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Wake County, NC 526
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NORTH CAROLINA

WAKE COUNTY

DECLARATION OF
 COVENANTS, CONDITIONS AND RESTRICTIONS
 FOR THE TOWNES AT ALLYN'S LANDING

THIS DECLARATION is made this 19th day of September, 2001, by **COMSTOCK LANDING, L.L.C.**, a Virginia limited liability company qualified to do business in the State of North Carolina, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property (the "Properties") in the City of Raleigh, County of Wake, State of North Carolina, which is more particularly described as follows:

BEING all of the real property as shown on a plat (the "Plat") entitled "COMSTOCK LANDING" prepared by Withers & Ravenel Engineering & Surveying, Inc., and recorded in Book of Maps 2001, Pages 1658 and 1659, in the Office of the Register of Deeds of Wake County, N.C., including but not necessarily limited to Lots 1 through 112, inclusive, and the Open Space, private streets and other Common Areas (as defined in this Declaration); BUT SAVING, EXCEPTING AND RESERVING THEREFROM all of Lot 113 and the rights-of-way of any public streets as shown on said Plat; and

WHEREAS, it is the intent of the Declarant hereby to cause the Properties to be subjected to this Declaration of Covenants, Conditions and Restrictions to create the Townes At Allyn's Landing.

NOW, THEREFORE, Declarant hereby declares that the Properties, including without limitation, every Lot (as hereinafter defined) which is a part of the Properties, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with such real property and shall be binding on all parties having any right, title or interest in the above-described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE 1-DEFINITIONS

SECTION 1.01. "Association" shall mean and refer to Townes At Allyn's Landing Owners Association, Inc., its successors and assigns.

SECTION 1.02. "Amenities" means the improvements, if any, constructed, erected, installed or existing on the Common Area for the common use, benefit and enjoyment of the Properties by the Owners, such as clubhouses, lakes and greenways.

SECTION 1.03. "Architectural Committee" means a committee of three individuals appointed by the Board of Directors.

SECTION 1.04. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

SECTION 1.05. "Common Areas" shall mean all real property owned by the Association and the easements granted to the Association for the common use, benefit and enjoyment of the Properties by the Owners. Common Areas shall also mean the facilities constructed, erected or installed on the real property which is part of the Common Areas for the use, benefit and enjoyment of the Owners, including without limitation, the following:

- A. All central appurtenant installations for services such as electricity, gas, telephone and cable television;
- B. All water lines and mains, sanitary sewer system and storm sewer system outside of city street rights-of-way, but not within the area of a Lot;
- C. Private streets, drives, parking areas, medians, traffic and landscape islands, street yard areas, subdivision signs and entrances on the Properties or serving the Properties, but excluding driveways serving individual Lots;
- D. All Amenities for the use and enjoyment of the Members; and
- E. All of the parts of the Properties and facilities and amenities existing in or upon the Properties for common use which is necessary or convenient to the existence, enjoyment, use, maintenance or safety of the Properties.

SECTION 1.06. "Common Expenses" shall mean and include:

- A. All sums lawfully assessed by the Association against its Members;
- B. Expenses for maintenance as further provided in the Declaration or the Association's Organizational Documents;
- C. Expenses of administration, maintenance, repair, or replacement of the Common Areas;
- D. Expenses declared to be Common Expenses by the provisions of this Declaration or the Association's Organizational Documents;

- E. Premiums for hazard, liability and such other insurance as the Declaration or the Association's Organizational Documents may require or authorize the Association to purchase or which the Association is required by law to purchase;
- F. Ad valorem taxes and public assessment charges lawfully levied against the Common Areas owned in fee simple by the Association;
- G. The costs and expenses of the maintenance of the lake, a portion of which is located on the Properties, whether such costs and expenses are direct expenses or assessments (including reserve funds) payable to a non-profit association established for the purpose of maintaining such lake, and the costs and expenses of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Properties, which cross Lots or Common Areas and which serve both the Properties and lands adjacent thereto;
- H. Expenses agreed by the Members to be Common Expenses of the Association;
- I. Costs and expenses associated with the Association's purchase and reconstruction of Townhomes as provided in this Declaration;
- J. Unpaid assessments resulting from the purchase of a Townhome at a foreclosure sale (such assessment shall be collectible from all Members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).
- K. Utilities used in connection with the Common Area;
- L. Fees for services of accountants, attorneys and other professionals engaged by the Association; and
- M. All expenses classified as Common Expenses pursuant to the Planned Community Act.

SECTION 1.07. "Declarant" shall mean and refer to Comstock Landing, L.L.C., a Virginia limited liability company, and its successors and assigns as provided in the Planned Community Act.

SECTION 1.08. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for the Townes At Allyn's Landing and all valid amendments hereto applicable to the Properties recorded in the Office of the Register of Deeds of Wake County, North Carolina.

SECTION 1.09. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first Mortgage on a Lot who has requested notice of certain matters from the Association as provided in this Declaration or the Organizational Documents.

SECTION 1.10. "FHA" shall mean and refer to the Federal Housing Administration of the U.S. Department of Housing and Urban Development, "HUD" shall mean the U.S. Department of Housing and Urban Development, and "VA" shall mean and refer to the U.S. Department of Veterans Affairs.

SECTION 1.11. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties (provided said map has been approved by Declarant or the Association), with the exception of the Common Areas. Except where otherwise indicated by context, the term "Lot" shall include the improvements on such Lot.

SECTION 1.12. "Lot in Use" shall mean any Lot owned by any Person on which a Townhome has been fully constructed and for which a certificate of occupancy has been issued by the appropriate governmental agency.

SECTION 1.13. "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 1.14. "Mortgage" means any mortgage, deed of trust, and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

SECTION 1.15. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage.

SECTION 1.16. "Organizational Documents" shall mean and refer to the Articles of Incorporation and Bylaws of the Association, and all lawful amendments thereto.

SECTION 1.17. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple interest (or undivided fee simple interest) in any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 1.18. "Person" means any individual, corporation, partnership, limited liability company, association, trustee, or other legal entity.

SECTION 1.19. "Planned Community Act" shall mean the provisions of Chapter 47F of the General Statutes of North Carolina applicable to the Properties, as such provisions shall be amended and recodified from time to time.

SECTION 1.20. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions affecting real property now within the jurisdiction of the Association and such additions thereto as hereafter may be annexed and brought within the jurisdiction of the Association.

SECTION 1.21. "Townhome" or "Townhouse" shall mean and refer to an attached single family dwelling or place of residence constructed upon a Lot within the Properties and constituting a part of a building.

ARTICLE 2-PROPERTY RIGHTS

SECTION 2.01. OWNER'S EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area which includes the right of ingress and egress over the Common Area for access to such Owner's Lot, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. Admission and Other Fees: Subject to the ordinances of the City of Raleigh, the right of the Association to regulate the use of and to charge reasonable admission and other fees for the use of any recreation facility situated upon the Common Area;
- B. Suspension of Use of Common Area: The right of the Association to suspend the right to use any Amenities by any Owner, his family, occupants, tenants, guests, etc. during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. Such rights also may be suspended, after notice and hearing, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for infraction or violation of any provision of this Declaration, the Organizational Documents or published rules and regulations of the Association;
- C. Dedication and Transfer of Common Area: Except as restricted by applicable law, including but not limited to the ordinances of the City of Raleigh, the right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority or utility, or for such purposes as may be agreed to by the Members, and subject to such conditions as may be agreed to by the Members, and provided that said dedication or transfer shall be approved as provided herein. No such dedication or transfer shall be effective unless an instrument signed by eighty percent (80%) of the entire membership agreeing to such dedication or transfer has been recorded in the Wake County Registry and such other agreement of consent as required by the Planned Community Act. Any such dedication or transfer shall be made subject to every Owner's easement for access, ingress and egress to such Owner's Lot;
- D. Guests: The right of the Association to limit the number of guests that a Member may allow to use the Common Area;
- E. Borrowing for Improvements: The right of the Association, in accordance with its Organizational Documents and the Planned Community Act, to borrow money

for the purpose of constructing, repairing, or improving the Common Area, including but not limited to the Amenities (or any portion thereof) and in aid thereof, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership, but in any event not less than 67% of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Planned Community Act, to mortgage, pledge, encumber or hypothecate said Common Area; provided, however, the right of such Mortgagee shall be subordinate to the rights and easements of the Association and the Owners established hereunder;

- F. Use of Common Area: The right of the Association, through its Board of Directors, to determine the time and manner of use of the Common Areas and Amenities, if any, by the Members and to formulate, publish and enforce rules and regulations, and specifically including, but not limited to, the right to make permanent and temporary assignment of parking spaces and to make rules and regulations concerning parking;
- G. Easements: The right of the Declarant, during Class B membership, with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area to any public agency, authority, or any utility for such purposes as benefits the Properties or any portion thereof. This Section 2.01(G) may not be amended or deleted, without the written consent of Declarant;
- H. Driveways: The right and easement of individual Owners for driveways and walkways as provided in this Declaration;
- I. Exchanges: The right of the Association, as provided by and consistent with Section 10-3073(a)(2) of the Raleigh City Code, as the same may be amended from time to time, to exchange all or part of the Common Area for other real property and consideration of like value and utility subject to the provisions of the Planned Community Act; and
- J. Rules and Regulations: The right of the Board to formulate, publish and enforce rules and regulations as provided in this Declaration.

SECTION 2.02. DELEGATION OF USE. Any Owner may delegate his right of use and enjoyment to the Common Area, including but not limited to the Amenities, to the members of his family, his tenants, contract purchasers or guests, who reside on such Owner's Lot, subject to the provisions of this Declaration.

SECTION 2.03. TITLE TO COMMON AREA. The Declarant covenants for itself, its heirs, successors and assigns, that in accordance with the Planned Community Act it will convey fee simple title in the Common Area to the Association, free and clear of all encumbrances and

liens, except then current year's ad valorem real property taxes, utility, greenway and drainage easements, easements as provided in this Declaration and easement of enjoyment to which the Owners are entitled to share. Title to Common Area within real property annexed pursuant to this Declaration shall be similarly conveyed to the Association.

SECTION 2.04. TELEVISION ANTENNAS. The Association may provide one or more cable television or telecommunication systems, central television antennas or other telecommunications-receiving devices for the convenience of the Members. The costs of services provided under these contracts may be included in annual or special assessments applicable to the Lots.

SECTION 2.05. PARKING RIGHTS. If a Lot is improved with a garage and/or is served by a driveway for which an easement is provided under this Declaration, then each of the following areas shall constitute an assigned parking space for such Lot: the garage, the driveway and the space in the common parking areas, if any, in front of such driveway. Garages shall be used for parking of motor vehicles and shall not be used as storage areas nor converted to other uses, such as conversion to living area. The Board may regulate all parking on the Common Areas including but not limited to the parking of boats, trailers, and other such items on the Common Areas. No boats and other watercraft, trailers, campers, tractors, trucks other than pickup trucks rated at 3/4 tons or less, and motor vehicles other than passenger motor vehicles for 7 or fewer passengers shall be parked within the right of way of any street within the Properties, nor shall any of these be regularly parked on the Properties except in an enclosed garage or in areas on the Properties designated by the Board. No inoperable motor vehicles shall be regularly stored on the Properties. The Board may from time to time adopt appropriate rules for the temporary parking of any of these items on the Properties.

SECTION 2.06. RULES AND REGULATIONS. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, including but not limited to the Amenities, and the Lots. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owner's prior to their effective date. Such rules and regulations shall be binding upon the Owner's (with the exception of the Class B Member), their families, tenants, guests, invitees, and agents until and unless such rule or regulation shall be specifically overruled, canceled, or modified by the Board of Directors or by the affirmative votes of a majority of the Members in a regular or special meeting. After notice and opportunity to be heard, the Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for a violation of the Association's rules and regulations, including but not limited to a suspension of the Owner's rights to use the Amenities. All rules and regulations shall be uniform with respect to the Lots. Notwithstanding anything to the contrary in this Declaration, the Board of Directors may not suspend an Owner's right of ingress and egress over the Common Areas and right to the use of parking spaces as provided in this Declaration.

SECTION 2.07. TAXES ON COMMON AREA. The Association shall be responsible for and shall cause to be paid out of annual assessments all ad valorem taxes and public improvement assessments levied against the Common Area.

SECTION 2.08. LEASES OF LOTS. Any lease between an Owner and a tenant for the lease of such Owner's Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, and that any failure by the tenant to comply with the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, shall be a default under the terms of the lease. All leases of Lots shall be in writing and shall be for a term of not less than thirty (30) days.

ARTICLE 3-MEMBERSHIP AND VOTING RIGHTS

SECTION 3.01. MEMBERSHIP. Every Owner of a Lot shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot. Following termination of the Properties as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

No Owner, whether one or more Persons, shall have more than one (1) membership for each Lot owned. In the event the Owner of a Lot is more than one Person, the votes associated with such Lot shall be cast as provided in the Planned Community Act.

SECTION 3.02. MEMBERSHIP CLASSES. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners other than the Declarant so long as there is a Class B membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members.

Class B: The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and shall be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (i) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership;

- (ii) On December 31, 2008; or
- (iii) Upon the surrender of the Class B membership by the Declarant.

ARTICLE 4-COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 4.01. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- A. Annual assessments or charges; and
- B. Special assessments as provided in this Declaration.

Such assessments are to be established and collected as hereinafter provided. All annual assessments shall be fixed at a uniform rate for all Lots; provided, however, as to any Lot which is not a Lot in Use, the amount of the annual assessment for each such Lot shall be an amount equal to twenty-five percent (25%) of the amount of the annual assessment applicable to a Lot which is a Lot in Use. Except as provided herein, special assessments shall be fixed at a uniform rate for all Lots without regard as to whether or not said Lot is a Lot in Use. Annual assessments shall be collected on a monthly basis. Special assessments may be collected on an annual, semi-annual, quarterly or monthly basis as determined by the Board from time to time. The annual and special assessments, together with such interest thereon, applicable late fees and the cost of collection thereof, including reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon such Lot until paid in full. Each such assessment, together with such interest, late fees and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

SECTION 4.02. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to pay the Common Expenses and to promote the recreation, health, safety and welfare of the residents of the Properties, to enforce these covenants and the rules and regulations of the Association, to pay common expenses, and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Areas, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed and public assessments levied against the Common Areas, the cost of maintenance as provided in this Declaration, the cost to purchase and reconstruct Townhomes as provided in this Declaration, the maintenance of water and sewer mains and systems in and upon the Common Areas, the maintenance of streets (whether dedicated or not), drives, entrances, and parking areas within or serving the Properties, the procurement and maintenance of insurance in accordance with this Declaration and the

Organizational Documents, the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Areas, the employment of attorneys, accountants and other professionals on behalf of the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, roofing, and any other major expense for which the Association is responsible, and such other needs as may arise.

The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and those other portions of the Properties or Lots which the Association may be obligated to maintain. Such reserve fund is to be established and maintained out of regular assessments as a common expense, but if the reserve fund is inadequate, a special assessment may be made.

SECTION 4.03. MAXIMUM ANNUAL ASSESSMENTS.

- A. Until January 1, 2003, the maximum annual assessment shall be \$2,100.00 collected at the rate of \$175.00 per month for each Lot.
- B. From and after January 1, 2003, the maximum annual assessment may be increased each year not more than 20% above the maximum annual assessment for the previous year without a vote of the Membership.
- C. From and after January 1, 2003, the maximum annual assessment may be increased above 20% of the maximum annual assessment for the previous year by a vote of two-thirds (2/3) or more of the Members who are voting in person or by proxy at a meeting duly called for this purpose.
- D. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum annual assessment.
- E. Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses as required by the Planned Community Act. If the assessments are insufficient to pay all Common Expenses, the Declarant may advance expenses for the maintenance and operation of the Association to the extent that annual assessments assessed against the Owners are inadequate for this purpose. Such advance shall be to the Association and on terms generally available to Declarant from its lending institution. At such time as the majority of the total votes of the Association are no longer held by the Declarant, its successors or assigns, the Declarant shall have no further obligation for maintenance and operation of the Association pursuant to the terms of this section. Notwithstanding the foregoing, Declarant, its successors and assigns, shall be responsible for the payment of assessments and other amounts pursuant to other sections of this Declaration.

SECTION 4.04. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or any other purpose permitted under the Planned Community Act. Any such special assessment shall have the assent of two-thirds (2/3) or more of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 4.05. SPECIAL ASSESSMENTS FOR THE PURCHASE AND RECONSTRUCTION OF TOWNHOMES. In the event that any Townhome located on any Lot is substantially destroyed by fire or other hazard, the Owner shall give written notice to the Association within thirty (30) days following such destruction of whether he intends to repair or reconstruct the Townhome. If the Owner fails to give such notice to the Association, it shall be conclusively considered, for purposes of this Section, as notice that the Owner does not intend to repair or reconstruct the Townhome. For purposes of this Section, "substantially destroyed" shall mean that the costs of replacement or repair equals at least fifty percent (50%) of the appraised value of the Townhome on the Lot before it was damaged. If the Owner elects not to repair or reconstruct the Townhome, the Association shall have the first right and option to purchase such Townhome and the Lot on which it is located in the manner hereinafter provided. The purchase option shall be effective for a period of ninety (90) days following notice of the Owner's election not to repair or reconstruct.

- A. Exercise of Option. Upon notice of an Owner's election not to repair or reconstruct, the Board of Directors shall appoint a committee, or shall designate an existing committee of the Association, to determine whether failure to reconstruct the substantially destroyed Townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining Lots and Properties. The committee may employ such persons, including, but not limited to, real estate appraisers, realtors, architects, and engineers, as are reasonably necessary to make its determination, and shall report its conclusions, with supporting data, in writing to the Board within fifteen (15) days. The report shall set forth such matters as the Board and committee deem pertinent, but shall contain estimates of the pecuniary injury and diminution in value along with an estimate of the cost of purchase and reconstruction of the Townhome.

If the Board of Directors determines that it would be advantageous to the Association and/or to the remaining Properties to purchase and reconstruct the Townhome, it shall call a special meeting by giving written notice thereof, setting forth the purpose of the meeting, to all Members within seven (7) days following submission of the committee report. The special meeting of Members shall be held not less than seven (7) days nor more than fifteen (15) days following notice to Members. Upon an affirmative vote of at least sixty-six and two-thirds percent (66-2/3%) of each class of membership present and voting, the Board will be authorized to purchase and reconstruct the Townhome and the Lot on which it is

located and to assess all Lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of such Townhome and Lot. The Board may require that the assessment be paid in a lump sum, in installments during an assessment year, or over a period of two (2) or more assessment years, as the Board, in its discretion, shall determine to be appropriate.

Such an assessment shall be in addition to, and not in lieu of, the annual assessments provided for in this Article and the special assessments provided for in Section 4.04.

- B. Determination of Value. The Owner of the substantially destroyed Townhome and Lot on which it is located shall convey marketable fee simple title thereto to the Association upon payment to the Owner by the Association of the fair market value of the Lot and Townhome in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the Owner. If they cannot otherwise agree on a fair market value or method of determining fair market value, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The fair market value as determined by any two of these three appraisers shall be final and binding on all parties. In the event no two appraisers agree upon a fair market value, the fair market value shall be the average of the values determined by the appraisers. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (1/2) of the fee of the third appraiser. If the Board and the Owner agree upon a single appraiser, each shall pay one-half (1/2) of the cost of the appraisal.
- C. Application of Insurance Proceeds. The Owner of the substantially destroyed Townhome, prior to conveyance to the Association, shall apply or cause to be applied so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the Townhome as shall be necessary to pay all liens, mortgages, deeds of trust, taxes and encumbrances upon the Lot so that the marketable fee simple title thereto may be conveyed free and clear of all liens and encumbrances. If the insurance proceeds are not sufficient to pay all liens, encumbrances, and obligations upon the Lot, the purchase price may be reduced by an amount adequate to pay any such deficiency or the deficiency may be paid out of the purchase price.
- D. Failure to Exercise Option. If the Association does not exercise the purchase option herein provided for, the Owner may retain the Lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a site of an attached, singly-family Townhome. The reconstructed or repaired Townhome shall be substantially identical to the destroyed Townhome, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

- E. Retention by Owner. If a Townhome is not habitable by reason of damage or destruction, and the Association does not exercise the purchase option provided for herein, the obligation of the Owner to pay annual and special assessments shall not be reduced, delayed, abated or suspended. In the event a Townhome is damaged or destroyed, and the Owner does not begin repair or reconstruction within thirty (30) days following the damage or destruction, the Owner shall remove or cause to be removed, at his expense, all debris from the Lot, so that it shall be placed in a neat, clean, and safe condition and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Lot until paid by the Owner, unless the Lot is thereafter purchased by the Association under this Section.
- F. Reconstruction by the Association. Upon the acquisition of title to the Lot and the substantially destroyed Townhome located thereon, the Association is authorized to arrange such financing and to execute such notes, mortgages, deeds of trust, and other instruments, to enter into such contracts, and to do and perform such other matters and things as are necessary to accomplish the reconstruction of such Townhome; provided, however, that only that Townhome which is to be reconstructed and the Lot on which it is located shall stand as security for any liens, mortgages, or obligations arising out of the purchase or reconstruction of such Lot and Townhome, and no other portion of the Properties, including the Common Areas, shall be pledged, hypothecated, mortgaged, deeded in trust, or otherwise given as security for any obligations arising out of said purchase or reconstruction, and no Member shall be required to become personally obligated therefore.
- G. Sale or Lease. The Association shall hold title to the Lot and Townhome for the benefit of all Members. The Board may lease or sell the Lot and Townhome upon such terms and conditions as it, in its discretion, deems most advantageous to the Members. The lease rental shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the Lot; (2) to the maintenance, upkeep, and repair of the Lot and Townhome; (3) to payment or repayment to the Members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Lot and Townhome; and (4) to the general expenses of the Association. In the event the Lot is sold, the purchase price shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the Lot; (2) to payment or repayment to the Members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Lot and Townhome; and (3) to the general expenses of the Association. Any payment or repayment to Members of the special assessment may be in cash or may be applied to any annual or special assessments due or to become due.

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

SECTION 4.06. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 4.03, 4.04 AND 4.05. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.03, 4.04 or 4.05 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned and the required quorum at the next meeting shall be reduced by one-half of the required quorum for the previously adjourned meeting as provided in the Planned Community Act. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

SECTION 4.07. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to a Lot on the earlier of the first day of the month following the date such Lot was conveyed by the Declarant to a third party purchaser or the first day of the month following the date such Lot becomes a Lot In Use. The first annual assessment for such Lot shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors of the Association shall adopt a proposed budget for the Association and set the amount of the annual assessment against the Lots at least 90 days in advance of each annual assessment period. The Board of Directors shall send to each Member a written summary of the proposed budget and a written notice of the meeting of Members to consider ratification of the proposed budget at least 10 days and not more than 60 days in advance of such meeting. Unless otherwise provided in the Planned Community Act, there shall be no requirement that a quorum be present at such meeting to consider ratification of the proposed budget. The proposed budget shall be ratified unless at that meeting a majority (or such smaller percentage as required by the Planned Community Act) of the votes of all Members rejects the proposed budget. In the event the proposed budget is rejected, the last ratified budget of the Association shall continue until a new proposed budget is ratified. The due dates shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing, signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated as provided in the Planned Community Act.

SECTION 4.08. EFFECT OF NON-PAYMENT OF ASSESSMENTS/REMEDIES OF THE ASSOCIATION. Any assessment which is not paid within thirty (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined

herein. If an assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from its due date at the rate of twelve percent (12%) per annum, or the highest rate allowed by law and shall be subject to late fees as approved by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against such Owner's Lot provided under this Declaration. To the extent permitted or required by the Planned Community Act, interest, late fees, costs and reasonable attorney fees of any such action shall be added to the amount of such assessment. Each such Owner, by acceptance of a deed to a Lot hereby expressly grants to the Association, its agents or assigns, the right and power to bring all actions against such Owner 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. Such lien shall be in favor of the Association, which shall have the power to purchase the Lot subject to the lien at foreclosure and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area, including without limitation the Amenities, or by abandonment of his Lot.

SECTION 4.09. SUBORDINATION OF THE LIEN TO MORTGAGE. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage on a Lot. Mortgagees are not required to collect assessments and nothing in this Declaration shall require that failure to pay assessments shall constitute a default under a Mortgage insured by HUD or VA. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any such Mortgage or of deed of trust or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer; provided that the Association and Declarant have been notified of said foreclosure prior to the date thereof. Such unpaid assessments extinguished by the foreclosure sale shall be deemed to be Common Expenses collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

SECTION 4.10. EXEMPT PROPERTY. The following portions of the Properties, subject to this Declaration, shall be exempt from the assessment created herein:

- A. All portions of the Properties dedicated to and accepted by a local public authority; and
- B. The Common Area.

SECTION 4.11. INSURANCE COVERAGE. The Board of Directors or its duly authorized agent may have the authority to and shall obtain insurance for the Common Area, including but not limited to the Amenities, against loss or damage by fire or other hazards in an

amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard and shall also obtain a broad-form public liability policy covering the Common Area and all damage or injury caused by the negligence of the Association or any of its agents in an amount of not less than \$1,000,000.00. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be a Common Expense. All such insurance coverage shall be written in the name of the Association.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, tenants, invitees, contractors, employees or authorized representatives, the cost of such maintenance or repair shall be added to and become part of the assessment applicable to the Lot owned by such Owner.

SECTION 4.12. TWO MONTHS OF ASSESSMENTS TO BE COLLECTED AT FIRST CLOSING. At the earlier of the closing of the first sale of each Lot after such Lot becomes a Lot in Use, or upon the occupancy of such Lot as a dwelling unit, a sum equal to two months of the regular annual assessment applicable to such Lot shall be collected from the purchaser in the event of such sale or from the Owner in the event of such occupancy, and such sum shall be paid to the general operating fund of the Association to be used in the manner specified for annual assessments. This contribution shall not be considered an advance against assessments to become due after such closing.

SECTION 4.13. ASSOCIATION FUNDS NOT ASSET OF OWNERS. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any common expense or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration and the Organizational Documents of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or for any assessment which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association are an asset of the Association which may be used in the operation and management of the Properties.

ARTICLE 5-ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

SECTION 5.01. PURPOSES. The Properties are hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each Lot in the Properties; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Properties; to preserve, so far as practicable, the natural beauty of said Properties; to guard against the erection

thereof of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Properties; to encourage and secure the erection of attractive dwelling units thereon, with appropriate locations thereof on Lots; to secure and maintain proper set-backs from the streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said Properties and thereby to enhance the values of investments made by the purchasers of Lots therein.

SECTION 5.02. PLAN APPROVAL REQUIREMENT. Other than improvements constructed, made, installed or planted by the Declarant, no building, wall, fence or other structure nor any hedge or mass planting shall be commenced, altered, erected, maintained or permitted to remain upon any Lot, nor shall any addition or repair be made thereto, nor shall any building, wall, fence, or other structure be rebuilt after destruction by any hazard until plans and specifications, showing the nature, kind, space, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant during the period of Class B Membership, and thereafter, the Board of Directors or the Architectural Committee, as the case may be. In the event the Declarant, the Board of Directors or the Architectural Committee, as the case may be, fails to approve or disapprove such design and location within thirty (30) days after all completed plans and specifications and other information reasonably requested have been properly submitted, approval will not be required and this Article will be deemed to have been fully complied with. To the extent not prohibited by the Planned Community Act or by regulations of HUD or VA, the Association shall have the right to charge and collect a reasonable fee for review of such plans and specifications. Nothing herein contained shall be construed to require architectural approval for any improvements constructed, made, installed or planted by the Declarant not to permit interference with the development of the Properties by the Declarant so long as said development follows the plan of development of the Properties approved by FHA and/or VA or by the City of Raleigh from time to time.

SECTION 5.03. CONDITIONS. As a condition to the granting of approval of any request made under this Article, the Declarant or the Board or the architectural control committee, as the case may be, may require that the Owner requesting such change be liable for any cost of maintaining or repairing the approved project. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Declarant or the Board, as the case may be. Thereafter, the Owner, and any subsequent Owner of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that any cost of maintenance and repair of such improvement shall be added to and become a part of the annual assessment or charge applicable to such Lot, and subject to the lien rights provided in this Declaration.

SECTION 5.04. GROUNDS FOR DISAPPROVAL/DEFECTS. Refusal of approval of such plans, locations or specifications may be based upon any grounds, including purely aesthetic and environmental, which the Declarant, Board of Directors or Architectural Committee, as the case may be, in its sole discretion, shall deem sufficient. The Declarant, Board of Directors and

Architectural Committee shall not be responsible for any deficiencies or defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications.

SECTION 5.05. VERIFICATION OF COMPLIANCE WITH PLANS. The Declarant, Board of Directors or Architectural Committee, as the case may be, or its appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Lot during site preparation or construction, erection or installation of improvements, to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE 6-PARTY WALLS

SECTION 6.01. GENERAL RULES OF LAW TO APPLY. Each wall which is built as a part of the original construction of the Townhomes upon the Properties and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provision of this Article, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts or omissions shall apply thereto.

SECTION 6.02. SHARING OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

SECTION 6.03. DESTRUCTION BY FIRE AND OTHER CASUALTY. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

SECTION 6.04. WEATHERPROOFING. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act or omission causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and repairing all damage resulting from such exposure.

SECTION 6.05. RIGHT TO CONTRIBUTION RUNS WITH LAND. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to Owner's successors in title. Upon request, an Owner shall furnish a written, signed statement as to whether that Owner claims any rights of contribution from any other Owner or Owners.

SECTION 6.06. EASEMENT AND RIGHT OF ENTRY FOR REPAIR, MAINTENANCE AND RECONSTRUCTION. Every Owner shall have an easement and right

of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall and of those improvements belonging to one Lot which encroach on an adjoining Lot or Common Areas. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

SECTION 6.07. ARBITRATION. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided under the laws of the State of North Carolina as they now are or are hereafter amended.

ARTICLE 7-EXTERIOR MAINTENANCE

SECTION 7.01. MAINTENANCE BY ASSOCIATION. In addition to maintenance of the Common Area and the Amenities, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed by the Declarant, the Association or the builder who constructed the initial improvements on a Lot, and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping); provided, however, that: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental entity. No Owner or occupant shall install any fence or similar structure on his Lot or plant any vegetation on his Lot except with the prior written approval of the Association under Article 5.

The Association shall have no responsibility to maintain or repair the exterior or any other portion of a Townhome or to insure any Lot, Townhome or other improvement on any Lot, and shall not be liable for any damage to any Lot, Townhome or other improvement thereon except such damage caused by the Association, its duly authorized agents or employees.

SECTION 7.02. OWNER'S MAINTENANCE OBLIGATIONS. Each Owner shall maintain such Owner's Lot and the Townhome thereon, including but not limited to the roof, deck, porch, siding gutters and downspouts, if any. The Owner of a Lot improved with a garage and/or served by a driveway shall repair and maintain the garage door and driveway in good order, condition and appearance and shall repair and correct any unsafe condition thereon. Each Owner shall be responsible for all repair and maintenance of his Lot except such maintenance and repair specifically required to be provided by the Association under this Declaration or the Organizational Documents. Any Owner who fences, encloses or screens, by plants or structures, the rear portion of his Lot, may plant trees, shrubs, flowers and grass in the fenced or enclosed portion at his own expense, provided that such enclosure, planting and maintenance does not

hinder the Association in performing its maintenance duties under this Declaration. No such maintenance by an Owner shall reduce any assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one (1) year. The Association may perform maintenance during the revocation period and any other repair or maintenance not performed by an Owner as required in this Declaration. Any additional maintenance costs incurred by the Association as a result of an Owner's failure to maintain or repair as provided in this Declaration shall be added to and become a part of the assessment to which such Owner's Lot is subject.

SECTION 7.03. NEGLIGENCE, ETC. In the event that the need for maintenance or repair of any Lot or Common Area is caused through the willful or negligent acts or omissions of an Owner, or such Owner's family, tenants, contract purchasers, guests, or invitees, such Owner shall be responsible for such maintenance and repair. The Association shall have the right, but not the obligation, to enter onto an Owner's Lot and to perform any maintenance or repair required to be performed by an Owner under this Declaration in the event that an Owner fails to commence any such maintenance or repair within thirty (30) days after written notice from the Association to such Owner specifying the need for such maintenance and repair or such Owner, after commencing such maintenance and repair, fails to diligently pursue to completion such maintenance and repair within a reasonable period of time; provided, however, no notice nor waiting period shall be required with respect to an emergency condition existing on an Owner's Lot.

ARTICLE 8-USE RESTRICTIONS

SECTION 8.01. PERMITTED USE. No Lot shall be used for any purpose other than a single family residential dwelling; provided, however, the Declarant excepts and reserves the right for itself and its assigns to use any Lot or Townhome as sales offices and/or models which may be shown to prospective purchasers of Lots. No garage shall be converted or used as a bedroom, storage room or other living space, nor shall the number of bedrooms in a Townhome be increased without the approval of the Association and the City of Raleigh. Garages shall be used for the parking of motor vehicles and limited storage which does not interfere with such parking.

SECTION 8.02. NO BUSINESSES. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot or other part of the Properties, except that any Owner may lease the Townhome located on his Lot for residential purposes; provided, however, the foregoing covenant shall not apply to the business activities associated with the development of the Properties and sales of the Lots or to the construction and maintenance of Townhomes and other improvements on the Lots or the Amenities and the various activities of the Association in furtherance of its powers and purposes as hereinafter set forth. The Declarant and its agents and builders may use any Lot or Lots and any Townhomes thereon for office, sales or display purposes.

SECTION 8.03. PROHIBITED STRUCTURES. No Owner shall at any time place on such Owner's Lot or any other portion of the Properties, any mobile, manufactured or modular home, or any tent, shack or other temporary structure with the limited exception of construction trailers for use as offices for overseeing construction and sales during the construction process and then only for the use of the contractor performing such construction and sales. Such construction trailers shall not be permitted to remain on the Properties after the period of construction and sales.

SECTION 8.04. ANIMALS. No animal, livestock or poultry of any kind shall be raised or kept on any Lot, except that no more than 2 dogs, cats or other usual household pets may be kept and maintained thereon, provided that they are not kept or maintained for any commercial purposes or in such a manner to be offensive or dangerous to the residents of the Properties and provided further that they are kept, maintained and controlled in compliance with: (i) all applicable laws, ordinances and regulations of the State of North Carolina, Wake County and the City of Raleigh, and (ii) such rules and regulations as the Board of Directors may adopt from time to time. In the event of a dispute over whether an animal is a household pet for purposes hereunder, the determination of the Declarant during the period of Class B Membership and thereafter by the Board of Directors shall be final. Puppies and kittens in excess of the numbers set forth above may be kept only until old enough to be safely separated from their mother. The Board of Directors shall have the absolute power to prohibit any particular pet from being kept on the Properties, including inside a residence, if the Board of Directors in its sole and absolute discretion determines that the pet is dangerous, a nuisance, or otherwise has a negative impact on the Properties.

SECTION 8.05. OUTSIDE ANTENNAS. No outside radio or television antennas or discs shall be erected on any Lot or Townhome within the Properties unless and until permission for the same has been granted by the Declarant or the Board of Directors or its Architectural Committee as provided in Article 5. To the extent this restriction may later be determined to be unenforceable pursuant to any rules and regulations promulgated by the Federal Communication Commission (as from time to time may be amended), an Owner shall nevertheless be restricted in its placement of said antennas to an area mounted on the rear roof elevation of a Townhome. Nothing in this section, however, shall prohibit (but shall not obligate) the Declarant or the Association from erecting a central master antenna, satellite dish or other similar master telecommunication system for the benefit of the Lots and charging fees for usage thereof.

SECTION 8.06. INSURANCE RISKS. Nothing shall be kept and no activity shall be carried on in any Townhome, Lot or on the Common Areas, nor shall any Owner do or keep anything, nor cause or allow anything to be done or kept on his Lot, or in his Townhome or on the Common Areas, which will increase the rate of insurance, applicable to residential use, for the Properties or the contents thereof or which will result in the cancellation of insurance on any portion of the Properties, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Areas.

SECTION 8.07. SIGNS. No Owner shall display, or cause or allow to be displayed, to public view on his Lot any sign, placard, poster, billboard, or identifying name or number on any portion of a Lot, the Common Area or the right-of-way of any street or road within the Properties except as permitted in this Declaration or as required by the City of Raleigh. Notwithstanding the foregoing, the Declarant and each Owner, or their respective agents, may place a single "For Sale" or "For Rent" sign on any Lot they own. During the development of the Properties and the marketing of Lots, the Declarant, builders and their realtors may maintain offices and may erect and display such signs and banners as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws. No Owner, other than the Declarant, shall display, or cause or allow to be displayed, to public view on his Lot any "For Sale" or "For Rent" sign which exceeds 12 inches in width or 12 inches in height. The Board of Directors may adopt Rules and Regulations concerning the color and placement of signs by Owners other than the Declarant. A sign advertising a yard sale or other temporary activity may be displayed on a Lot for no more than seventy-two (72) consecutive hours. Notwithstanding the foregoing, the Board of Directors has the authority to require any sign, other than a sign maintained by the Declarant, be removed if it determines, in its sole discretion, such sign to be detrimental to the Properties. Easements are reserved as shown and designated on the recorded plats of the Properties to erect and construct entrance signs and landscape or streetscape areas.

SECTION 8.08. STRUCTURAL INTEGRITY. Nothing shall be done in or to any Townhome or in, to, or upon any of the Common Areas which will impair the structural integrity of any building, Townhome, or portion of the Common Areas or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

SECTION 8.09. NUMBER OF OCCUPANTS. No Lot shall be rented to or occupied by a greater number of unrelated individuals than the original number of bedrooms in the Townhome on such Lot. In no event shall a Lot be rented to or occupied by a number of individuals, whether or not unrelated, which exceeds twice the original number of bedrooms in the Townhome on such Lot. For purposes of this restriction, "unrelated individuals" means individuals who are neither within the same immediate natural or adopted family (grandparents, parents, children, grandchildren) nor who are legal guardian and ward; provided, however, siblings shall be considered unrelated individuals unless a parent also occupies the same Lot as his or her principal residence.

SECTION 8.10. GARBAGE CANS AND TRASH REMOVAL. Garbage cans or approved dumpsters shall be located or screened so as to be concealed from view of neighboring Lots, Common Areas and street rights of way. All rubbish, trash, and garbage shall be regularly removed from any Lot and shall not be allowed to accumulate thereon. Trash spillage shall be the responsibility of the subject Owner for removal. Yard waste must be disposed of properly and not deposited on any other Lot, the Common Areas or street rights of way within the Properties. Notwithstanding the foregoing, The Declarant reserves for itself and its approved builders of Townhomes within the Properties the right to dump and bury rocks, trees, stumps and similar debris as needed for efficient development of the Properties provided that such dumping

and burying are done according to good building practice and in accordance with all applicable governmental laws and regulations.

SECTION 8.11. NUISANCES. No immoral, improper, offensive or unlawful use shall be made of the Properties, or any part thereof, and all valid laws, orders, rules, requirements, ordinances and regulations of all governmental agencies having jurisdiction thereof relating to any portion of the Properties shall be observed. No noxious or unreasonably offensive activities shall be carried on upon any Lot or other portion of the Properties, nor shall anything be done thereon which may be or become a nuisance or an unreasonable annoyance to the neighborhood. Activities associated with the development of the Properties and the construction of Townhomes on the Properties shall not be deemed offensive nor an annoyance or nuisance if conducted in accordance with the ordinances of the City of Raleigh. Other than in connection with the development of the Properties or the construction and sale of Lots and Townhomes, no trade materials or inventories may be stored upon a Lot.

SECTION 8.12. RULES AND REGULATIONS. The Board of Directors shall have the power to formulate, adopt, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the yard spaces of each Lot and the Common Area. All rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the Owners and available to them for reasonable inspection during normal business hours.

SECTION 8.13. SUBDIVISION OF LOT. No Lot shall be subdivided nor its boundary lines changed except with the prior written approval of the Declarant or its assigns, if during the period of Class B membership, and thereafter with the prior written approval of the Board; provided, however, the Declarant reserves the right to subdivide, re-subdivide or recombine any Lot or other property in the Properties owned by the Declarant. Any subdivision, re-subdivision or recombination of the Properties or any portion thereof shall be done in accordance with all applicable laws and regulations.

SECTION 8.14. DEVELOPMENT RIGHTS RESERVED. Notwithstanding any provisions or restrictions contained in this Declaration, and rules and regulations adopted hereunder or any amendments to the foregoing, it shall be expressly permissible for the Declarant, and its respective agents, employees and approved builders during the period of Class B membership to maintain such facilities and carry out such construction activities as may be reasonably required, convenient or incidental to the development, improvement, completion and sale of any portion of the Properties, including without limitation, the installation and operation of sales and construction trailers and offices, sales models and appropriate signs; provided, however, that in the event a sales office has been maintained in any portion of a Lot such sales office must be removed and the original intended and approved use of such structure must be restored prior to conveyance from the Declarant or its assigns to any third party purchaser.

ARTICLE 9-EASEMENTS/BUFFERS

SECTION 9.01. UTILITIES. Easements for the installation and maintenance of utilities (including, but not limited to water, sewer, gas, electricity, telephones, telecommunications, cable television and other utilities, such as a master antenna system) and drainage facilities are reserved as indicated on the recorded plats of the Properties. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Association shall have the power and authority to grant and establish upon, over and across the Common Areas such additional easements as are necessary or desirable for the providing of service or utilities to the Common Areas or Lots.

SECTION 9.02. ENCROACHMENTS. In the event that any improvements on a Lot shall encroach upon any Common Areas or upon any other Lot as a result of the initial improvements constructed by Declarant or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Areas or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Areas shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Areas into any such Lot for so long as such encroachment shall naturally exist.

SECTION 9.03. STRUCTURAL SUPPORT. Every portion of a Townhome on a Lot which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the building.

SECTION 9.04. EASEMENT FOR GOVERNMENTAL AGENCIES. An easement is hereby established over the Common Area for the benefit of applicable governmental agencies, utility companies and public service agencies (and any other Person providing services to the Properties under agreement with or at the direction of the Association) as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage channels and facilities, utilities, fire fighting, garbage collection, postal delivery, emergency and rescue activities, law enforcement activities and other governmental duties and services. An easement is hereby established for the benefit of the City of Raleigh over the Common Area and over the front five (5) feet of each Lot for the setting, removal and reading of water meters, the maintenance and replacement of water, sewer and drainage channels and facilities and the collection of garbage.

SECTION 9.05. WALKS, DRIVES, PARKING AREAS AND UTILITIES. All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, cable television lines, and other public utilities as shall be established prior to the conveyance of such Lots or the Common Area by the Declarant, and the

Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Properties. If a Lot is served by a driveway as indicated on a recorded plat of the Properties (provided such plat was approved by the Declarant or the Association), there is created an appurtenant easement over the Common Areas in favor of such Lot for the construction, reconstruction, repair and maintenance of such driveway and for the exclusive use of such driveway for ingress, egress, regress and parking purposes. Such driveway easement is subject to water, sewer and utility lines lying under such driveway and the repair and maintenance of such lines. The Association and the other Owners shall not obstruct or interfere with the use of such driveway except as is incident to the repair and maintenance of Common Areas and water, sewer and utility lines. If the Association obstructs or interferes with the permitted uses of such driveway, the Association shall make reasonable efforts to provide alternative parking for such Lot during the period of obstruction or interference.

SECTION 9.06. EASEMENTS APPURTENANT TO LOTS. All private streets and driveway areas in the Common Areas shall be subject to an easement in favor of every Lot to which they are adjacent or which they are intended to serve and shall be deemed appurtenant to each such Lot, whereby the Owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

SECTION 9.07. EMERGENCIES, ETC.. Every Lot and Townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome on any Lot and that endangers any Lot or portion of the Common Areas, or as necessary to correct any grading for drainage purposes.

SECTION 9.08. EASEMENTS TO ASSOCIATION. An easement is hereby granted to the Association, its officers, agents, employees, and authorized representatives, including but not limited to management companies, to enter in or to cross over the Common Area in connection with the exercise of any right, duty or obligation of the Association under this Declaration or its Organizational Documents.

SECTION 9.09. EASEMENT AND RIGHT OF ENTRY FOR REPAIR, MAINTENANCE AND RECONSTRUCTION. Each Owner of a Lot shall have shall have a perpetual access easement over the adjoining Lot or Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of the Townhome on such Owner's Lot. Such repair, maintenance or reconstruction shall be done expeditiously, in good and workmanlike manner and in compliance with all applicable laws, ordinances and regulations, and upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

SECTION 9.10. ACCESS EASEMENT. Each Owner shall have the right to ingress and egress over, upon and across the Common Area as necessary for access to his Lot and shall have the right to lateral support for his Lot.

SECTION 9.11. EASEMENT RESERVED BY DECLARANT FOR DEVELOPMENT. Until December 31, 2010, notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns including, but not limited to Persons constructing dwellings and other improvements on the Common Area or Lots, a nonexclusive, right, privilege and easement over, under, in, and/or on the Common Area, without obligation and without charge, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Properties, including but not limited to construction of the Amenities and installation of utilities. The reserved easement shall constitute a burden on the title to the Properties and specifically includes, but is not limited to:

- A. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on and through the Common Area; and the right to construct the Amenities; and the right to tie into any portion of the Properties with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities, constructed or installed in, on, under, and/or over the Properties any damage caused by the exercise of such rights shall be repaired and the damaged property shall be restored to as near the same condition, as reasonable and practical, as that which existed prior to the exercise of such rights;
- B. The right to construct, install, replace, relocate, maintain, authorize, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, desirable, or incidental to the construction and sale of residences on the Lots;
- C. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any portion of the Properties, including, without limitation, Lots or Common Areas conveyed to the Association, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto; and
- D. This section may not be amended without the written consent of Declarant.

SECTION 9.12. DRAINAGE. The Declarant reserves for itself and its assignees, including but not limited to the Association, the right and easement to enter upon any Lot or the

Common Area for the purpose of altering the flow of surface water in, on or across such Lot or Common Area in order to correct surface water drainage problems existing on any Lot or the Common Area. Any alterations made pursuant to the foregoing easement shall be made at the sole cost and expense of the Declarant or its assigns, as the case may be, and shall not unreasonably interfere with the Owner's use and enjoyment of his Lot. Declarant hereby agrees that in exercising the rights reserved above, all debris, materials, excess soil and rock from an affected Lot shall be removed, all excavations shall be filled, all topsoil and grass on all disturbed earth shall be replaced and reseeded. Declarant may give its written consent to an Owner to alter the flow of surface water in, on or across such Owner's Lot in order to correct surface water drainage problems existing on such Lot; provided, however, that the Declarant during the period of the Class B Membership, and thereafter the Board of Directors or the Architectural Committee, as the case may be, must give its written approval to the Owner's plan to alter the flow of surface water on such Owner's Lot.

ARTICLE 10-ANNEXATION OF ADDITIONAL PROPERTIES

SECTION 10.01. BY ASSOCIATION. Any annexation of additional land shall require the assent of two-thirds (2/3) of each Class of Membership of the Association.

SECTION 10.02. PROCEDURE. Annexation of additional land shall be accomplished by recording in the Wake County Registry a Declaration of Annexation, duly executed by the Association, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation. Upon annexation, the land shall be used only for residential and ancillary purposes and shall be subject to this Declaration and all Owners shall automatically become Members of the Association.

ARTICLE 11-RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 11.01. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 11.02. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

- A. To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by an accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by May 15th of each calendar year;

- B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions, the Organizational Documents of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self management by the Association;
- C. To receive notice of any condemnation or casualty loss affecting the Common Area or any portion thereof;
- D. To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- E. To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Area, other than those specific rights vested in the Association under Article II hereof; and
- F. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such institutional Lender, or to the place which it may designate in writing.

SECTION 11.04. REQUIREMENTS OF INSTITUTIONAL LENDER. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by certified mail at the address of the Association's registered agent identifying the Lot or Lots upon which any such Institutional Lender holds any first mortgage together with sufficient pertinent facts to identify such mortgage, or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

ARTICLE 12-GENERAL PROVISIONS

SECTION 12.01. UTILITY CHARGES. The Declarant reserves the right to subject a Lot (prior to the conveyance of such Lot to a third party) and any other portion of the Properties, to contracts with public utility companies for the installation of underground utility service and the installation of street lighting. Declarant further reserves the right to connect to each Lot necessary water and sewer service which may require a continuous monthly charge to the Owner of the Lot. Upon acceptance of a deed to the Lot each Owner agrees to pay said continuing monthly charges, if any.

SECTION 12.02. ENFORCEMENT. The Association and each Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the

Articles of Incorporation or Bylaws of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to request that law enforcement, public safety and animal control officers come on the properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

SECTION 12.03. INSURANCE. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his Townhome except that the amount shall not be required to exceed the replacement cost of the Townhome. An Owner shall exhibit to the Board, upon demand, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be added to and become a part of the annual assessment of the Owner and shall constitute a lien against such Owner's Lot until paid.

In the event the Association becomes the Owner of any buildings, or other improvements, or personal property, located within the Common Areas or such other areas that the Association is responsible for, the Board of Directors shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to buildings and properties similar in construction, location and use.

The Board of Directors shall also procure and maintain public liability and property damage insurance, insuring: each member of the Board of Directors; the manager, if any; and the Association against any liability to the public or to the Owners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use of the Common Areas, or such other areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board of Directors, but in no event shall it be less than \$1,000,000.00 per occurrence with regard to the Association and each individual director.

There shall also be obtained such other insurance coverage as the Board of Directors shall determine from time to time to be desirable and necessary. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors as a common expense of the Association.

(Recommendation to Owners - If a Townhome is damaged by fire or other casualty, and if such damage results in damage to an adjacent Townhome, there may be prolonged disputes between the insurance carriers of the adjacent damaged Townhomes (which may, in turn, delay the settlement of claims) unless the insurance protection on both Townhomes

is provided by the same carrier. It is therefore recommended that the owners of all Townhomes located within each building purchase their fire and casualty insurance from the same insurance carrier.)

SECTION 12.04. FIDELITY BONDS. The Association shall maintain blanket fidelity bonds or other similar insurance coverage for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, fidelity bonds or other similar insurance coverage shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

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

Fidelity bonds required herein shall:

- A. name the Association as an obligee;
- B. contain waivers by the issuers of the fidelity bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and
- C. to the extent available without the payment of an additional premium, provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any institutional lender servicing on behalf of the Federal National Mortgage Association any loan secured by any Lot.

The premiums on all such fidelity bonds for the Association (including premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

Notwithstanding anything to the contrary, in lieu of fidelity bonds, insurance providing similar coverage or protection may be provided and references to "fidelity bonds" shall include such insurance.

SECTION 12.05. AMENDMENT. The covenants, conditions and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the

Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time, this Declaration shall automatically be extended for successive periods of ten (10) years each. Except as specifically otherwise provided herein, the covenants, conditions and restrictions of this Declaration may be amended as provided in this Article by the affirmative vote of or by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots. Any amendments must be recorded in the Office of the Register of Deeds of Wake County, North Carolina, or such other place as designated for the recording of documents affecting real estate (the "Wake County Registry")

SECTION 12.06. AMENDMENT OF DECLARATION WITHOUT APPROVAL OF OWNERS. The Declarant, without the consent or approval of the Association or of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Properties or to qualify the Properties or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding the purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the VA, HUD, FHA, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.

No amendment made pursuant to this Section shall be effective until duly recorded in the Register of Deeds of Wake County.

SECTION 12.07. AMENDMENT TO ACHIEVE TAX-EXEMPT STATUS. The Declarant, for so long as it shall retain control of the Association, and thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Properties, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

SECTION 12.08. VA/HUD APPROVAL. As long as there is a Class B membership, the following actions will require prior approval of the VA and/or HUD: annexation of additional properties (except as permitted by applicable HUD or VA regulations for annexations by the Declarant pursuant to a right reserved under the Declaration), mortgaging of Common Area, withdrawal of or dedication of or otherwise deeding of Common Area to Persons other than the Association, and amendment of this Declaration.

SECTION 12.09. CERTIFICATE OF AMENDMENTS. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

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

B. Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that these were executed. The following form of certification is suggested:

"CERTIFICATION OF VALIDITY OF AMENDMENT TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
THE TOWNES AT ALLYN'S LANDING TOWNHOMES

By authority of its Board of Directors, the Townes At Allyn's Landing Owners Association, Inc. hereby certifies that the foregoing instrument has been duly approved or executed by the Owners of sixty-seven percent (67%) of the Lots of the Townes At Allyn's Landing and is therefore a valid amendment to existing Declaration Of Covenants, Conditions and Restrictions For The Townes At Allyn's Landing.

TOWNES AT ALLYN'S LANDING OWNERS
ASSOCIATION, INC.

By: _____
President

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 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 in this section, it shall be conclusively presumed that such instrument constitutes a

valid amendment as to all Persons thereafter purchasing any Lot. All amendments shall be approved as set forth herein, as required.

SECTION 12.10. VOTING. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Association's By-Laws.

SECTION 12.11. SEVERABILITY. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

SECTION 12.12. GENDER AND GRAMMAR. The singular, wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make provisions hereby apply to either corporations or individuals, man or woman, shall in all cases be assumed as though in each case fully expressed.

SECTION 12.13. LIABILITY EXEMPTIONS. In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police or other public service when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, the Owners or their occupants. In no case shall the City of Raleigh or the State be responsible for maintaining any private street. Such responsibility shall rest with the Association and Owners in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

SECTION 12.14. ADDRESS. Each Member agrees to keep Association informed of his address at any time and any notice sent or delivered to said address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as the Ownership of each Lot. If a Member fails to provide the Association with its address or otherwise fails to keep its address current, the Association may use the address shown on the Wake County tax records for the Owner of the Lot for which such membership exists as the Member's address.

SECTION 12.15. PROHIBITION AGAINST ASSOCIATION ENTERING INTO LONG TERM CONTRACT WHILE DECLARANT IN CONTROL OF BOARD OF DIRECTORS. Any contract or agreement entered into by the Association during any period of Class B Membership shall be subject to the right of the Association to terminate such contract or agreement, without cause, which is exercisable without penalty at any time upon not more than 90 days notice to the other party.

SECTION 12.16. CONFLICTS. In the case of any conflict between the Declaration and the Articles of Incorporation or By-Laws of the Association, the Declaration shall control, and in the case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles shall control.

IN WITNESS WHEREOF, the undersigned, have caused this instrument to be duly executed under seal as of the 19 day of September, 2001.

DECLARANT:

COMSTOCK LANDING, L.L.C.,
a Virginia limited liability company (SEAL)

By: **COMSTOCK SERVICE CORP., INC.**,
A Virginia corporation, MANAGER

~~[CORPORATE SEAL]~~

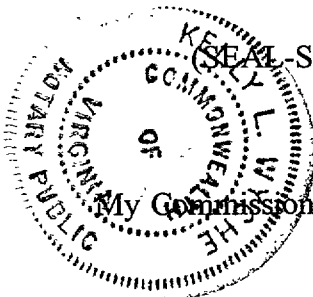
By: Christopher D. Clemente,
Chief Executive Officer

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX

I, the undersigned Notary Public of the Commonwealth of Virginia and the County aforesaid, do hereby certify that **CHRISTOPHER D. CLEMENTE** personally came before me this day and acknowledged that he is the Chief Executive Officer of **COMSTOCK SERVICE CORP., INC.**, a Virginia corporation, which is the Manager of **COMSTOCK LANDING, L.L.C.**, a Virginia limited liability company, and that by authority duly given and as the act of **COMSTOCK SERVICE CORP., INC.**, the foregoing instrument was signed by him as its Chief Executive Officer ~~and sealed with its corporate seal~~, for and on behalf of **COMSTOCK LANDING, L.L.C.**

WITNESS my hand and official seal, this the 19 day of September, 2001.



My Commission expires: 11-30-04

Kathy J. Diche
Notary Public

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 009083 Page : 01461 - 01495

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



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

North Carolina - Wake County

The foregoing certificate of _____
_____ Kelly L. Wyche _____

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

Laura M. Riddick, Register of Deeds

By:
Assistant Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages