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Wake County, NC 182  
Laura M Riddick, Register of Deeds  
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Prepared By and Held For Kiloatrick Stockton, LLP (CPC)

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

**DECLARATION OF MASTER COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THORNTON SQUARE TOWNHOMES**

THIS DECLARATION, made this 19<sup>th</sup> day of July, 2002, by Perry Creek Commons, Inc., a North Carolina corporation ("Declarant"). This Agreement is executed by Central Carolina Bank, and Southland Associates, Inc., Trustee to evidence their consent hereto.

**WITNESSETH:**

WHEREAS, Declarant is the owner and developer of certain property located in Wake County, North Carolina, and more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Property consists of eighty nine (89) subdivided and numbered building lots (the "Lots") as more particularly shown on the "Subdivision Map of Tract 3, Perry Creek Commons for Thornton Square Townhomes" (the "Subdivision Map") and certain other areas shown on the Subdivision Map, including, without limitation, those areas identified as "Open Space" (Lot 91) and "Recreation Area" (Lot 90) on the Subdivision Map, (as used herein the term "Lot" or Lots" shall not include Lot 90 and Lot 91 as shown on the Subdivision Map); and

WHEREAS, Declarant shall convey the Property subject to the protective covenants, conditions and restrictions, reservations and charges as hereinafter set forth; and

WHEREAS, Declarant desires to create Thornton Square Townhomes; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and conceptual intent of Thornton Square Townhomes, for the maintenance of Common Property and improvements thereon as described herein, and accordingly desires to subject the Property together with such additions and/or deletions as may hereinafter be made, to the covenants, restrictions, easements, affirmative obligations, charges, and liens, as hereinafter set forth, each and all of which is hereby declared to be for the benefit of said Property and each and every owner of any and all parts thereof who consents or takes subject to this Declaration; and

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WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities of Thornton Square Townhomes to create one agency to which shall be delegated and assigned the power and authority of owning, maintaining and administering the Common Property as defined herein, administering and enforcing the covenants and restrictions governing said Common Property, collecting and disbursing all assessments and charges necessary for such activities, and promoting the recreation, health, safety, and welfare of the residents; and

WHEREAS, Declarant has caused or will later cause to be incorporated under the laws of the State of North Carolina as a nonprofit corporation, Thornton Square Homeowners Association, Inc., for the purpose of exercising the functions described above, and which are hereinafter more fully set forth; and

NOW, THEREFORE, in consideration of the premises and covenants set forth herein, Declarant declares that the Property and such additions and/or deletions thereto as may hereafter be made, is and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens hereinafter set forth (sometimes referred to as the "Covenants"), and said Covenants shall run with the land and be binding on all persons claiming under or through Declarant and/or Owner, as defined below, and said Covenants shall inure to the benefit of each Owner (as defined below) thereof.

#### ARTICLE 1.

#### DEFINITIONS

Section 1. "Association" shall mean and refer to the Thornton Square Homeowners Association, Inc. a North Carolina nonprofit corporation, and its successors and assigns.

Section 2. "Board of Directors" or "Board" means those persons elected or appointed to act collectively as the directors of the Association.

Section 3. "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies adopted by the Board of Directors.

Section 4. "By-Laws" shall mean the By-Laws of the Association as they now or hereafter may exist.

Section 5. "Common Expenses" shall mean and refer to all sums lawfully assessed by the Association against its Members, expenses of administration, maintenance, repair or replacement of Common Property, expenses declared to be or described as Common Expenses by the provisions of this Declaration, expenses for landscaping maintenance, as described herein, premiums for hazard, liability or other insurance as may be obtained by the Association, ad valorem taxes and public assessments levied on the Common Property owned in fee, utility charges for Common Property facilities, and expenses agreed by the Members of the Association to be Common Expenses of such Association.

Section 6. "Common Property" shall mean and refer to those properties within Thornton Square which are for the common use and enjoyment of all Members of the Association. Common

Property shall include open space, common areas, private streets, and private drives and common property identified on the Plat and all subsequent plats for additions brought within the jurisdiction of this Declaration, including, without limitation, Lot 91 as shown on the Subdivision Map. Common Property shall also include any water lines serving more than one Lot and located outside any public street right-of-way, any sewer lines serving more than one Lot and located outside any public street right-of-way or City of Raleigh sanitary sewer easement, and all stormwater easements, stormwater pipes, drainage facilities, including lakes and stormwater detention or retention facilities serving more than one Lot and not accepted for maintenance by any unit of government. Notwithstanding anything contained herein to the contrary, Lot 90, as shown on the Subdivision Map shall not be part of the Common Property of the Subdivision but shall be part of the common area of Perry Creek Commons Association, Inc., the Master Association for the Property, the adjacent 72 unit condominium development and the adjacent 3.988 acre parcel which is currently undeveloped. The purpose of making Lot 90 part of the common area of the Perry Creek Commons Association, Inc. is to make Lot 90 and the amenities located thereon available for the use of all of the members of that association and require the members of that association to participate in the cost of the maintenance of such area and its amenities.

Section 7. "Declarant" shall mean Perry Creek Commons, Inc., its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot for the purpose of development or if such successors or assigns should acquire more than one Lot, whether developed or undeveloped, pursuant to foreclosure or a deed in lieu of foreclosure ("successors" includes any lender with respect to loans obtained by Declarant to develop the Property.)

Section 8. "Declaration" shall mean and refer to this Declaration of Master Covenants, Conditions and Restrictions for Thornton Square Townhomes as it may be amended and supplemented (by Supplemental Declarations) from time to time as herein provided.

Section 9. "Dwelling Unit" shall mean a single family attached dwelling which comprises a section of a multi family residence structure containing two separate sections without internal access between the sections, with each such section containing, at a minimum, sleeping facilities for one or more persons, a kitchen, and a bathroom.

Section 10. "Thornton Square Townhomes" shall mean and refer to the Property as defined below and such additions and/or deletions thereto as may hereafter be brought within or taken from the jurisdiction of the Association as subjected to this Declaration or any Supplemental Declaration.

Section 11. "Lot" shall mean any of the Lots or any other plot of land regardless of size as shown on a recorded subdivision plat of Thornton Square Townhomes which has been approved as required by this Declaration for a Dwelling Unit. Common Property are not Lots.

Section 12. "Member" shall mean and refer to every person or entity entitled to membership in the Association as provided in this Declaration.

Section 13. "Owner" shall mean and refer to the record owner, whether one or more persons, firms, associations, corporations, or other legal entities, their successors and assigns, of a fee simple title to any Dwelling Unit or Lot which is part of the Property presently or hereafter made

subject hereto, including contract sellers, but notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee, as successors or assigns, until and unless such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an owner. The terms "Owner" and "Declarant" shall not be mutually exclusive.

