11.16. **Governmental Regulations.** Each Owner shall comply with all laws, ordinances, governmental building codes, health regulations, zoning restrictions and the like applicable to its Lot and/or Common Areas. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

11.17. **Additional Restrictions.** The Declarant (as long as it hold Class B Membership) and thereafter, the Association, the Association's Board, or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Property.

11.18. **Anti-Discrimination.** No action shall at any time be taken by the Declarant, the Association, the Association's Board, or the Architectural Committee in the enforcement or interpretation of these Protective Covenants which in any manner would unfairly discriminate against any Owner in favor of any of the other Owners.

11.19. **Limited Liability.** In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police or other public service when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, Owners or occupants. In no case shall the City of Raleigh or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and/or Owners.

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11.20. **Waiver.** Notwithstanding anything above to the contrary, the Declarant (as long as Class B Membership exists), the Association's Board, or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon to be in non-conformance with any applicable governmental ordinances.

12. GENERAL PROVISIONS.

12.1. **Enforcement.** The Declarant (as long as Class B Membership exists), the Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, the terms of the Protective Covenants. Failure by the Association or by any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

12.2. **Severability.** Invalidation of any one or more 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.

12.3. **Amendment.**

12.3.1. The Protective Covenants shall run with the land for a term of twenty (20) years from the date of their recording and shall insure to the benefit of the Declarant (as long as Class B Membership exists), the Association or any Owner or their respective legal representatives, heirs, successors, and assigns. These Protective Covenants shall thereafter automatically be extended for successive periods of ten (10) years. Except as specifically otherwise provided in this document, the Protective Covenants may be amended by an instrument signed by not less than the owners of seventy-five percent (75.0%) of the Lots.

12.3.2. If an amendment is executed, each such amendment shall be delivered to the Association's Board which shall, within thirty (30) days:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined); and

(b) Attach the following certification:

CERTIFICATION

By authority of its Board of Directors, Umstead Townhome Association, Inc. certifies that the foregoing instrument has been duly executed by the Owners of seventy-five percent (75%) of the

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Lots in the Property and is therefore a valid amendment to the Declaration recorded at Book _____, Page _____, Wake County Registry.

UMSTEAD TOWNHOME ASSOCIATION, INC.

BY: _____

ATTEST: _____ President

Secretary

(Corporate Seal)

Within the thirty (30) day period, the Association's Board shall cause the amendment to be recorded with the appropriate Register of Deeds. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association.

12.4. **Disputes.** In the event of any dispute arising concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

12.5. **Voting.** Voting by Members of the Association shall be in accordance with the applicable provisions set forth in this Declaration and the Bylaws.

12.6. **Member Addresses.** Each Member agrees to keep the Association informed of his address at any time and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of his ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the ownership of each Lot.

12.7. **Gender and Gammer.** All words and phrases in this Declaration shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, as the context requires.

12.8. **Owner Responsibility.** Notwithstanding anything in this Declaration to the contrary, an Owner shall be responsible for any and all violations of these Declarations by his employees, agents, tenants, guests and invitee. When a party to this Declaration consists of more than one individual or entity, such party's liability hereunder shall be joint and several.

12.9. **Construction.** This Declaration shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles. In case of any conflict between the Declaration and the Articles or the Bylaws, the Declaration shall control.

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conditions and provisions of this Declaration (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The right and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from any default on the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

12.12. Approval.

12.13.1. As long as there is a Class B membership, the following actions will require prior approval of the Veterans Administration and/or the Department of Housing and Urban Affairs: Annexation of Additional Properties, conveyance of Common Area, dedication or withdrawal of land from dedication of Common Area, or an Amendment of this Declaration.

12.13.2. These Protective Covenants shall not be amended or terminated without the prior approval of the City of Raleigh. A failure to approve or disapprove the proposed amendment or termination within thirty (30) days after it has been submitted, in writing, to the City of Raleigh, Attn.: City Attorney's Office, shall be deemed to be an approval of the proposed amendment/termination.

IN WITNESS WHEREOF, the undersigned General Partner has caused this Agreement to be signed in the partnership name, sealed, and delivered, all as the act of the Partnership, on the date first above written.

UMSTEAD VILLAGE LIMITED PARTNERSHIP,
A NORTH CAROLINA LIMITED PARTNERSHIP
BY ITS GENERAL PARTNER:

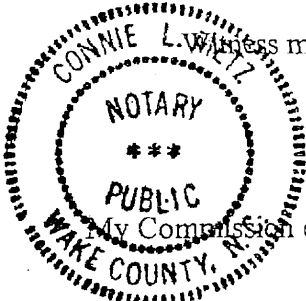
BY: _____



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NORTH CAROLINA
WAKE COUNTY

I, the undersigned Notary Public in and for the aforesaid County and State, certify that David Riese, General Partner of Umstead Village Limited Partnership, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of and as the act of the partnership.



Witness my hand and notarial seal this Nov. 6, 1996.

Connie L. Metz
Notary Public

My Commission expires: Oct. 18, 2000

f:joyce\umstead\covenant\declar

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate ____ of

Connie L. Metz

Notar(y)(ies) Public is

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

KENNETH C. WILKINS, Register of Deeds

By

Kim M. [Signature]
Asst./Deputy Register of Deeds

EXHIBIT A

Being all of Lot 1 according to that plat entitled "Umstead Village" recorded at Book of Maps 1996, Page 1396, Wake County Registry.