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HOLD FOR:
MICHAEL G. SANDMAN

Wake County, NC 398
Laura M Riddick, Register Of Deeds
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STATE OF NORTH CAROLINA
COUNTY OF WAKE

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MADISON PARK PARKHOMES**

THIS DECLARATION is made this 5TH day of OCTOBER, 1999, by MADISON PARK LAND COMPANY, LLC ("Madison"), JOSEPH H. CALL and wife, SARA L. CALL (collectively, "Call"), and HERITAGE CUSTOM HOMES, LLC ("Heritage") (Madison, Call and Heritage shall hereinafter sometimes be referred to collectively as the "Declarant").

WITNESSETH:

WHEREAS, Madison is the owner of Lots 62 through 69, Madison Park Subdivision (the "Madison Lots"), as shown on plat recorded in Book of Maps 1998, Pages 866 and 867, Wake County Registry, as modified by plat recorded in Book of Maps 1999, Page 1812, Wake County Registry (collectively, the "Record Plat"); and

WHEREAS, Call is the owner of Lot 71, as shown on the Record Plat (the "Call Lot"), and Heritage is the owner of Lots 61 and 70, as shown on the Record Plat (the "Heritage Lots") (the Madison Lots, the Call Lot and the Heritage Lots shall hereinafter be referred to collectively as the "Property"); and

WHEREAS, pursuant to the terms of the following instruments, the Property is a part of the Madison Park Cluster Unit Development and subject to the Declaration of Covenants, Conditions and Restrictions recorded in Book 8076, Page 324, Wake County Registry, as amended by instrument recorded in Book 813, Page 263, Wake County Registry (the "Master Covenants"); (a) Declaration of Cluster Unit Development recorded in Book 8076, Page 352, Wake County Registry, as superseded and replaced by Declaration of Cluster Unit Development recorded in Book 813, Page 263, Wake County Registry; (b) Assignment of Declarant's Rights recorded in Book 813, Page 263, Wake County Registry; and (c) Declaration of annexation recorded in Book 813, Page 263, Wake County Registry; and

WHEREAS, Declarant wishes to subject the Property to the additional protective covenants, conditions and restrictions hereinafter set forth (together the "Parkhome Covenants"), each and all of which shall run with the land and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, occupied, used, transferred, sold and conveyed subject to the Parkhome Covenants.

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ARTICLE I
DEFINITIONS

- A. "Additional Properties" means any real property, other than the Property, subjected to the Parkhome Covenants.
- B. "Articles" means the Association's Articles of Incorporation.
- C. "Association" means Madison Park Parkhome Association, Inc., a North Carolina nonprofit corporation.
- D. "Association's Board" means the Board of Directors for the Association.
- E. "Bylaws" means the Association's Bylaws.
- F. "Common Area" means all real property owned or leased by Madison Park Homeowners Association, Inc.
- G. "Declarant" means MADISON PARK LAND COMPANY, LLC, a North Carolina limited liability company, and its successors and assigns designated as Declarant.
- H. "Improvements" means any structure of any type or kind, and all exterior modifications thereof, including, but not limited to buildings, outbuildings, parking areas, loading areas, screening walls, retaining walls, hedges, mass plantings, lawns, sidewalks, poles, signs, and utility lines and facilities.
- I. "Lot" means any numbered or lettered plot of land (excluding Common Areas and Restricted Common Areas; but including, without limitation, townhome blocks) shown on any plat, described by a metes and bounds description, recorded in the Office of the Register of Deeds, Wake County, North Carolina, which is made subject to this Declaration, as it may be amended.
- J. "Lot in Use" means any Lot which has been conveyed by the Declarant to a subsequent purchaser. Except, in the event the Lot is a vacant lot, the Lot does not become a Lot in Use until such time as a certificate of occupancy for Improvements on the Lot is initially granted or twelve (12) months from the date of conveyance, whichever is earlier. In no event shall it mean a Lot owned by the Declarant on which no Improvements have been constructed.
- K. "Member" means every Person who holds membership in the Association.
- L. "Owner" or "Owners" means the record owner, whether one or more Persons, of a fee simple title to any Lot, except those having an interest merely as security for the performance of an obligation.