Section 14. "Project" shall mean and refer to the development now known as Thornton Square, of which the Property is a part. Declarant has retained, and hereby retains the right to change the name of the Project from "Thornton Square" to another name selected by Declarant by filing an amendment hereto in the records of Wake County, North Carolina, subject to approval by the Raleigh City Planning Department.

Section 15. "Property" shall mean the Lots, Common Property (as defined above) and any and all other property hereafter made subject to this Declaration as provided hereinbelow.

Section 16. "Undeveloped Lot" shall mean a Lot or an area of Thornton Square Townhomes not yet developed but intended to contain one or more Dwelling Units as approved by the City of Raleigh, including any additions or deletions thereto.

## ARTICLE II.

### PROPERTY AND PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 1. Property Made Subject to Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, used, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

#### Section 2. Annexation of Property.

(a) If Declarant is the owner from time to time of any property immediately across a public street right-of-way or adjoining in whole or in part any portion of the land now or hereafter constituting any portion of the Property or Common Property ("Additional Property") which it desires to add to the scheme of this Declaration, it may do so by filing of record, on or before December 31, 2017, a Supplemental Declaration, in accordance with section 3 of this Article, which shall, upon consent of the City of Raleigh, extend the scheme of this Declaration to such Additional Property; provided, however, that such Supplemental Declaration, as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration.

(b) Except as provided above for Declarant, other property may only be added if it is immediately across a public street right of way or adjoins in whole or in part any portion of the land now or hereafter constituting any portion of the Property or Common Property, it is approved by the City of Raleigh, and if each voting class as defined in Article II, by a vote of 2/3 of the Members of each class present at any annual or duly called special meeting at which the addition of further property is considered, gives written consent thereto. If the foregoing conditions are met, such property shall be

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considered "Additional Property". No annexation of Additional Property shall become effective until a Supplemental Declaration is prepared and recorded in accordance with section 3 of the Article.

(c) No property shall be annexed pursuant to this Section unless every lender of record on such property subordinates its interest to this Declaration.

(d) Following the annexation of Additional Property, but prior to the sale of the first Lot within such Additional Property, the Property Owner shall convey all Common Property and to the Association free and clear of all liens, provided, however, Declarant reserves the right, until December 31, 2017, to grant to the owner of the parcel adjacent to the Property an easement for the construction and maintenance of a stormwater retention pond on Lot 91, as shown on the Subdivision Map, subject to the requirement that such owner of the adjacent parcel maintain such stormwater retention pond at its sole cost and expense.

Section 3. Contents of Supplemental Declaration. Each Supplemental Declaration shall set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant and the Association, acting through its Board; provided, however, that Declarant's consent will not be necessary after December 31, 2017. In no event, shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the Property or to previously added Additional Property. All Supplemental Declarations shall be recorded with the Wake County Registry.

Section 4. Merger or Consolidation. Upon a merger or consolidation of the Association with another association which is a nonprofit corporation composed of owners of Additional Property, and upon consent of the Raleigh City Attorney or his or her deputy, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association and shall administer the terms and provisions of this Declaration and any applicable Supplemental Declarations, if any, affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the terms and provisions of this Declaration or any Supplemental Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 5. Common Property. Declarant shall convey all Common Property to the Association free and clear of all liens, provided, however, Declarant reserves the right, until December 31, 2017, to grant to the owner of the parcel adjacent to the Property a perpetual, nonexclusive,

easement for the construction and maintenance of a stormwater retention pond on Lot 91, as shown on the Subdivision Map, subject to the requirement that such owner of the adjacent parcel maintain such stormwater retention pond at its sole cost and expense.

Section 6. Delegation of Use. Subject to section 7 below, any Member may delegate in accordance with the By-Laws of the Association, his right of enjoyment to the Common Property and facilities to the members of his family, his tenants, or contract purchasers who reside on such Members' Lot.

Section 7. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Common Property and in aid thereof to mortgage said properties, provided, however, that any such mortgage must be authorized by the vote of two-thirds (2/3) of each class of Members at a duly called meeting at which a quorum is present and unless written notice of the proposed action is sent to every Member at least twenty (20) days in advance of any action taken at such Members' address on the records of the Association. A true copy of such resolution together with a certificate of the result of the vote taken and a certificate of mailing executed by the Secretary of the Association or the managing agent shall be annexed to any instrument affecting the Common Property, prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership; provided, however, that the mortgagee's interest therein shall be subordinate to the rights of the Owners and Association in such Common Property;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure; and

(c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment of rights of any Member or any tenant of any Member for any period during which any assessment remains unpaid; and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment; and

(d) Subject to the ordinances of the City of Raleigh, the right of the Association to charge fees for the use of the Common Property, and

(e) The right of the Association to exchange Common Property in accordance with the provisions of the Raleigh City Code.

### ARTICLE III.

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Members. Declarant for so long as it shall be an Owner, and every person or entity who is a record owner of a fee simple or undivided fee simple interest in any Dwelling Unit or Lot that is subject by the Covenants to assessments by the Association and who qualifies as an Owner,

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as defined above, shall be a Member of the Association; provided, however, that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit or Lot which is subject to assessment by the Association. Ownership of a Dwelling Unit or Lot shall be the sole qualification for Membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Dwelling Unit or Lot in Thornton Square Townhomes. No Owner shall have more than one Membership per Lot.

**Section 2. Member Classes and Voting Rights.** The Association shall have two (2) classes of voting Members:

**Class A.** Class A Members shall be all Owners with the exception of Declarant, until its Class B Membership has converted to Class A Membership. Class A Members shall be entitled to one (1) vote for each Dwelling Unit or Lot in which they hold the required ownership interest.

**Class B.** The Class B Member shall be Declarant, its successors or assigns. The Class B Member shall be entitled to three (3) votes for each Dwelling Unit or Lot in which it holds the required ownership interest, 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 first:

(a) The total votes outstanding in Class A Membership equals 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, as provided hereunder, and before the time stated in subparagraph (b) below, additional lands are annexed to the Property without the assent of the Class A Members on account of the development of such additional lands by the Declarant, all within the times and as provided for herein, or

(b) December 31, 2017.

Thereafter, the Declarant may be entitled to one (1) vote per Dwelling Unit or Lot owned by it.

**Section 3. Voting Right Suspension** 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 for any period during which any assessment of a Member remains unpaid according to the provisions of Article IV, Section 9.

**Section 4. Voting** The total vote of the Association shall consist of the sum of the votes of the Class A Members and the votes of Class B Members present in person or by proxy at a legally constituted meeting at which a quorum is present. The number of votes present at a meeting that will constitute a quorum shall be as set forth in the By-Laws, as amended from time to time. Notice

requirements for all action to be taken by the Members of the Association shall be as set forth herein or in the By-Laws, as the same may be amended from time to time.

When more than one person holds an interest in any Dwelling Unit or Lot, all such persons shall be Members; and the vote for such Dwelling Unit or Lot shall be exercised as they among themselves determine; however, in no event may more than one vote be cast with respect to any one Dwelling Unit or Lot owned by Class A Members and in no event shall fractional votes be allowed. When one or more co-Owners signs a proxy or purports to vote for his or her co-Owners, such vote shall be counted unless one or more other co-Owners is present and objects to such a vote or, if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote is counted. Cumulative Voting is prohibited.

A person's or entity's membership in the Association shall terminate automatically whenever such person or entity ceases to be an Owner, but such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Association or this Declaration during the period of such ownership, or impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

**Section 5. Right of Declarant to Representation on Board of Directors of the Association.**

Notwithstanding anything contained herein to the contrary, until December 31, 2017, or until Declarant shall have conveyed seventy-five percent (75%) of the Lots, whichever occurs first, Declarant (or its expressed assignee of the right granted in this section) shall have the right to designate and select at least a three fifths (3/5) majority of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or By-Laws of the Association. Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed. Any director designated and selected by Declarant need not be an Owner. Any representative of Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have pecuniary interest or other interest. Any management contract executed while Declarant selects the Board of Directors, shall contain a provision allowing unilateral termination by the Association, without cause, following sixty (60) days written notice.

**Section 6. Quorum.** Except as otherwise provided in the Articles of Incorporation, or this Declaration, the presence at the meeting of Members or of proxies entitled to cast, ten percent (10%) of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum for any action. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

## ARTICLE IV

COVENANTS FOR ASSESSMENT

Section 1. Creation of Lien and Obligation for Assessments. Declarant hereby covenants and agrees, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or conveyance, shall be deemed to covenant and agree to all the terms and provisions of these Covenants and to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies):

(a) Annual Assessments or charges;

(b) Special Assessments for the purposes set forth in this Article, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The Annual and Special Assessments together, which such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection therefor as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. In the case of co-ownership of a Lot, all such co-owners shall be jointly and severally liable for the assessment.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for payment of Common Expenses and for the purposes of enforcing and carrying out the terms and provisions hereof and of any Supplemental Declaration, carrying out the duties of the Board, the purposes of the Association and promoting the recreation, health, safety and welfare of the residents of the Property and for the improvement, maintenance, and operation of the Common Property, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereof, and for the costs of labor, equipment, materials, and management supervision thereof. The Special Assessments shall be used for the purposes set forth in Section 4 and Section 5 of this Article.

Section 3. Basic and Maximum Annual Assessments. For the calendar year 2002, the maximum annual assessment shall be Six Hundred and No/100 Dollars (\$600.00) per Dwelling Unit or recorded Lot except as otherwise provided herein, the exact amount of which shall be determined from time to time by the Board of Directors. On or before December 31 of each year during the term hereof, the Board shall set the amount of the Annual Assessment for the ensuing year for each Dwelling Unit or Lot, taking into consideration, among other things, the then-current Common Expenses and estimated increases in Common Expenses, the then-current development and/or maintenance costs, estimated increases in development and/or maintenance costs, and the future needs of the Association. The amount of the Annual Assessment for each Dwelling Unit or Lot as set by the Board shall be determined by dividing the amount of costs and expenses to be incurred by the Association for the year in question, as such amount is reasonably estimated by the Board (and which estimated amount may include a reasonable contingency fund), by the number of Dwelling Units or Lots in the Property, such that the regular Annual Assessment for each Dwelling Unit or Lot shall be the same. The Annual Assessment shall be due and payable as provided in Section 7 of this Article.

The Board of Directors may not increase the amount of the Annual Assessment by more than 10% in any given calendar year without the approval of at least 2/3 of each class of Members present in person or by proxy, at a duly-called meeting whereat a quorum is present.

Section 4. Special Assessment. In addition to the Annual Assessment authorized by Section 3 hereof, the Board may levy in any assessment year or years a Special Assessment, as defined herein, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of an Association-owned improvement including the necessary fixtures and personal property related thereto, or for carrying out other purposes and/or duties and obligations of the Association as stated in its Articles of Incorporation or as stated herein. Special Assessments shall be assessed pursuant to this Section 4 against the Dwelling Units and owners thereof and the Lots and owners thereof on a pro rata basis in the same manner as described in Section 3 above. No special assessment may be established without the approval of at least 2/3 of each class of Members present, in person or by proxy at a duly called meeting whereat a quorum is present.

Section 5. Uniform Rate of Assessment. Both Annual and Special Assessments must be fixed at a uniform rate for all Dwelling Units and Lots within a particular class of membership, except for exempt Dwelling Units and Lots provided in Section 12 hereof and except that, notwithstanding anything within this Declaration to the contrary, Declarant or any builder which owns a Lots shall be required to pay only 25% of any Annual or Special Assessment levied against any Dwelling Unit or Lot owned by it and for which no certificate of occupancy has been issued by the City of Raleigh.

Section 6. Commencement Date of Annual Assessment. The first Annual Assessment provided for herein shall commence the month after the first Dwelling Unit is completed on the Property and such Annual Assessments shall continue on a calendar year basis thereafter from year to year.

Section 7. Due Date of Assessments. All Annual Assessments shall be due and payable on a monthly, quarterly, semi-annual or annual basis as determined by the Board of Directors on the dates specified by the Board of Directors. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the assessment against all Lots for each assessment period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand, and for a reasonable charge, at any time furnish to any Owner liable for said assessment, or to any person interested in Owner's Title, with the permission of Owner, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid; provided, however, that no Owner, or such person interested in Owner's title, shall be entitled to receive more than one (1) certificate for each payment. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

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Section 9. Effect of Nonpayment of Assessment. Any assessment that is not paid within ten (10) days after the due date shall incur a late charge in the amount of ten dollars (\$10.00) and, if such assessment is not paid within thirty (30) days after the due date, then such assessment and applicable late fee, shall become delinquent and shall, together with interest therefrom at the rate of fifteen percent (15%) per annum (or if illegal, the highest rate of interest permitted by law) from the due date, and the cost of collection thereof as hereinafter provided, become a charge and continuing lien on the Lot and all improvements thereon. If an assessment is not paid within thirty (30) days after the due date, the Association may bring an action at law against the Owner personally and/or foreclose the lien against the Lot, and there shall be added to the amount of such assessment the costs of collection, including reasonable attorneys' fees and expenses, and interest as provided above. No Owner may waive or escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his Lot. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association, or its agents or assigns, the right and power to bring all actions against such Owner or Member personally liable for the collection of such charges as a debt and to enforce the aforesaid 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 and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. The lien provided for in this action shall be in favor of the Association and shall be for the benefit of the Association and all other Owners.

Section 10. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with late fees and interest as provided in Section 9 hereof and the cost of collection, including reasonable attorneys' fees, become a continuing lien and charge on the Lot owned by the defaulting Owner and improvements thereon covered by such assessment, as of the assessment due date, which shall bind such Lot and improvements then in the hands of the Owner, and the defaulting Owner's heirs, devisees, personal representatives, successors, and assigns. Except as hereinafter provided, the aforesaid lien shall be superior to all other liens and charges against such Lot and improvements thereon. To evidence the aforesaid assessment lien, the Board may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot and improvements thereon covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Office of the Register of Deeds of Wake County, North Carolina. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure of the defaulting Owner's Lot and improvements thereon by the Association in like manner as a deed of trust with power of sale on real property subsequent to the recording of a notice of assessment lien as provided above, and/or the Association may institute suit against the Owner personally obligated to pay the assessments and/or for foreclosure of the aforesaid lien judicially or may seek other available remedy or relief. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorneys' fees incurred. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The provisions of this Article IV shall be in addition to the provisions of applicable laws relating to liens established as herein provided.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust now or hereafter placed

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upon any Lot subject to assessment. Sale or transfer of any Lot shall not affect the assessment lien; however, sale or transfer of any Lot pursuant to such mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien, but not the personal liability of the Owner affected, of such assessments as to payments 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 12. Exempt Property. The following property, individuals, partnerships and corporations subject to this Declaration shall be exempted from the assessment, charge and Lien created herein:

- (a) Properties conveyed to public utilities for the purpose of granting utility easements;
- (b) All properties exempt from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such legal exemptions, and
- (c) All Common Property as defined herein;
- (d) All properties dedicated to, and accepted by, a local public municipality or authority.

Section 13. Annual Budget. By majority vote of the directors, the Board of Directors shall adopt an annual budget for the subsequent year of operation, which shall provide for allocation of expenses in such a manner that the obligations imposed by these Declarations and any and all Supplemental Declarations will be met.

Section 14. Omission of Assessments. The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

#### ARTICLE V

#### ARCHITECTURAL CONTROL

Section 1. General. Anything contained in Article VI of this Declaration to the contrary notwithstanding, no Lot preparation on any Lot or change in grade or slope of any Lot or erection of buildings or exterior additions or alterations to any building situated upon the Property or erection of or changes or additions in landscaping (excluding minor changes such as, but not limited to, annual and perennial flowers), fences, hedges, walls and other structures, or construction of any swimming pools or other improvements (as defined in Section 7 below), shall be commenced, erected or maintained on any Lot until the Architectural Control Committee (herein called the "Architectural Control Committee" or the "Committee") appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such improvements.

Section 2. Composition. Until December 31, 2017, Declarant shall appoint the members of the Architectural Control Committee which will be composed of three (3) individuals, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Project. In the event of the death or resignation of any member of the Architectural Control Committee, Declarant, for so long as it has the authority to appoint the members of the Architectural Control Committee, and thereafter, the remaining members of the Architectural Control Committee, shall have full authority to designate and appoint a successor. Subsequent to December 31, 2017, the Board shall appoint the members of the Architectural Control Committee. At any time, Declarant may elect not to appoint the members of the Architectural Control Committee and may assign this right to the Board of Directors. For all construction commenced on or before December 31, 2017, Declarant retains the right to approve all original construction plans even though other members may be appointed to the Architectural Control Committee. Members of the Architectural Control Committee are not required to be Members or Owners.

Section 4. Procedure. No improvement of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee, as to:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces with the remainder of the Property and improvements thereon;
- (c) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon and drainage arrangement;
- (d) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Control Committee, or matters in which the Architectural Control Committee has been vested with the authority to render a final interpretation and decision as the same may relate to creating a harmonious residential development in the Property.

Final completed plans and specifications for all improvements proposed to be constructed on a Lot shall be submitted in duplicate to the Architectural Control Committee for its approval or disapproval. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Architectural Control Committee, one complete set of plans and specifications will be retained by the Architectural Control Committee and the other complete set of plans and specifications will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these covenants, conditions and restrictions or if found to be otherwise unacceptable to the Architectural Control Committee pursuant hereto, one set of plans and specifications shall be returned to the Lot Owner marked "Disapproved," accompanied by a reasonable statement of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being so unacceptable. Any modification or change to the Architectural Control Committee

approved set of plans and specifications must again be submitted to the Architectural Control Committee for its inspection and approval. The Architectural Control Committee's approval or disapproval, as required herein, shall be in writing. All homeowners requesting Architectural Control Committee approval must comply with all City of Raleigh Applications and Permit requirements.

The Architectural Control Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. Although the Architectural Control Committee shall not have unrestrained or complete discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these Covenants and are incorporated herein by reference, provided, however, that such bulletin may be amended with only the affirmative vote of the Board of Directors. Copies of all Architectural bulletins shall be on file for inspection in the principal office of the Association.

Section 5. Jurisdiction. The Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any improvements on a Lot which may, in the reasonable opinion of the Architectural Control Committee, adversely affect the living enjoyment of one or more Owner or the general value of the Property of the Project.

Section 6. Enforcement. The Architectural Control Committee shall have the specific, nonexclusive right (but no obligation) to enforce the provisions contained in this Article of this Declaration and/or to prevent any violation of the provisions contained in this Article of this Declaration by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article of this Declaration. No failure to enforce or delay in enforcement of this Article shall be deemed a waiver of the right to enforce strict compliance with the terms of this Article.

Section 7. Definition of "Improvement". The term "improvement" shall mean and include all buildings, storage sheds or areas, carports, garages, decks, patios, roofed structures, satellite dish antennas, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, clothesline installation, swimming pools, tennis courts, signs, exterior illumination, changes in any roof shingle, changes in any exterior color or shape and any new exterior construction or exterior improvement which may not be included in any of the foregoing. The definition of improvements does not include flower, shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expended in accounting practice and which does not change exterior colors or exterior appearances. The definition of improvements does include both original improvements and all later changes to improvements.

Section 8. Failure of the Architectural Control Committee to Act. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within thirty (30) days after submittal thereof,

and provided such submittal was a full and complete submittal of all items that were to have been submitted to the Architectural Control Committee, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals, EXCEPT that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in the Declaration or by any rules, regulations, ordinances, or requirements of any governmental authority. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee shall either reject them as being inadequate or approve or disapprove part, conditionally or unconditionally, and reject the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

Section 9. Limitation of Liability. Except for gross negligence, neither the Architectural Control Committee nor the members thereof nor Declarant shall be liable for claims, causes of action, damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

Section 10. Miscellaneous. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses.

Section 11. Inspection. The Architectural Control Committee shall have the right to enter the Lot of the applicant to determine that the improvements were made in conformity with the approved plans.

## ARTICLE VI

### USE OF LOTS AND COMMON PROPERTY

The Property (and each Lot situated therein) and the Common Property shall be occupied and/or used as follows:

Section 1. Residential Purposes Only. Each Lot shall be used exclusively for residential purposes only. No trade or business of any kind shall be conducted upon any Lot or any part thereof, except as may be approved by the Board of Directors on a case-by-case basis after petition by an Owner, provided, however, that any such approved business must be entirely conducted within the confines of the house or garage of an Owner and must not create, among other things, a nuisance to neighbors or create, among other things, excessive noise, traffic, odors, or unpleasant appearances. No Lot and no improvement may be used for hotel or other transient residential purposes. Each lease relating to any Lot or any improvements thereon (or any part of either thereof) must be for a term of at least six (6) months and must provide that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Lot and/or improvement.

Section 2. Obstructions, Etc. There shall be no obstruction of the Common Property, nor shall anything be kept or stored in the Common Property, nor shall anything be altered, or constructed or planted in, or removed from the Common Property, without the prior written consent of the Board

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of Directors. Declarant shall have the right to install signs in the Common Property until December 31, 2017.

**Section 3. Restricted Actions by Owners.** No Owner shall permit anything to be done or kept on his Lot or in the Common Property which will result in the cancellation of or increase of cost of any insurance carried by the Association, or which would be in violation of any law. No waste shall be committed in the Common Property. Each Owner shall comply with these Declarations as well as all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances) and other governmental rules and restrictions in regard to such Owner's Lot(s).

**Section 4. Signs.** Unless otherwise approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except Unit identification signs and one professional sign advertising the Lot for sale or rent or advertising the building contractor constructing improvements on the Lot during the initial construction and sales period. However, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property, the Project or portions of either thereof. Notwithstanding the foregoing, all signs erected and maintained on any Lot must conform with all applicable governmental requirements.

**Section 5. Nuisances.** Nothing shall be done in any part of the Property, nor shall any noxious or offensive activity be carried on, nor shall any outside lighting or loudspeakers or other sound producing devices be used, which, in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners.

**Section 6. Attachments.** No permanent attachments of any kind or character whatsoever (including, but not limited to, television and radio antennas) shall be made to the roof or exterior walls of any residence on a Lot, unless such attachments shall have been first submitted to and approved in writing by the Architectural Control Committee, as defined in Article V.

**Section 7. Damage to the Common Property.** Each Owner shall be liable to the Association and/or the Declarant for any damage to the Common Property and/or landscaping caused by the negligence or willful misconduct of the Owner or his guests, invitees, agents, or contractors.

**Section 8. Rules of the Board.** All Owners and occupants of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant until December 31, 2017 for all damages and costs, including attorney's fees incurred in enforcing such rules and regulations.

**Section 9. Animals.** No animals, livestock or poultry shall be raised, bred or kept in any portion of the Property except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. All pet owners must contain, restrain, and control pets under applicable city and county animal control laws, and, in any event, all pets must be on a leash when not on the Lot of the pet owner.

**Section 10. Waste.** No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Waste of any nature shall not be kept on any part of the Property except on a temporary basis in sanitary containers.

**Section 11. Boats and Recreational Vehicles.** Neither a motorboat, houseboat, or other similar water-borne vehicle, nor any "camper", recreational vehicle, or trailer, nor abandoned vehicle may be maintained, stored or kept on any portion of the Property, except in enclosed garages or in areas specifically designated by the Architectural Control Committee.

**Section 12. Floor Areas, Stories.** The total floor area of each Dwelling Unit located on a Lot, exclusive of porches, decks, terraces, garages and outbuildings, shall contain not less than 1200 square feet of space. No improvements, as hereinafter defined, may be constructed or maintained on any Lot which exceeds two (2) stories plus a finished or unfinished attic in height.

**Section 13. New Construction.** Construction of new buildings only shall be permitted on Lots, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot and remodeling or converting same into a Dwelling Unit. Declarant retains the right to Architectural Control approval for all new construction for all Lots within Thornton Square Townhomes commenced on or before December 31, 2017.

**Section 14. Limitation of Truck Parking and Other Vehicles.** Trucks of any Owner with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Property. No vehicle of any size which transports flammable or explosive cargo may be kept in the Property at any time by any Owner. No vehicles of any Owner that are not in a condition to be normally operated or which are unsightly in appearance may be stored or situated on any Lot, including in the driveway of any Lot, or parked on any street at any time, but may be stored in an enclosed garage. During the period of construction on each Lot, no Owner shall be allowed to park any construction vehicles on the Lot or in the streets for any period of time beyond the time that said vehicle is necessary for construction on the said Lot.

**Section 15. No Temporary Structure.** No temporary dwelling, shop, tent, trailer or mobile home of any kind or any improvement of a temporary character shall be permitted on any Lot except that the builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a given Lot during construction of a residence. No building material of any kind or character shall be placed or stored upon the Property until the owner thereof is ready to commence construction of improvements.

**Section 16. Landscaping.** Except for the building pad, driveways and sidewalks, swimming pools, patios and decks as approved by the Architectural Control Committee (if required as hereinafter provided) on each Lot, the surface of each Lot shall be of grass or other live foliage and/or ground cover and such grass, foliage and ground cover shall be neatly maintained at all times. The general grading, slope and drainage plan of a Lot may not be altered without Architectural Control Committee approval and/or appropriate governmental agency approvals, if applicable. All firewood shall be neatly stacked in the rear or to the side of the house and/or garage on any Lot. Landscaping and gardening materials and supplies, including but not limited to, topsoil, wood chips, sand, leaf, mold, compost, pine straw, wheat straw and manure, whether in bag, bale or bulk form, shall be spread, used or

incorporated into the landscaping and/or garden as quickly as possible after delivery and in no event shall be permitted to remain in view in either bag, bale or bulk form without being spread, used, or incorporated into the landscaping and/or garden for longer than fifteen (15) days.

Section 17. Fences and Walls. No fence or wall shall be erected, placed or altered on any Lot nearer to any street fronting such Lot than the building corner of the Dwelling Unit constructed on such Lot and shall not exceed six (6) feet in height unless otherwise specifically required by governmental authorities having jurisdiction. All fences shall be maintained in a structurally sound and attractive manner. An Owner must obtain the approval of the Architectural Control Committee before erecting a fence on such Owner's Lot.

Section 18. Sight Line Limitations. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right of way lines. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

Section 19. Air Conditioning Equipment. No air conditioning apparatus shall be installed on the ground in front of any Dwelling Unit on a Lot. No air conditioning apparatus shall be attached to any front wall or window of a Dwelling Unit on a Lot.

Section 20. Clothes Lines. The outdoor drying of clothes and the erection of outdoor clothes lines or similar devices is prohibited within the Property.

Section 21. Burning. Except within fireplaces in the Dwelling Unit and outdoor cooking, no burning of anything shall be permitted within the subdivision.

Section 22. Utilities. All utilities and utility connections shall be located underground, including electrical and telephone cables and wires.

Section 23. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots.

Section 24. Maintenance of Lots By Association. If any Owner fails to maintain or cause to be maintained in good order and condition their Lot, Dwelling Unit or any other improvement upon the Lot, as required by this Declaration, and such failure continues for a period of thirty (30) days after such Owner has been given written notice by the Association specifying such failure to maintain, then the Association shall have the right to go on the Lot of such Owner to perform any necessary maintenance or repairs at the expense of the Owner. If the Association performs such maintenance or repairs pursuant to this Section 26, it shall be deemed to have contracted with the Owner for that work, shall be entitled to file and enforce a mechanic's lien against the interest of

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the Owner in its Lot for the cost of that work, and to recover the cost of that work in an action at law against the Owner, all in accordance with the applicable laws of the State of North Carolina.

#### ARTICLE VII

##### INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association, by and through its Board of Directors or its otherwise duly authorized agents, shall have the authority to obtain and shall obtain, if available at a reasonable price, insurance for all insurable improvements on the Common Property against loss or damage by fire or other hazards, including extended coverage of vandalism and malicious mischief. This insurance, if available, shall be in an amount sufficient to cover the full replacement cost or repair or reconstruction in the event of damage or destruction from any such hazard. The Association shall also obtain a comprehensive public liability policy in the minimum amount of \$1,000,000 covering the Common Property, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, contractors, or employees along with a Fidelity Bond for all officers and employees having control over the receipt and disbursement of Association funds and Worker's Compensation to the extent necessary to comply with applicable laws. Premiums for all such insurance contemplated hereunder shall be Common Expenses of the Association.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment for such repairs or reconstruction. Any proceeds remaining after such costs of repair or reconstruction to the Common Property shall be retained by and for the benefit of the Association.

(h) If it is determined by the Board of the Association that the damage or destruction of Common Property for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association.

Section 3. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may levy a Special Assessment, as provided for in Article IV of this Declaration, to cover the deficiency.

#### ARTICLE VIII

##### CONDEMNATION

In the event that all or any part of the Common Property shall be taken (or conveyed in lieu of or under threat of condemnation) the award made for such taking shall be payable to the Association as trustee for Owners, to be disbursed as follows:

(a) If the taking involves a portion of the Common Property on which improvements have been constructed, the Association shall restore or replace such improvements so

taken on the remaining Common Property to the extent such plans are available in accordance with plans approved by the Board of Directors of the Association. If the condemnation award is insufficient to replace or relocate the improvements, the Board may levy a special Assessment, as provided for in Article IV of this Declaration, to cover the deficiency.

(b) If the taking does not involve any improvements on the Common Property or in the event that a decision is made not to repair or restore such improvements, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors may determine.

## ARTICLE IX

### EASEMENTS

Section 1. Blanket Easement. There is hereby created a blanket easement upon, across, over, and under all of the Property subject to this Declaration for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephones, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect, read meters, and maintain the necessary equipment on said Property, and to affix and maintain electrical and/or telephone equipment under the roofs and exterior walls of said property. An easement is further granted to all police, fire protection, garbage collectors, postal delivery, ambulance, and all similar persons to enter upon the private streets and driveways and Common Property in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management companies selected by the Association to enter in or to cross over the Common Property provided for herein. Notwithstanding anything to the contrary contained in this Section 1, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property except as initially approved by Declarant until December 31, 2017 or thereafter approved by the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable documents, Declarant (or the Association after the termination of Class B Membership or in the event the easement crosses property owned by the Association) will have the right and authority to grant such easement on the Property without conflicting with the terms hereof. The easement provided for in this Article shall in no way affect other recorded easements on the Property.

### Section 2. Underground Electrical Services.

(a) Underground electrical service only shall be available to all the Lots. The metering equipment shall be located on the exterior surface of the wall at a point to be designated by the utility company. The utility company furnishing the service shall have a two-foot priority easement along and centered on the underground electrical power service conductors installed from the utility company's easement to the designated point of service on the Dwelling.

(b) Easements for the underground utility service shall be kept clear of improvements such as buildings and patios, provided, however, other pavings such as walkways or driveways may cross such utility easements and neither Declarant nor any such utility company using

the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants to such improvements or shrubbery, trees, flowers, and other improvements of the Owner located on land covered by said easements.

(c) An easement is hereby established for the benefit of all applicable government agencies over all Common Property and over an area adjacent to any street or roadway within this Property hereby or hereafter established for the setting, removal, and reading of water meters.

**Section 3. Encroachments and Declarant's Easements to Correct Drainage** All Lots and the Common Property shall be subject to an easement for the encroachments of initial improvements constructed on adjacent Lots or Common Property by Declarant to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, bay windows, steps and walls. If this Declaration is breached or any encroachment occurs as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alterations, there is hereby created and shall be and remain a valid easement for such encroachment and the maintenance of the same. For a period of twenty-five (25) years from the date of conveyance of the first Lot in a parcel, phase or section, Declarant reserves a blanket easement and right on, over and under the ground within that parcel, phase or section to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary. After such action has been completed, Declarant shall restore the affected property to its original condition to the extent practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by Declarant.

**Section 4. Association Easement** Every Lot and Dwelling structure thereon 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 Dwelling structure and that endangers any improvement or portion of the Common Property.

**Section 5. Association Maintenance Easement** For the benefit of the Association, its successor and assigns, a blanket easement across all of the Property is hereby established for the purpose of performing maintenance which the Association deems appropriate for the Association to perform pursuant to the terms of this Declaration.

**Section 6. Temporary Construction Access and Disturbance Easement** An easement over, through and to the Common Property 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 living unit 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, in harmony with surrounding areas and, if applicable, landscaped in a manner substantially similar to any previous landscaping. 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 Property which shall be reasonably servient and proximate to the Lot(s) upon which the construction is taking place.

Section 7. Landscape and Exterior Maintenance 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 any portion of a Lot for exterior maintenance of the Dwelling Units and the landscaping of the Lots, as stated herein. The Owner of any Lot agrees not to remove, injure or otherwise destroy the landscape material placed on the Lots.

## ARTICLE X

### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall comprising a portion of two(2) Dwelling Units constructed on any Lot(s) which is placed on the dividing line between Lots (and any re-construction or extension thereof) shall be deemed "Party Walls". and, to the extent not inconsistent with the provisions of this Article X, the general rules of law regarding such walls shall apply thereto.

Section 2. Destruction By Fire or Other Casualty. If a Party Wall is damaged or destroyed by fire or other casualty, any Owner who has used the wall may restore the wall. Each Owner who uses the restored Party Wall shall contribute to the costs of restoring the same in proportion to each such Owner's use; provided, however, that such contribution shall not prejudice the right of any such Owner to seek a larger contribution from any contributing Owner(s) based on negligence or willful misconduct.

Section 3. Alteration, Repair and Maintenance. Each Owner may construct, reconstruct, repair or extend a Party Wall situated on its Lot in an expeditious manner and in accordance with the provisions hereof. To the extent reasonably necessary, an Owner may go upon an adjoining Lot to perform such work. Upon the completion of such work, the Owner responsible therefore will restore the adjoining Lot to a condition as near as reasonably practicable to that which existed before such work was commenced. All reasonable costs for the repair and maintenance of a Party Wall shall be shared by the Owners who use the wall in proportion to such use; provided, however, that the cost of any repair necessitated by damage resulting from an Owner's negligence or intentional misconduct will be the sole responsibility of the Owner causing such damage. The cost of any voluntary alteration or improvement of a Party Wall shall be the sole responsibility of the Owner(s) performing such work.

Section 4. Right to Contribution. An Owner's right hereunder to contribution from another Owner shall be appurtenant to and run with the land. An Owner wishing to sell, transfer, mortgage or otherwise convey an interest in its Lot(s) may request in writing that the adjoining Lot Owner(s) provide to the requesting Owner within ten (10) days after receipt of such request a certificate stating that no contribution is due and owing to it from the requesting Owner, or if a

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contribution is claimed, describing in reasonable detail the nature of the claim. Any such certificate shall be provided at no charge.

Section 5. Arbitration. Notwithstanding anything to the contrary contained herein, any dispute between Owners concerning a Party Wall or arising under this Article X shall be settled by binding arbitration.

## ARTICLE XI

### EXTERIOR MAINTENANCE AND LANDSCAPING

Subject to the provisions of Article VI, Section 26, in addition to maintenance of the Common Property, the Association shall provide general maintenance of the rear and front lawns upon each Lot provided, however, that the Association shall only be responsible for lawn maintenance in the front and rear yard of each Lot if the rear yard is not fenced in, or if there are no other structures or impediments which preclude efficient lawn maintenance (to be determined in the sole and absolute discretion of the Grounds Committee, or if none, then the Board of Directors). If the rear yard is fenced in and/or there are other structures/impediments which preclude efficient lawn maintenance as determined in the sole and absolute discretion of the Grounds Committee or Board of Directors then the Owner shall be responsible for lawn maintenance and any cost associated therewith shall not be an item of Common Expense. Each of the Owners of the Lots shall be responsible for all other maintenance and care of the Lots and the Dwelling Units located thereon and shall maintain such in a first class condition. The Owner of any Lot may at his election plant and maintain trees, shrubs, flowers, and grass in his yard in compliance with this Section. No such planting or maintenance by an Owner shall reduce the assessment payable by him to the Association. In the event that the Association must perform any maintenance or repair which is the obligation of an Owner, as stated herein, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

## ARTICLE XII

### GENERAL PROVISIONS

Section 1. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and shall be to the benefit of every Owner of a Lot in the Property, including Declarant, and their respective heirs, successors, and assigns, for a term of thirty-five (35) years from the date this Declaration is recorded. At such time, the easements, covenants, conditions and restrictions herein will automatically be extended for period(s) of ten (10) additional years each unless and until a majority of the Owners of the Lots vote against such extension, which vote shall be evidenced by an appropriate instrument of record recorded on or before the expiration of the then applicable period. Owners may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting.

Section 2. Amendment. Subject to the limitations hereinafter contained, this Declaration or any Supplemental Declaration may be amended or modified at any time by a vote of sixty six and two-thirds percent (66 2/3%) of the total eligible votes of the membership of the Association as defined in Article III hereof, with both classes of the membership voting together. Members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting. Notwithstanding anything contained hereinabove, it is understood and agreed that the consent of Declarant in writing to any amendment or modification hereof or of any Supplemental Declaration must first be obtained if such amendment or modification is to be effected prior to December 31, 2017. Declarant, without the consent or approval of any other Owner, shall have the right to amend these declarations to conform to the requirements of any law or governmental agency having jurisdiction over the Property. In addition, Declarant may make minor amendments or modifications hereof which do not involve a change which materially affects the rights, duties or obligations specified herein provided it first obtains the approval (by vote at a duly called meeting) of the holders of fifty-one percent (51%) or more of the eligible votes of the Association (with both Classes of voting Members voting together). Any amendment or modification effected pursuant to this Section 2 shall become effective when an instrument is filed for the record in the Register of Deeds Office, Wake County, North Carolina, with the signatures of the requisite number of Owners (and the signature of Declarant, if such amendment or modification is to be effected prior to December 31, 2017). The foregoing shall not limit the rights of Declarant stated elsewhere herein. All amendments hereto must be approved by the City Attorney for the City of Raleigh, such approval to be evidenced by attaching a letter or stamp from such City Attorney or deputy to the recorded amendment, provided, however, that the City Attorney upon failure to approve or disapprove of a proposed amendment within thirty (30) days of receipt of a copy of such proposed amendment shall be deemed to have approved such amendment.

Section 3. Amendment Form. If any amendment to this Declaration is so approved, each such amendment shall be delivered to the Board of the Association. Thereupon, the Board of Directors shall within thirty (30) days, do the following:

(a) Reasonably assure itself that the amendment has been validly approved 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 any title to any Lot to be examined).

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS  
CONDITIONS AND RESTRICTIONS OF  
THORNTON SQUARE TOWNHOMES

By authority of its Board of Directors, Thornton Square Homeowners Association, Inc., hereby certifies that the foregoing Instrument has been duly approved by the Owners of Thornton Square Townhomes and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Thornton Square Townhomes.

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This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

THORNTON SQUARE HOMEOWNERS  
ASSOCIATION, INC.

ATTEST:

\_\_\_\_\_  
Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of their recordation in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons then owning or thereafter purchasing any Lots.

Section 4. Enforcement. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charges or lien and in no event shall any delay in such enforcement be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof. Declarant, so long as it is a Class B. Member, the Association and each Owner shall each independently have the right to enforce these Covenants.

Section 5. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases shall remain effective irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases shall become or be illegal, null or void.

Section 6. Notice. Whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not. It is the Owner's responsibility to notify the Association of any changes in Owner name and/or mailing address.

Section 7. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

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Section 8 Conflicts In the event of any irreconcilable conflict between this Declaration and the By-Laws of the Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the By-Laws of the Association and the Articles of Incorporation of the Association, the provisions of this Declaration shall control.

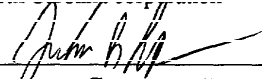
Section 9 Declarant Consent No provision hereof requiring the consent of Declarant shall be effective during any period while Declarant does not own property subject to the provisions of this Declaration.

SIGNATURES FOLLOW

BK009504PG01350

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have caused this Declaration to be executed under Seal on the day and year first above written.

PERRY CREEK COMMONS, INC.,  
a North Carolina corporation

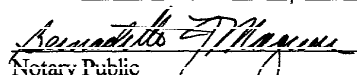
By:   
JOHN R. LANCASTER, PRES.

STATE OF NORTH CAROLINA

WAKE COUNTY

I, Bernadette J. Maguire, a Notary Public for said County and State do hereby certify that John R. Lancaster personally appeared before me this day and acknowledged that he/she is the President of Perry Creek Commons, Inc., a North Carolina corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by him/her.

Witness my hand and official stamp or seal this 17th day of JULY, 2007.

  
Notary Public

My Commission Expires:

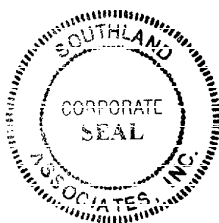
12/29/02



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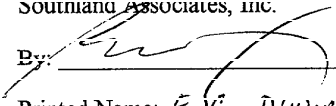
## CONSENT OF MORTGAGEE

Central Carolina Bank, being the Beneficiary under that certain Deed of Trust from Perry Creek Commons, Inc. to Southland Associates, Inc., Trustee, recorded in Book 8503 at Page 523 of the Wake County, North Carolina Public Registry, conveying the property described on **Exhibit A** attached to this Declaration, hereby: (a) consents to the recordation of this Declaration and the imposition of the provisions hereof to the real property described in **Exhibit A**; and (b) subordinates the lien and operation of the Deed of Trust to this Declaration and the provisions contained herein. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the property in lieu of foreclosure, Beneficiary and Trustee agree that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the property together with and subject to all of the terms and conditions of this Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of the Declarant under this Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.



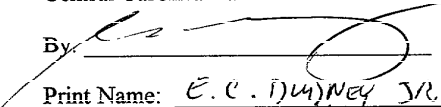
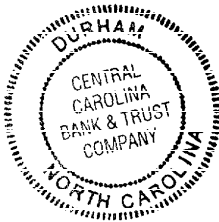
## TRUSTEE:

Southland Associates, Inc.

By: Printed Name: E. C. Dunaway Jr.Title: Vice President

## BENEFICIARY

Central Carolina Bank

By: Print Name: E. C. Dunaway Jr.Title: Vice President

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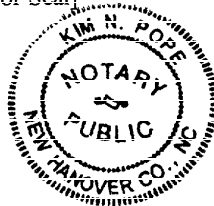
STATE OF North CarolinaCOUNTY OF New Hanover

I, Kim N. Pope, Notary Public for said County and State, do hereby certify that E.C. Dudley Jr. personally appeared before me this day and acknowledged that he/she is Vice President of Southland Associates, Inc., Trustee, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her.

WITNESS my hand and official seal, this the 19<sup>th</sup> day of July, 2002.

Notary Public Kim N. Pope

[Official Stamp or Seal]

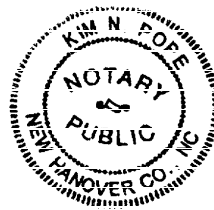
My commission expires: 03-16-2004STATE OF North CarolinaCOUNTY OF New Hanover

I, Kim N. Pope, Notary Public for said County and State, do hereby certify that E.C. Dudley Jr. personally appeared before me this day and acknowledged that he/she is Vice President of Central Carolina Bank and Trust Company, and that by authority duly given and as the act of the association the foregoing instrument was signed in its name by him/her.

WITNESS my hand and official seal, this the 19<sup>th</sup> day of July, 2002.

Notary Public Kim N. Pope

[Official Stamp or Seal]

My commission expires: 03-16-2004

BK009504PG01353

# CONSENT OF MORTGAGEE

YEL Developments, LLC, being the Beneficiary under that certain Deed of Trust from Perry Creek Commons, Inc. to W. Robbins Cox, Trustee, recorded in Book 8590 at Page 1074 of the Wake County, North Carolina Public Registry, conveying the property described on **Exhibit A** attached to this Declaration, hereby: (a) consents to the recordation of this Declaration and the imposition of the provisions hereof to the real property described in **Exhibit A**; and (b) subordinates the lien and operation of the Deed of Trust to this Declaration and the provisions contained herein. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the property in lieu of foreclosure, Beneficiary and Trustee agree that the purchaser at any such foreclosure or the transferee under any such deed in lieu of foreclosure shall take title to the property together with and subject to all of the terms and conditions of this Declaration. The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of the Declarant under this Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.

TRUSTEE

W. Robbins Cox, Trustee

W. Robbins Cox, Trustee

BENEFICIARY

YEL Development, LLC

By: John R. Lancaster

Print Name: JOHN R. LANCASTER

Title: MANAGER

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STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Bernadette J. Maguire, Notary Public for said County and State, do hereby certify that W. Robbins Cox, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal, this the 22<sup>nd</sup> day of July, 2002.

Bernadette J. Maguire  
Notary Public

[Official Stamp or Seal]

My commission expires: 12/29/02.

STATE OF North Carolina

COUNTY OF Wake

I, Bernadette J. Maguire, Notary Public for said County and State, do hereby certify that John R. Lancaster, a Member/ Manager of YFI. Developments, I.L.C., personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

WITNESS my hand and official seal, this the 22<sup>nd</sup> day of July, 2002.

Notary Public

[Official Stamp or Seal]

My commission expires: 12/29/02.

BK009504PG01355

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**EXHIBIT A**  
**Legal Description**

BEING all of that certain 10.784 acre parcel labeled as Tract 3 of the Subdivision Plat for Perry Creek Commons for YEL Development LLC, dated January 27, 2000 and prepared by McKim and Creed, recorded in Book of Maps 2000, Page 1785, Wake County Registry.

BK009504PG01356

Laura M Riddick  
Register of Deeds  
Wake County, NC



Book : 009504 Page : 01324 - 01356

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



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

North Carolina - Wake County

The foregoing certificate s of \_\_\_\_\_

*Bernadette J. Maguire*  
*Kim N. Pope.*

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

Laura M. Riddick, Register of Deeds

By: *[Signature]*  
Assistant/Deputy Register of Deeds

This Customer Group  
\_\_\_\_\_ # of Time Stamps Needed

This Document  
\_\_\_\_\_ New Time Stamp  
33 # of Pages