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M. "Person" or "Persons" means an individual, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, an unincorporated association, or other entity.

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

O. "Restricted Common Area" means all real property owned or leased by the Association and the easements granted thereto for the common use and enjoyment of the Owners. The Restricted Common Area, including private streets and parkhome open space, to be owned by the Association shall be described in deeds to the Association and/or designated as such on each recorded plat of the Property. Restricted Common Areas shall also mean all subdivision identification signage, water lines, sewer lines, storm water ponds, storm water pipes and water retention and detention devices, if any, located within the Property which are not otherwise dedicated to and accepted by a governmental entity or serving only a single Lot.

P. "Subdivision" means Parkhomes at Madison Park Subdivision, as shown on the recorded subdivision plat(s) of the Property.

ARTICLE II PROPERTY RIGHTS

2.1. Title to Restricted Common Area. The Declarant, prior to the conveyance of the first Lot, as shown on any recorded subdivision plat(s) of the Property, shall convey fee simple title in the Restricted Common Area to the Association, free and clear of all encumbrances and liens, except utility and drainage easements of record. The provisions of this Paragraph 2.1 shall apply to Restricted Common Areas within Additional Properties, if any.

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

A. The Association shall have the right to dedicate or transfer all or any part of the Restricted Common Area to any public agency, authority or utility. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to the dedication or transfer has been recorded in the Wake County Registry. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and egress to public and private streets and walkways.

B. The Association shall have the right, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Restricted Common Area and facilities and to mortgage those properties to secure those borrowings; provided the mortgage is subordinate

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to the Owners' Easement and the rights of the Association.

C. The Association shall have the right to impose and enforce rules and regulations which may restrict the use and enjoyment of the Restricted Common Areas. The Association's Board of Directors shall have the right to suspend an Owner's rights to use the Restricted Common Areas, with notice and a hearing, for a period not to exceed sixty (60) days, for a violation of any rules and regulations established by such Board governing the use of the Restricted Common Areas.

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

E. During any period in which an Owner shall be in default in the payment of any annual or special assessment levied by the Association, the Association's Board of Directors shall have the right to suspend said Owner's rights to use the Restricted Common Areas until such assessment has been paid.

F. The Association shall have the right to exchange Restricted Common Areas for other properties, subject to the approval of the Raleigh City Planning Director and the laws of the City of Raleigh.

G. The Association shall have the right, subject to the provisions of the Raleigh City Code, to charge reasonable admission and other fees for the use of any recreational or other facility situated upon the Restricted Common Area.

H. The Members of the Association shall have the right to use parking spaces as may be provided by the Association's Board of Directors.

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

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

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

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

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

B. The Class B Member shall be the Declarant. The Class B members shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership upon the earlier of (i) the date on which the total votes outstanding in Class A equal the total votes outstanding in Class B, or (ii) January 1, 2008, or (iii) the Declarant's written consent to termination. Notwithstanding anything to the contrary contained hereinabove, Class B membership shall be reinstated if, in accordance with Section 4.2, Declarant annexes Additional Properties prior to January 1, 2008.

ARTICLE IV ANNEXATION OF ADDITIONAL PROPERTIES

4.1. Annexation by Members. Except as provided in Section 4.2, and subject to the approval of the City of Raleigh, Additional Properties may be added and annexed to the Property only if two-thirds (2/3) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Members comprising no less than two-thirds (2/3) of each class of all Members entitled to cast votes in favor of annexation describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. Subsequent to recordation of the Declaration of Annexation, the property owners shall deliver to the Association, in accordance with Section 2.1, one or more deeds conveying any property that will be designated as Restricted Common Area or Common Area within the Additional Properties as such designated property is platted.

4.2. Annexation by Declarant. As long as Class B membership exists, the Declarant may, from time to time, subject to the approval of the City of Raleigh, annex Additional Properties to the Property without the consent of the Members, if the Declarant should develop an additional tract or tracts of land consisting of any property contiguous to or across a public or private street from the Property. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. Subsequent to recordation of the Declaration of Annexation, the Declarant shall deliver to the Association, in accordance with Section 2.1, one or more deeds conveying any property that will be designated as Restricted Common Area and Common Area within the Additional Properties as such designated property is platted.

4.3. Reserved Declarant Rights. As long as Class B membership exists, the Declarant

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reserves the following development rights: (i) to add real estate to the Property in accordance with Section 4.2 of this Declaration; (ii) to add Restricted Common Areas; (iii) to recombine Lots within the Property it owns; (iv) prior to a conveyance of that real estate to an Owner, to withdraw real estate from the Property, subject to the approval of the City of Raleigh; (v) to impose supplemental conditions, restrictions and changes upon the Additional Properties annexed in accordance with Section 4.2 hereof.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

5.1. Lien of Assessments.

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

B. The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Association's Board and may be collected on a monthly, quarterly, semiannual or yearly basis as determined by the Association's Board. Annual Assessments shall be charged to each Owner of a Lot in Use, and for any Lot owned by Declarant for which a certificate of occupancy permit has been issued by the City of Raleigh; provided, however, that only one-twentieth (1/20) of the regular assessment shall be assessed against a vacant Lot. Special Assessments shall be charged to each Lot without regard to whether or not it is a Lot in Use. Assessments, together with interest and late fees thereon, and the costs of collection (including reasonable attorney fees), shall be a lien on the applicable Lot from the due date for the assessment as set by the Association's Board, continuing until paid in full, as well as a personal obligation of the person who was the Owner of the Lot at the time when the assessment fell due. The personal obligation shall not pass to that Owner's successors in title unless expressly assumed by the successor.

Each Owner covenants for itself, its heirs, successors and assigns, to pay each assessment levied by the Association on each parcel of land conveyed to said Owner within ten (10) days of receipt of an invoice for the same, and further covenants that if said charge shall not be paid within thirty (30) days from the date that said invoice is deposited, postage prepaid in the United States mail, in an envelope addressed to such Owner at its address as it appears on the books of the Association or to such other address as said Owner shall have designated, the amount of such charge shall become a lien upon said parcel of land and shall continue to be such a lien until fully paid.

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5.2. Purpose of Assessments. The Assessments shall be used exclusively for the purpose of promoting the beautification of the Property, the recreation, health, safety and welfare of the Owners, the improvement and maintenance of the Restricted Common Area, private streets, driveways, separate entrance signs, if any, access easements crossing private property, sidewalks, and the exterior of each Lot and the living unit situated thereon, the enforcement of these covenants and the rules of the Association, and the services and facilities devoted to such purpose. Expenses to be funded with the Assessments (the "Common Expenses") shall include, without limitation, taxes and assessments, all insurance premiums required hereunder (including but not limited to casualty, liability and fidelity bond premiums), Association operational costs, management fees, the fees of attorneys, accountants and others employed to represent the Association when necessary, the cost of landscaping, repairing and maintaining the Restricted Common Areas, the Parkhome Landscape Easement Area(s), the bidding at foreclosure sales as set forth in Section 5.8, and the cost of such other needs as may arise. The Association shall maintain a reserve fund for periodic maintenance, repair and replacement of the Restricted Common Area, and for periodic exterior maintenance and repair of each Lot and the living unit situated thereon. The above exterior maintenance (the "Exterior Maintenance") shall include, without limitation, the repair, replacement and care of any of the following improvements made by or with the approval of the Declarant or the Association: living unit roofs, gutters, downspouts, exterior building surfaces, mailboxes, and Lot landscaping, ordinary yard maintenance, fencing and lighting (excluding the electricity therefore). The Exterior Maintenance shall not, however, include glass surfaces, screens, awnings or any exterior maintenance, repair or replacement costs which would be covered by casualty insurance, whether or not a casualty insurance policy is in effect.

(As a matter of information for future Members of the Association, the developer wishes to make it known that it is part of the original development plan to construct a variety of Parkhomes with a variety of exteriors for the good of the entire Subdivision. Some living units will require more maintenance than others because of the types of exterior exposures. Nevertheless, in order to avoid monotony and in order to achieve a harmony of design and textures, all of those connected with the conception, design, construction and financing of the Subdivision as originally planned, are in accord in their belief that all Members of the Association will be benefited by the variety of exteriors; and, therefore, the Association should provide exterior maintenance and make a uniform rate of assessment without regard to the actual cost of maintenance of each living unit.)

5.3. Annual Assessments.

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

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B. Notwithstanding the above to the contrary:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment per Lot shall be \$2,880.00; and

(ii) An annual increase in the Annual Assessments shall not be more than ten (10%) percent except by approval by two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

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

5.4. Special Assessments. In addition to the Annual Assessments, the Association may levy in any Annual Assessment Period a special assessment applicable to that year only (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any unexpected expense, including, without limitation, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Restricted Common Area, and any unexpected exterior maintenance costs, including fixtures and personal property related thereto. A Special Assessment shall require the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.5. Notice and Quorum for Any Action Authorized Under Article 5. Written notice of any meeting called for the purpose of taking any action authorized under this Article 5 shall be delivered to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. If mailed, such notice shall be deemed to be delivered two (2) calendar days after being deposited in the United States mail, addressed to the Member at its address as it appears on the books of the Association, with postage thereon prepaid. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

5.6. Uniform Rate of Assessment. Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots in Use or Lots, as the case may be. Provided, however, that the Association shall also have the authority, through the Board of Directors, to establish, fix and levy a Special Assessment on any Lot to secure the liability of that Owner to the Association arising from that Owner's breach of any of the provisions of this Declaration.

5.7. Date of Commencement of Annual Assessment/Due Dates. The Annual Assessments

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

5.8. Non-Payment of Assessment/Remedies of the Association. Any Assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any Assessment due and payable if any installment thereof becomes delinquent. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late charge of \$25.00 and bear interest from the date of delinquency at the rate of twelve percent (12.0%) per annum or the highest rate allowed by law, whichever is less and the Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable Lot. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of the delinquent Assessment. Each Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property. Each Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Owner may waive or otherwise escape liability for Assessments by non-use of the Restricted Common Area or abandonment of his Lot.

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

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

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ARTICLE VI INSURANCE

6.1. Coverage. The Association shall obtain a broad-form public liability policy covering all Restricted Common Area and all damage or injury caused by the negligence of the Association or any of its agents. This coverage shall be in the amount of at least One Million and No/100 Dollars (\$1,000,000.00). This insurance may include coverage against vandalism. All persons responsible for or authorized to expend funds or otherwise deal in the Association's assets shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties. The Association shall also obtain such other insurance coverage as it deems desirable and necessary.

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

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

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

ARTICLE VII EASEMENTS

7.1. Blanket Utility Easement. A blanket easement upon, across, over, and under all of the Restricted Common Area is reserved for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to cable, water, sewer, gas, telephones, and electricity. Notwithstanding such, no cable, sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Restricted Common Area except as approved by the Declarant or the Association (after the termination of Class B membership). Should any utility furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant or the Association (after the termination of Class B membership) will have the right and authority to grant such easement. The easement provided for in this Article shall in no way affect other recorded easements on the Property.

7.2. Association Easements. An easement is granted to the Association, its officers, agents, employees, independent contractors, and to any management company retained by the

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Association to enter in or to cross over the Restricted Common Area. Every Lot shall be subject to an easement for entry by the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Restricted Common Area. In addition, an easement is granted to the Association (and the Persons described above) to enter upon and cross over each Lot for purposes of complying with the provisions of Article 5.2 hereof.

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

7.4. Maintenance Easement. An easement over, through and to adjacent Lot(s) is reserved and established in favor of Declarant and all Owners for the purpose of maintaining any living unit located closer than five (5) feet from a Lot line. This easement shall be used only as and when necessary to facilitate such maintenance at any time on a Lot by Declarant or Owner. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities, and shall restore the land to substantially the same condition as existed prior to such maintenance work. Should that Person fail to restore the disturbed land as required, the Owner(s) of the adjacent Lot(s) may restore the land to the required condition and that Person shall indemnify the Owner(s) of the adjacent Lot(s) for the reasonable expense incurred in performing that restoration.

7.5. Drainage Easement. For a period of thirty-six (36) months following the initial conveyance of a Lot to an Owner by the Declarant, that Lot shall be subject to an easement for entry and encroachment by the Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, the Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

7.6. Easement for Underground Utilities and Street Lighting. Declarant reserves the right to subject the Property to a contract with Carolina Power & Light Company for the installation of underground electric cables and the installation of street lighting, either or both of which may require

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a continuous monthly charge to the owner of each Lot.

7.7. Governmental Easements.

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

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

7.8. Landscape Easement. An easement is granted to the Association, its officers, agents, employees, independent contractors, and to any management company retained by the Association to enter in or to cross over any portion of a Lot denoted as "Parkhome Landscape Easement" on any recorded plat of the property (the "Parkhome Landscape Easement Area"). The Association shall be solely obligated and responsible to maintain the Parkhome Landscape Easement Area, including but not limited to planting, watering, pruning, weeding, spraying, maintaining and replacing any shrubbery, trees, fences, signage, and other landscape material which shall be placed thereon. The Owner of any Lot encumbered by a Parkhome Landscape Easement Area agrees not to remove, injure or otherwise destroy the landscape material placed within the Parkhome Landscape Easement Area; provided, further, the Owner of said Lot shall in all respects remain the fee owner of the property subject to this Declaration, and make available uses of such property not inconsistent with these terms and conditions.

ARTICLE VIII
ARCHITECTURAL COMMITTEE

8.1. Members. The Architectural Committee shall consist of one (1) or more persons designated by the Declarant. On January 1, 2008 or at such time as Declarant no longer owns any real property within the Property (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), whichever is earlier, the Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Committee. Upon this assignment, the Board shall appoint three (3) or more persons as the members of the Architectural Committee.

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

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Improvements and materials to be used in those Improvements, the site upon which they are proposed to be erected, and the effect of the Improvements on adjacent or neighboring property. There is specifically reserved unto the Architectural Committee the right of entry and inspection upon any Lot for the purpose of determining whether there exists any construction of any Improvements which violates the terms of any approval by the Architectural Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. The Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvements, or to remove any unapproved Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorneys' fees).

8.3. Approval of Plans & Specs. No Improvement shall be commenced, erected, or maintained upon the Property, nor shall an Improvement be repaired or rebuilt after destruction by any hazard until the Plans & Specifications, showing the nature, color, kind, space, height, materials, and location of the Improvement shall have been submitted to and approved in writing by the Architectural Committee. A failure to approve or disapprove completed Plans & Specifications within thirty (30) days after they have been submitted shall be deemed to be an approval of those completed Plans & Specifications. Neither the Association, the Association's Board, the Declarant, the Architectural Committee or any officer, employee, director or members thereof shall be liable for damages to any persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications. Every person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages.

ARTICLE IX ARCHITECTURAL CONTROL AND USE RESTRICTIONS

9.1. Building Sites. Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for single-family, residential purposes only. The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant (as long as Class B Membership exists), or the Association's Board or the Architectural Committee and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one Lot may be used as one Building Site. In no event, however, shall a Lot or group of Lots be resubdivided or recombined in violation of any applicable zoning or other laws in force at the time of the change. Declarant reserves the right to utilize any Lot for purposes of constructing a road to access adjacent property, subject to approval by all necessary governmental authorities.

9.2. Setbacks. Building setbacks of all structures on any Lot shall be as set forth on any recorded plat of the Property. For the purposes of this covenant, eaves, steps, carports, decks and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a Building Site to encroach upon another Lot. Provided it otherwise complies with the applicable zoning ordinances and the setbacks, if any, shown

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on the applicable recorded plat, the Declarant and/or the Architectural Committee may approve by written waiver a violation of these requirements.

9.3. Structures. Improvements on any Building Site shall be limited to single-family, residential structures. No residential structure which has a minimum area of less than fifteen hundred (1,500) square feet of heated area for a one story residence and two thousand (2,000) square feet for a one and one-half or two story structure, exclusive of porches, basement and garage, shall be erected or placed on any Building Site. All buildings and structures erected upon Lots shall be of new construction and no building or structures, other than attached single-family Parkhomes (not to exceed forty (40) feet in height) shall be constructed. No structures of a temporary character, manufactured home, modular home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Property at any time as a residence, either temporarily or permanently.

9.4. Declarant Facilities. Notwithstanding any provision in this Article to the contrary, during the period of development and sale of the Lots, the Declarant or its designated agent(s) may, subject to all applicable laws of the City of Raleigh, maintain such facilities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots. These facilities shall include but not be limited to a business/sales office, storage area, construction yards and signs.

9.5. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Lots, except that a reasonable number of domesticated, household pets may be kept, provided they are (a) not maintained for commercial purposes, (b) reasonably restrained while outside the living unit, and (c) not permitted access to an outside shelter which is (i) not approved by the Declarant, the Board of Directors or the Architectural Committee, or (ii) visible from the street.

9.6. Screening. All clothes line, equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate Improvements so as to screen them from view from the street and adjoining Lots. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate.

9.7. Leasing. No Lot or any portion of the Improvements thereon shall be leased for transient or hotel purposes, except that an Owner may lease not less than the entire residential structure on its Lot; provided that each lease must be in writing, must be for a period of not less than ninety (90) days, and must provide that it is subject to this Declaration and the Bylaws and that any failure by a tenant to comply with such shall be a default under the lease. Failure to include this provision of the lease shall not relieve the tenant from complying with the Declaration and the Bylaws.

9.8. Utility Devices. Without the prior written approval and the authorization of the Declarant (as long as Class B Membership exists), the Association's Board or the Architectural Committee, no exterior television or radio antennas, satellite dishes or solar panels or other utility

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devices of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Improvements to be located upon the Property; provided, however, that television satellite dish antennae less than 24" in diameter may be approved subject to the provisions of Articles 8.3 and 9.6 hereinabove. For the convenience of the Members, the Association may provide one or more central television antennas and cablevision, the cost of which will be included in annual or special assessments.

9.9. Business/Obnoxious Activity. No business activity of any kind or any obnoxious or offensive activity shall be conducted on the Property or Improvements thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall the Property be used in any way or for any purpose which may endanger the health of or unreasonably disturb an Owner or his tenants or invitees. No "For Sale" signs (exceeding four (4) square feet in dimension), advertising signs or rent signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property, and in no event in the Restricted Common Area. The foregoing covenants shall not, however, apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agent and assigns, during the construction and sales period for the Madison Park Subdivision.

9.10. Vehicles. No boats, recreation vehicles, or trailers (the "Vehicles") of any Owner or member of his family, his tenants, or contract purchasers shall be parked within the Restricted Common Area, or within the right-of-way of any street in or adjacent to the Property. All Vehicles shall be stored either within the Owner's garage or other facilities not located on the Property or screened from public view from the street and adjoining Lots. No Owner shall park or store an inoperative or abandoned Vehicle or automobile on any Lot or on the streets in the Property.

9.11. Above-Ground Tanks. No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance. Notwithstanding such, tanks may be placed above-ground provided they are kept in a screened enclosure which must exceed in height by at least one (1) foot any such tank as may be placed therein. The screened enclosure shall be subject to the Architectural Committee's prior approval.

9.12. Lawn Ornaments. Decorative lawn ornaments shall be approved in writing by the Architectural Committee prior to installation or placement on any Lot.

9.13. Parking Right. Owners shall park their automobiles and Vehicles only in areas designated by the Association. Ownership of each Lot shall entitle the Owner(s) thereof to the use of not less than two (2) automobile parking spaces, together with rights of ingress and egress in and upon the Subdivision's parking areas and over any private streets leading to and from such parking areas. The Association may permanently assign one (1) parking space for each living unit, which parking space will be located as near as reasonably practicable to the living unit to which it is assigned. Owners shall not be permitted to park their automobiles and Vehicles on the streets in the Subdivision.

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Parkhomes constructed on any Lot(s) which is placed on the dividing line between Lots (and any reconstruction or extension thereof) shall be deemed "party walls", and, to the extent not inconsistent with the provisions of this Article X, the general rules of law regarding such walls shall apply thereto.

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

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

10.4 Right to Contribution. An Owner's right hereunder to contribution from another Owner shall be appurtenant to and run with the land. An Owner wishing to sell, transfer, mortgage or otherwise convey an interest in its Lot(s) may request in writing that the adjoining Lot Owner(s) provide to the requesting Owner within ten (10) days after receipt of such request a certificate stating that no contribution is due and owing to it from the requesting Owner, or if a contribution is claimed, describing in reasonable detail the amount and nature of the claim. Any such certificate shall be provided at no charge. These certificates shall be conclusive evidence of payment as to third parties acting in reliance of the statement contained therein.

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

ARTICLE XI GENERAL PROVISIONS

11.1. Enforcement. The Declarant (as long as Class B Membership exists), the Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, the terms of the Parkhome Covenants. Failure by the Association or by any Owner to enforce any covenant or

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restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

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

11.3. Amendment.

A. The Parkhome Covenants shall run with the land for a term of thirty (30) years from the date of their recording and shall inure to the benefit of the Declarant (as long as Class B Membership exists), the Association or any Owner or their respective legal representatives, heirs, successors, and assigns. These Parkhome Covenants shall thereafter automatically be extended for successive periods of ten (10) years unless terminated by an instrument signed by not less than the Owners of seventy-five percent (75%) of the Lots and the City Attorney of Raleigh, North Carolina (the "City Attorney") or his/her designated agent. Except as specifically otherwise provided, the Parkhome Covenants may be amended by an instrument signed by not less than the Owners of seventy-five percent (75.0%) of the Lots; provided further, that no annexation of Additional Land, amendment or termination of the Declaration shall become effective without the written consent of the City Attorney.

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

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

(ii) Attach the following certification:

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CERTIFICATION

By authority of its Board of Directors, Madison Park Parkhome Association, Inc. certifies that the foregoing instrument has been duly executed by the Owners of seventy-five percent (75%) of the Lots in the Property and is therefore a valid amendment to the Declaration recorded at Book _____ Page _____, Wake County Registry.

MADISON PARK PARKHOME ASSOCIATION, INC.

ATTEST:

Secretary
(CORPORATE SEAL)

By: _____
President

CONSENTED TO:

CITY OF RALEIGH

By: _____(SEAL)

ATTEST:

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

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

11.5. Voting. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Declaration and the Association's Bylaws.

11.6. Member Addresses. Each Member agrees to provide the Association with written notice of his/her change of address within thirty (30) days after such change, and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of his ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the ownership of each Lot.

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

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

11.9. Construction. This Declaration shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles.

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

11.11. FHA/VA/FNMA APPROVAL. As long as there is a Class B membership, the following actions will require the prior written approval of FHA, FNMA and/or the VA: (a) annexation of Additional Properties; (b) dedication of Restricted Common Area; and (c) amendment of this Declaration.

11.12. Landscaped Traffic Islands.

A. Landscaping of traffic island(s) within the right(s)-of-way of public street(s) shall be the sole responsibility of the Madison Park Homeowners Association, Inc. (the "Master Association"). Neither the City nor the State will be liable for any accidents or damage caused by such encroachment within the right(s)-of-way of public street(s), and the Master Association shall hold harmless the public.

B. The Association shall be responsible for street landscaped islands within the right(s)-of-way of private street(s). Such street landscaped islands shall remain neat, clean, attractive and safe. Damaged, unsafe or dead plants shall be removed by the Association, and indemnify the City and State from such liability.

11.13. No Exemption. No Owner or other party may exempt itself from the coverage hereof or obligations imposed hereby by non-use or abandonment of such Owner's Lot or the Restricted Common Area.

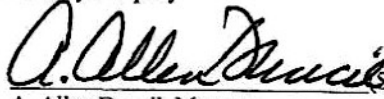
11.14. Recreational Facilities. The original plan of, or future annexations to, the Madison Park Subdivision may provide for recreational amenities upon a townhome or condominium development. So long as such amenities are not located on the Common Area or any City of Raleigh greenway, these amenities shall be provided for the exclusive benefit of the Owner of the townhome

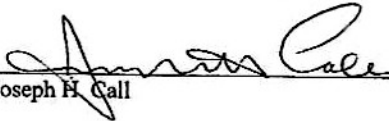
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IN WITNESS WHEREOF, Declarant has executed this Declaration under seal as of the day and year first above written.

MADISON PARK LAND COMPANY, LLC, a North Carolina
limited liability company

By:  (SEAL)
A. Allen Duncil, Manager

 (SEAL)
Joseph H. Call

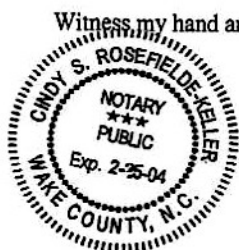
 (SEAL)
Sara L. Call

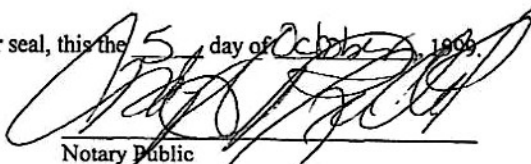
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STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that A. ALLEN DUNCIL, Manager of MADISON PARK LAND COMPANY, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.



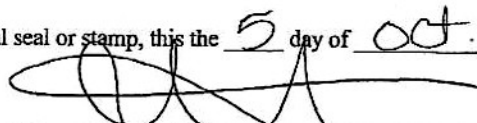

Notary Public
My Commission Expires: _____

STATE OF NORTH CAROLINA

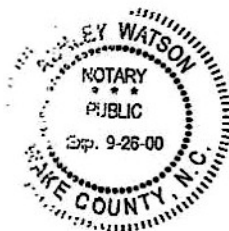
COUNTY OF WAKE

I, a Notary Public of the aforesaid County and State, do hereby certify that JOSEPH H. CALL and wife, SARA L. CALL personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal or stamp, this the 5 day of Oct, 1999.


Notary Public

My Commission Expires: _____

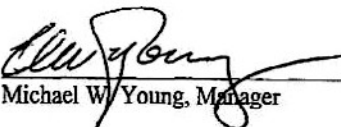


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DECLARANT (CONT'D.):

HERITAGE CUSTOM HOMES, LLC

By:  (SEAL)
Michael W. Young, Manager

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, the undersigned Notary Public of the aforesaid County and State, hereby certify that MICHAEL W. YOUNG, Manager of HERITAGE CUSTOM HOMES, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official stamp or seal, this the 7 day of July, 1999.


Notary Public

My Commission Expires: 11/15/00



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Laura M Riddick
Register of Deeds
Wake County, NC



Book : 008433 Page : 02652 - 02676



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

North Carolina - Wake County

The foregoing certificate of

Ginny S. Ruffolo - Keller
Shirley L. Ruffolo
G. C. Ruffolo

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: Shirley L. Ruffolo
Assistant Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages