

FOR REGISTRATION
Sharon A. Davis
REGISTER OF DEEDS
Durham County, NC
2018 Jun 11 02:13:40 PM
BK:8442 PG:738-763
DECLARATION
FEE: \$70.00
INSTRUMENT # 2018019855



DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
751 SOUTH TOWNHOMES

Prepared by and return to: Alison R. Cayton, Manning, Fulton & Skinner, P.A., P.O. Box 20389, Raleigh, NC 27619-0389

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA AND/OR THE FLAG OF THE STATE OF NORTH CAROLINA.

THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

THIS DECLARATION, made on the date hereinafter set forth by **751 South, Inc.**, a North Carolina corporation, with its principal office located at 9310 North Carolina Highway 751, Durham, North Carolina 27713-6880, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in or near the City of Durham, County of Durham, State of North Carolina, which is more particularly described on Exhibit "A" attached hereto;

WHEREAS, 751 South is a multi-use development consisting of the 751 South Master Association, Inc. and other sub-associations including the 751 South Townhome Owners Association, Inc.; and

WHEREAS, the Members of the 751 South Townhome Owners Association, Inc., shall be responsible for paying the Townhome Common Expenses of the 751 South Townhome Owners Association, Inc. as well as sharing the Common Expenses of the 751 South Community Association, Inc. with Members of the other sub-associations.

NOW, THEREFORE, Declarant hereby declares that all of the Property described above shall be held, used occuppies, leased, mortgaged, sold and conveyed subject to the following easements, restrictions, charges, liens, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Articles" shall mean the Articles of Incorporation of the Association as filed with the Secretary of State, State of North Carolina, as the same may be from time to time amended.

Section 2. "Association" shall mean and refer to 751 South Townhome Owners Association, Inc., a North Carolina corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 4. "Building" shall mean and refer to a multi-unit structure containing townhomes, constructed or erected on the Property.

Section 5. "Consumer-Occupant Lot Owner" referred to herein is a Lot Owner who purchase the Lot from the Declarant or an Initial Builder and occupies the residence on the Lot.

Section 6. "Declarant" shall mean and refer to 751 South, Inc., its successors and assigns, to whom the rights of Declarant hereunder may be expressly transferred, in writing in whole or in part, and subject to such terms and conditions as Declarant may impose.

Section 7. "Declarant Development Period" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Durham County, North Carolina, and continuing until the later of (i) such time as Declarant shall no longer have the right to annex any additional property pursuant to the provisions of Article VI, Section 2 hereof; or (ii) such time as Declarant shall no longer own any portion of the Property for the purpose of development or sale.

Section 8. "Initial Builder" shall mean the contractor or Lot Owner that constructs the initial dwelling or model home on a Lot after the recording of this Declaration, or any entity designated as an Initial Builder by Declarant.

Section 9. "Limited Townhome Common Element" shall mean those portions of the Townhome Common Elements that serve only a single Lot or a limited number of Lots, and which may include, but specifically is not limited to, driveways, walkways, parking areas or areas serving only specified Lots, and such other similar areas as may be designated by a subdivision map of the Property or the Association.

Section 10. "Living Unit" shall mean and refer to any Lot on which a dwelling unit has been fully constructed and made ready for occupancy as a residence, including without limitation, completion of the final floor covering, interior paint and wallpaper and all appliances, for which a Certificate of Occupancy or Compliance has been issued, and owned by anyone other than the original builder thereof unless occupied as a residence or model home.

Section 11. "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map of the Property, as such map or maps may be from time to time amended or modified, and designated for residential use and for separate ownership and occupancy. Declarant hereby reserves the right to reconfigure, from time to time and without the consent of any other Owner or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant or an affiliate of Declarant, as the case may be, and to thereby create additional Lots, eliminate existing Lots or Common Elements, or create additional Common Elements; provided, however, in no event shall the Property contain a greater number of Lots than the number from time to time permitted by the appropriate local governmental authority. Upon the recording by Declarant of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this Declaration and each newly configured lot shown on the revised plat shall be a "Lot" as defined in this Declaration.

Section 12. "Master Association" shall mean and refer to 751 South Community Association, Inc., a North Carolina corporation, its successors and assigns.

Section 13. "Master Association Common Elements" is defined as all real property and Improvements thereon owned by the Master Association for the use, enjoyment or benefit of the Members of the Master Association, and all rights in and to all easement in or on real property, together with all associated Improvements in or on such easements, granted to or reserved by or on behalf of the Association (or by or on behalf of the Declarant for later transfer or assignment to the Association) for the use, enjoyment or benefit of the Members of the Association. Common Property typically will be established by an instrument or plat recorded in the Register and identified in such instrument or plat as "Common Area", "Common Property", "Private Street", "Private Open Space", "Common Open Space", "Open Space", "Buffer", "Trail" or some other, similarly descriptive term. Common Property also includes all "Landscape Easements", "Sign Easements", and "Landscaped Rights-of-Way" as defined in the Master Declaration of Covenants for the Master Association.

Section 14. "Master Plan" shall mean and refer to the plan(s) for the Property and any additional property now or hereafter approved by the appropriate local governmental authority as such plan(s) may be from time to time amended.

Section 15. "Master Plan Lot" shall mean and refer to any separately numbered portion of the Property shown from time to time on the Master Plan intended for use or used as a site for any townhome unit and shall include any improvements constructed thereon and "Master Plan Lots" shall refer to all such lots collectively.

Section 16. "Member" shall mean and refer to every person or entity that holds membership in the Association.

Section 17. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 18. "Person" shall mean and refer to any individual, corporation, partnership, limited liability company, association, trustee or other legal entity.

Section 19. "Property" shall mean and refer to that certain real property hereinbefore described on Exhibit "A", and such additions thereto as may hereafter be brought within the jurisdiction of the Association as this Declaration may provide.

Section 20. "Townhome Common Elements" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of all the Owners or Members or designated classes of Members of the Association, including but not limited to Limited

Townhome Common Elements, private streets, townhome open space, townhomes common areas, townhome common properties, and sewer lines and water lines that serve more than one Lot and are located outside any public street or City water or sanitary sewer easement, and Townhome Common Elements as may be designated on any subdivision map of the Property or by the Association. Townhome Common Elements also include stormwater drainage and stormwater system improvements and easements located on the Property serving any or more than one Lot and are not maintained by any governmental authority

Section 21. "Townhome Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses for maintenance of the townhomes as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair, or replacement of the Townhome Common Elements and Limited Townhome Common Elements;
- (d) Expenses declared to be Townhome Common Expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase, or as the Association may deem appropriate to purchase;
- (f) Ad valorem taxes and public assessment charges lawfully levied against Townhome Common Elements owned in fee by the Association;
- (g) Expenses for maintenance of roads, streets, rights of way and any amenities as provided in this Declaration;
- (h) Expenses for maintenance of security devices or personnel if determined necessary by the Board;
- (i) Any other expenses determined by the Board or approved by the Members to be Townhome Common Expenses of the Association;
- (j) Expenses for a management company hired by Declarant or the Association, as applicable, in its discretion, to assist with any of the expenses outlined above and any other powers of Declarant or the Association as applicable; and
- (k) The charges for utilities used in connection with maintenance and use of Townhome Common Elements.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Townhome Common Elements and Master Association Common Elements together with and including the right of access, ingress and egress, both pedestrian and vehicular, on and over the private streets, drives, walkways and parking areas of the Townhome Common Elements and Master Association Common Elements, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) Subject to the ordinances of the City of Durham, North Carolina, the right of the Association to charge reasonable admission and other fees for the use of any recreational or other similar facility situated upon the Townhome Common Elements or Master Association Common Elements;

(b) the right of the Association to suspend the voting rights and the right to use the recreational or other similar Townhome Common Element and Master Association Common Elements facilities, if any, by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association pursuant to Section 47F-3-112 of the Planned Community Act and with the consent of Members entitled to cast at least sixty-seven percent (67%) of the votes of each class of Members of the Association, to sell, dedicate or transfer fee title to all or any part of the Townhome Common Elements and Master Association Common Elements for such purposes and subject to such conditions as may be agreed to by the Members consenting to such dedication or transfer; provided, however, during Declarant's Development Period, Declarant must also consent to such action and, further provided that no such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from, the Lots or any remaining Townhome Common Elements, or cause any Lot or any remaining Townhome Common Elements to fail to comply with applicable laws, regulations or ordinances;

On any instrument of dedication, sale, or transfer of real property, the Secretary of the Association shall certify that sixty-seven percent (67%) of the votes of each class of members have approved the action evidenced by the instrument, and that certificate shall be conclusive that the execution and delivery of such instrument was properly authorized by the Association and its members and shall be relied upon and binding as to any third party or as to any grantee, its successor and assigns; provided, however, conveyances for general service utility purposes as specified in the Declaration may be made without consent of the members, and the Association may execute an instrument of conveyance therefore without such certification;

(d) the right of the Association to participate in an equal exchange of land, as permitted by local government ordinances.

(e) the right of the Association to limit the number of guests of Members except Initial Builders;

(f) the right of the Association, with the assent of two-thirds (2/3) of each class, to borrow money for the purpose of improving the Townhome Common Elements, Master Association Common Elements and facilities and in aid thereof to mortgage the Townhome Common Elements, and Master Association Common Elements provided that the rights of such mortgagee in the Townhome Common Elements, and Master Association Common Elements shall be subordinate to the rights of the homeowners and Association hereunder;

(g) the right of the individual Members to the use of parking spaces as provided in this Article;

(h) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Townhome Common Elements and Master Association Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Townhome Common Elements and Master Association Common Elements and to create Limited Townhome Common Elements.

(i) the right of Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the initial Property and all lands included in subsequent phases.

(j) the right of the Association to dedicate or transfer non-exclusive easements on, over and upon all or any part of the Townhome Common Elements or Master Association Common Elements for such purposes and subject to such conditions as may be agreed to by the Association's Board; provided, however, no such dedication or transfer shall interfere with or obstruct drainage rights in favor of, utility service to, or ingress, egress and regress to or from, the Lots or any remaining Townhome Common Elements and Master Association Common Elements or cause any Lot or any remaining Townhome Common Elements or Master Association Common Elements to fail to comply with applicable laws, regulations or ordinances and no such dedication or transfer shall be effective unless an instrument executed on behalf of the Association by its duly authorized officers, agreeing to such dedication or transfer, has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Association's Bylaws, his right of use and enjoyment to the Townhome Common Elements or Master Association Common Elements and facilities to the Members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. Title to the Townhome Common Elements. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Townhome Common Elements and Master Association Common Elements located within the Property to the Association or the Master Association, free and clear of all encumbrances and liens, except for encumbrances of utility, service, access, storm drainage and other similar service or utility easements. The Association and Master Association shall be deemed to accept such Townhome Common Elements or Master Association Common Elements for ownership and maintenance as necessary.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every record Owner of a Lot, which is subject to assessment, shall be a Member of the Association and the Master Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment.

Section 2. Section 2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant, and 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; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited. In the event that two or more Lots are recombined to form one Lot, the owner of the new Lot shall only be entitled to one vote for the new Lot. Likewise, in the event that one Lot is subdivided to form two or more Lots, the owners shall be entitled to one vote per new Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to six (6) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes in Class A membership equal or exceed the total votes in Class B membership; but provided, that the Class B membership shall be reinstated if thereafter, and before the time stated in Sub-paragraph (b) below, the Master Plan is amended to add additional Master Plan Lots sufficient to give the Class B membership a total number of votes (with the Class B membership entitled to six (6) votes for each Master Plan Lot that is owned by Declarant and/or any Affiliate or for which Declarant or any Affiliate holds a contract right to purchase) greater than those of the Class A membership, or

(b) ten (10) years from the date of recordation of this Declaration

Section 3. Prior to conversion of the Class B membership to Class A membership, Declarant shall have the right to designate and select all of the Members of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association, and Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any members or members of the Board of Directors so removed for the remainder of the unexpired term of any member or members of the Board of Directors so removed. Any Board of Directors member designated and selected by Declarant need not be a resident of the Property. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any members of the Board of Directors which Declarant is not entitled to designate or select shall be elected by the Members of the Association.

Section 4. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 1(b) herein.

Section 5. Simultaneously with the recordation of this Declaration and pursuant to Article V, Section 9 of the Master Declaration, Declarant hereby irrevocably assigns to the Association and the Association shall be deemed to have irrevocably assumed the following rights of membership in the Master Association:

- (a) The right to attend member meetings of the Association;
- (b) The right to cast any vote and the right to give or withhold any consent, both as a Member of the Association and as an Owner, provided for herein.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges which are Townhome Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements, and (3) special assessments for purchase and reconstruction of townhomes as hereinafter defined, all as hereinafter provided. The annual and individual and special assessments, together with interest and costs, late payment charges, reasonable attorney's fees, and fees not to exceed \$150.00 in total for each act of delinquency, to be charged by the Association or the Association's managing agent for offsetting the costs of collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, late payment charges, and reasonable attorney's fees, and fees not to exceed \$150.00 in total for each act of delinquency, to be charged by the Association or the Association's managing agent for offsetting the costs of collection, 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 for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. The Owner of any Lot shall also 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 to the Master Association such assessments and charges as are set forth in the Declaration for the Master Association.

The Association, upon an affirmative vote by the majority of the Board of Directors, may increase or decrease the amount charged by the Association or the Association's managing agent for offsetting the costs of collection, provided that written notice is provided to all Owners of record at the time of such change.

The Association shall also have the authority, through the Board of Directors to establish, fix and levy an individual assessment on any Lot or Living Unit to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the amount of such assessment shall be in default and become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Townhome Common Expenses to promote the recreation, health, safety, and welfare of the residents of the Property and in particular, but not limited to, for the acquisition, improvement and maintenance of Property, services, amenities and facilities, for trees and landscaping located between the boundary line of a Lot and the street, for the exterior maintenance of the Buildings and for the use and enjoyment of the Townhome Common Elements, including but not limited to, the cost of repairs, replacements and additions, the cost of maintenance of private streets and lighting on private streets, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Townhome Common Elements owned in fee by the Association, the procurement and maintenance of insurance in accordance with the Declaration and Bylaws or as deemed appropriate by the Board, the payment of common antenna service, the employment of counsel, accountants and other professionals for the Association when necessary, and such other needs as may arise.

Section 3. Amount of Assessment.

(a) Initial Maximum Assessment. To and including December 31, 2018, the maximum annual assessment shall not exceed One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) per Living Unit.

(b) Increase by Association. From and after January 1, 2019, the maximum annual assessment effective for any year, initially \$1,200.00, may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed twelve (12%) percent. The percentage increase shall be based on the maximum annual assessment for the prior year, or if the Association has not chosen to implement an increase for one or more years, the increase provided in this Section 3 (b) may, at the option of the Association, be based on the annual assessment that would be effective had the increase been implemented each year prior to the year of the actual increase. Any budget providing for an increase not requiring a vote pursuant to subsection (c) below, is ratified unless ninety percent (90%) of the total vote of each class of Members vote to reject the budget at a duly called meeting. The Board of Directors, at its option may declare that a special Refurbishment Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Refurbishment Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied no more than once every five (5) years from the date of the recording of this Declaration. The Refurbishment Assessment shall be used to pay for the cost of enhancing, refurbishing or repairing portions of the Common Elements such as, but not limited to entryway features, lighting and landscaping and the like.

(c) Increase by Members. From and after January 1, 2019, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the greater of twelve (12%) percent or the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 3.

(e) Board Authority. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, Declarant may loan to the Association funds to cover the expenses not otherwise covered by the assessment hereunder.

(g) Attorney's Fees. There shall be an approval by the majority of the votes of the members prior to making a special assessment for attorney's fees or prior to incorporating attorneys fees (other than those typically incurred in the normal management of the Subdivision) into the annual budget on which the annual assessment is based.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Townhome Common Elements, any extraordinary maintenance, including vegetation, fixtures and personal property related thereto and any

property for which the Association is responsible, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. . Provided, however, the Board of Directors, at its option and without a vote of the members of the Association, may declare that a Special Capital Assessment be levied against all Lots. Provided, however, the Board of Directors, at its option may declare that a Special Capital Assessment be levied against all Lots, unless ninety percent (90%) of the total vote of each class of Members vote to reject it. The Special Capital Assessment shall be in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) per Lot and may be levied in emergency situations only, no more than once every five (5) years from the date of the recording of this Declaration. The Special Capital Assessment shall be used to defray the cost of any construction, reconstruction, restoration, repair or replacement of capital improvements upon the Townhome Common Elements. This assessment may not be used for any other purposes including litigation involving the Association.

Section 5. Replacement Reserve. Out of the Townhome Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Townhome Common Elements and any Limited Townhome Common Elements which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than ten (10) days nor more than sixty (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 of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a minimum seven (7) day, maximum twenty-one (21) day notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. If at a second meeting, the requirement of one-half (1/2) of the required quorum is not met, then in a subsequent meeting the requirement shall be one-fourth (1/4) of the required quorum and successive meetings may be held until a quorum is maintained by successively halving the quorum requirement of the prior meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual basis or other periodic basis established by the Board.

Section 8. Date of Commencement of Annual Assessments: Due Dates. Notwithstanding any other provision of this Article IV, the annual assessments, special assessments, capital amounts and other charges provided for in this Declaration shall not commence as to any Lots or Living Units until the date of the sale or lease of the Lot or Living Unit from the Declarant to a Consumer-Occupant Lot Owner or from an Initial Builder to a Consumer-Occupant Lot Owner. Provided however, an Annual Assessment not to exceed \$1,200.00 per Lot per year ("Initial Builder Assessment") shall be assessed against Lots owned by an Initial Builder, commencing on the date of sale or lease of a Lot from the Declarant to an Initial Builder until such time as the Initial Builder sells or leases a Lot or Living Unit to a Consumer-Occupant Lot Owner. The Initial Builder Assessment shall not increase over the maximum annual amount of \$1,200.00 per Lot per year. Upon commencement of annual assessments for a Lot, the Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be on a monthly basis, or at any other time as established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

Section 9. Two Months Initial Working Capital. In addition to the regular assessments to be charged and paid hereunder, the initial Consumer Occupant Lot Owner shall, at the time of the initial sale of each Lot from the Declarant or builder to the initial Consumer-Occupant Lot Owner, pay to the Association a sum equal to two (2) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the Lot Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, shall be subject to a late charge up to the highest amount permitted under applicable law. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorneys' fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Section 47F of the North Carolina General Statutes. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys' fees, advances to pay taxes and prior encumbrances, fees not to exceed \$150.00 in total for each act of delinquency, to be charged by the Association or the Association's managing agent for offsetting the costs of collection, and, if permitted under applicable law, interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The Association, upon an affirmative vote by the majority of the Board of Directors, may increase or decrease the amount charged by the Association or the Association's managing agent for offsetting the costs of collection, provided that written notice is provided to all Owners of record at the time of such change.

Section 11. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes and public assessments levied on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 12. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 13. Foreclosure of liens for unpaid Townhome Common Expenses. In any action brought by the Board to foreclose on a Lot because of unpaid Assessments, the Lot Owner shall be required to pay a reasonable rental for the use of his Lot, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all Lot Owners, or on behalf of any one or more individual Lot Owners, if so instructed, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage, convey, or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover money judgment for unpaid Townhome Common Expenses may be maintainable without foreclosing or waiving the lien securing the same.

Section 14. Unpaid Assessments. No Lot Owner shall be liable for the payment of any part of the Townhome Common Expenses assessed against his Lot subsequent to a consummated sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Lot. A purchaser of a Lot other than an Initial Builder purchaser, shall be jointly and severally liable with the seller for the payment of the Townhome Common Expenses assessed against such Lot prior to the acquisition by the purchaser of such Lot, without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser therefor. Provided, that a first-lien mortgagee or other purchaser of a Lot at a foreclosure sale of such Lot shall not be liable for, and such Lot shall not be subject to, a lien for the payment of Townhome Common Expenses assessed prior to such foreclosure sale, and such unpaid assessed Townhome Common Expenses shall be deemed to be Townhome Common Expenses collectible from all of the Lot Owners, including such purchaser, his successors and assigns.

ARTICLE V

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhomes upon the Property and placed on the dividing line between the Lots and all reconstruction or extensions of such walls shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repairs and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Consumer-Occupant Lot Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, 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 4. Easement to Adjoining Lot. The Owner of any Lot may construct, reconstruct, repair, or extend a party wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. This provision shall not apply to any Initial Builder that causes a party wall to be exposed to the elements during construction.

Section 6. Right to Contribution Not Run with Land. The right of any Owner to contribution from any other Owner under this Article shall be contractual hereunder and shall not be appurtenant to the land and shall not pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining Owner

has a right of contribution as provided in this Article V, request of the adjoining Owner a certificate that no contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request without charge; provided, however, that where the adjoining Lot Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE VI

ARCHITECTURAL CONTROL

No site preparation (including, but not limited to, grading, elevation work, sloping or tree work) or initial construction, erection or installation of any improvements, including but not limited to, buildings, fences, signs, walls, screens, mailboxes, landscaping, plantings or other structure shall be commenced, erected, placed, altered or maintained upon the Property or any Lot, nor shall any exterior addition to, or change, or alteration therein be made to any improvement by any Owner, other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, exterior design, colors, siding, roof shingles, location and elevations of the proposed improvements 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 Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. Provided however, at the Declarant's option, the Declarant may retain the ability to appoint the members of the Architectural Committee after Class B membership has terminated until such time as the construction of a Living Unit has been completed on all Lots. In the event said Board, or its designated Committee, fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required; and this Article will be deemed to have been fully complied with; provided that plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing or any prior approval by the Committee.

Upon request the Board shall provide any Owner with a letter stating that any such work plans and specifications have been approved and the same may be relied upon by third parties.

Refusal of approval of such plans, location or specifications may be based upon any grounds, including purely aesthetic and environmental, that in the sole discretion of the Board or Committee, it shall deem sufficient. The Association, Board or Architectural Committee shall not be responsible for any defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications.

The Association or its appointed agents shall have the right, at its election, but shall not be required, to enter upon any of the Property 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.

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

Notwithstanding any of the foregoing, as to any Initial Builder, Declarant may provide approval on a Building by Building basis, for site preparation, construction, erection or installation of improvements, exterior addition to, or change or alteration to any Improvement, without the need for additional written approvals of, or the submission of, any plans or specifications by the Association, the Board, or the Architectural Committee. Once granted as to any Building, such approval shall be irrevocable and binding on the Association, the Board,

and the Architectural Committee. Once approval is granted for any Building, such Initial Builder shall not be obligated to obtain any other approvals from the Board, the Association, or the Architectural Committee.

ARTICLE VII

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Approval of Annexation. Annexation of additional property, except as provided in Section 2 of this Article VII, shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any, present in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purposes of the meeting. The presence of Members or of proxies entitled to cast forty percent (40%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, Members not present may give their written assent to the action taken thereat.

Section 2. Annexation by Declarant. If within twenty (20) years of the date of recordation of this Declaration in the office of the Durham County Register of Deeds, the Declarant should develop such other lands as Declarant or Affiliate or member of Declarant may hereafter acquire contiguous to the additional land, which additional land has been subjected to this Declaration, such land may be annexed by the Declarant without the consent of Members; and, in doing so, Declarant may file and record such amendments to this Declaration as are necessary without the consent of the Members in order to subject such additional lands to the terms of this Declaration and the jurisdiction of the Association. For purposes of determining contiguity of property, the rights-of-way of public or private roads and utilities, as well as rivers and streams, shall be deemed not to separate otherwise contiguous property. All land subject to the Master Plan shall be deemed contiguous property.

Declarant may amend this Declaration at the time of annexation of additional lands as pursuant to the provisions of this Article VI, Section 2. Declarant shall have the right to make such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration but such additions and/or modifications shall have no effect upon the properties previously subjected to this Declaration.

The addition of property authorized under this paragraph may increase the cumulative maximum number of lots authorized in the properties, and, therefore, may alter the relative maximum potential voting strength of the various types of membership of the Association.

Section 3. Recording Annexation Documents. Annexation of additional lands shall be accomplished by recording in the Office of the Register of Deeds in the county in which the Property is located, a Declaration of Annexation, duly executed by the Declarant if the Declarant has the right to annex pursuant to Section 2 above (and by the Association and the land owner of the annexed tract if pursuant to Section 1 above), 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 Property on the date of recordation of the Declaration of Annexation, and in the case of an annexation by the Declarant, no action or consent on the part of the Association or any other person or entity

shall be necessary to accomplish the annexation except any local governmental authority if required by its ordinances

Section 4. Annexed Townhome Common Elements. Subsequent to recordation of the Declaration of Annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Townhome Common Elements within the lands annexed as such Townhome Common Elements are developed and by recordation of such deed by the Declarant, the Association is deemed to accept such Townhome Common Elements for ownership and maintenance as necessary.

ARTICLE VIII

EXTERIOR MAINTENANCE

Section 1. Exterior Maintenance by Association. In addition to maintenance of the Townhome Common Elements, the Association shall provide exterior maintenance upon each Living Unit which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant, and exterior post lights (excluding electricity therefore). Such exterior maintenance shall not include windows, window frames, doors and door frames, glass surfaces, or screens for windows and doors, or any improvements contained within courtyards or areas secured by the owner or the repair or reconstruction of any improvements on any lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect. The Association shall not be responsible for damage to vegetation planted by a Lot Owner or for any portion of a Lot enclosed by a fence. 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 year and the Association shall perform maintenance during the revocation period at the expense of the Owner. The Owner shall not plant any vegetation in the front or rear yard except with the prior written approval of the Association. In the event a Lot Owner selects unusual or exotic vegetation for his Lot, which vegetation necessitates extraordinary maintenance and care by the Association, the Association reserves the right to impose an individual assessment upon the individual Lot Owner for any costs attributable to said extraordinary maintenance and care of his vegetation. Lot Owners shall be responsible for maintenance of any other structural components of a Living Unit that are not specified to be the responsibility of the Association, including reasonable repairs resulting from water infiltration from the exterior of the building.

As a matter of information to future Members of this Association, the Declarant wishes to make it known that it is a part of the original plan of development to construct a variety of dwellings with a variety of exteriors for the good of the entire subdivision. Some dwellings will require far 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 this 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 charge without regard to the actual cost of maintenance of each dwelling.

Notwithstanding the foregoing, the Association shall maintain: (a) all entry features to each Living Unit, including any electrical and irrigation systems; (b) storm water detention or drainage facilities serving the Property; (c) all exterior portions of the Living Unit, including but not limited to exterior materials, shutters, painting, exterior lighting and roofs, and (f) termite and wood-infestation treatment and bond on the Living Unit. With the initial transfer of title of a Living Unit from Initial Builder, each Owner may be provided with bonded protection against subterranean termites and possibly other selected pests and/or hazards. Unless such cost and responsibility is assumed by the Association through a policy adopted by the Board, it shall at all times be the responsibility of each Owner to maintain this policy and to pay any and all cost associated with maintaining this policy, including but not limited to renewal fees and additional treatment fees, or the same for

a policy deemed appropriate by the Board. Failure to cause protection satisfactory to the Board to be maintained may be deemed by the Board to be a violation of the Declaration. Upon such determination, the Association shall have all remedies for non-compliance available to it under the Declaration to ensure that the policy or a comparable policy remains in place for any Living Unit. The Association shall also have the authority, where coverage satisfactory to the Association is not maintained, to cause coverage to be issued for a specific Living Unit and assess the non-compliant Owner for such associated cost. In the event that an Owner fails to maintain coverage satisfactory to the Board and it is determined by the Board that the Owner's failure to maintain such a policy resulted in the infestation of or damage to a portion of another Living Unit, the non-compliant Owner shall reimburse the affected Owner for all cost of the repair of such damage or any additional treatment cost incurred by that affected Owner, as the same may be determined appropriate by the Board to be within the bounds of coverage for pests that would have been provided by a policy that would have met the minimum standard for protection established by the Association's Board. Should the non-compliant Owner fail to pay such costs when notified by the Association to do so, the Association may levy an Assessment equal to or greater than the cost incurred by the affected Owner or the Association, including and related cost attorney fees and administrative cost incurred by the Association or other affected Owner.

Each Owner shall be responsible for making any necessary repairs to vapor barrier and/or mitigation systems installed on its Lot, including, without limitation, periodic inspections (not fewer than twice per year), maintenance and repair of the fan that constitutes and integral component of the vapor barrier and/or mitigation systems installed on its Lot. If Owner does not make repairs within thirty (30) days of notification of the need for such repairs, the Association shall exercise its self-help rights.

Section 2. Damage by Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of a Consumer-Occupant Lot Owner, his family, or tenants, guests, contractors, or invitees, or contract purchasers the cost of such maintenance or repairs shall be added to, and become a part of, the assessment to which such Lot is subject.

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

Section 4. Casualty Loss Not Included. Maintenance and repairs under this Article arise from normal usage and weathering and do not include maintenance and repairs made necessary by fire or other casualty or damage.

ARTICLE IX

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot and the Townhome Common Elements. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Property. No portion of the Property (except for temporary offices, sales or construction trailers, areas used for marketing, and/or model townhouses used by Declarant or any Initial Builder) shall be used except for single-family residential purposes and for purposes incidental or accessory thereto.

No trade or business of any kind shall be conducted upon any Lot or part thereof, except as may be approved by the Board of Directors on a case-by-case basis after petition by an Owner. Provided however, that

any such approved business must be conducted entirely within the confines of the house or garage of an Owner and must not create, among other things, a nuisance to the neighbors, or create among other things, excessive noise, traffic, odors or unpleasant appearances. Once permission is granted by the Board of Directors for such a business, the Board of Directors automatically retains the right to terminate approval of such business for violation of the above conditions or any other conditions stated in the Board's initial approval and the Owner shall terminate such business within thirty (30) days after receipt of notice from the Board.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood. Construction, marketing, sales and leasing activities of Declarant and any Initial Builder shall not be considered a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, birds, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners. No pet shall be allowed to make an unreasonable amount of noise. Pets shall be under leash at all times when walked or exercised in any portion of the Townhome Common Elements, and the owner of such pet shall clean up after such pet. Upon the written request of any Owner, the Board may conclusively determine, in its sole and absolute discretion, whether for purposes of this Section 5, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Property if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors shall have the further right to fine any Owner for the violation of these pet restrictions by such Owner, and the Owner shall be liable to the Association for the cost of repair of any damage to the Townhome Common Elements caused by the Owner's pet. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due to which such Dwelling and its Owner are subject. Animals shall not be permitted to reside solely outdoors in an enclosed yard, and Lot Owners shall be responsible for regularly picking up animal waste on any portion of a Lot.

Section 5. Insurance. Except as to Initial Builders, nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance, applicable to residential use, for the Property or the contents thereof. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, in his townhome or on the Townhome Common Elements which will result in the cancellation of insurance on any portion of the Property, 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 Townhome Common Elements.

Section 6. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, order, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

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

Section 8. Business. No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot except as provided for in Article IX, Section 2 hereinabove, except that on any portion of the Property that has not been deeded to a Consumer-Occupant Lot Owner, the Declarant, any Initial Builder, or their respective agents may conduct construction, marketing, sales and leasing activities.

Section 9. Signs. No signs (excluding political signs) or other advertising devices shall be displayed on or about the exterior of any Living Unit or in the Townhome Common Elements except for one building standard name plate or sign not exceeding twenty four (24) square inches in area on the main door to each Living Unit. The display of political signs is permitted; provided, however, there shall be no display of political signs earlier than 45 days before the day of the election nor later than seven days after an election. Further no political sign may be larger than 24 inches by 24 inches in accordance with N.C.G.S. 47C-3-121. For purposes of this section a political sign means a sign that attempts to influence the outcome of an election, including supporting or opposing an issue on an election ballot. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about the exterior of any Living Unit or in the Townhome Common Elements unless approved in advance by the Association. In the event that the Association approves installation of a pole or device for the display of decorative flags, any such flags displayed by an owner of the Living Unit shall be in good taste and shall not contain lewd or offensive displays or material. The display of the flag of United States or North Carolina is permitted as long as its size is no greater than 4 feet by 6 feet and it is displayed in accordance with or in a manner consistent with the patriotic customs set forth in 4 U.S.C. § 5-10, as amended. No flag (North Carolina or United States included) of a size greater than 4 feet by 6 feet shall be displayed or erected on or about the exterior of any Living Unit or Townhome Common Element.

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

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

Section 12. Screens. No Owner shall utilize window screens on the front of any townhome.

Section 13. Parking. No boats, jet skis, trailers, campers, ATVs, motor homes, trucks or tractors shall be parked on any Lot, on the Common Elements, or on any right of way of any roads or streets within the Property or adjoining the Property by any Lot Owner, its family members, tenants or contract purchasers, except: (a) by Declarant or any Initial Builder for the purpose of construction, marketing, sales or leasing; (b) inside an enclosed garage located on a Lot or in a specified storage area established by the Association; or (c) as otherwise may be permitted by Rules and Regulations of the Association. Delivery and maintenance vehicles are permitted. Notwithstanding the foregoing, this prohibition shall not apply to contractor's trucks and vehicles during the construction of any dwelling, garage or accessory building, it being clearly understood that contractor's trucks and vehicles shall be permitted to park on the roads and streets within the Property until completion of any dwelling, garage or accessory building.

Section 14. Trailers, etc. No trailer, tent, mobile home, modular home or other structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to Declarant or any Initial Builder for the purpose of construction, marketing, sales or leasing, it being clearly understood that Declarant's and Initial Builders' temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

Section 15. Fuel Tanks. No fuel tanks or similar storage receptacles may be exposed to view, except as to Declarant or any Initial Builder when such fuel tanks or similar storage receptacles are used for construction activities. Any such receptacles may be installed only within an accessory building or within a screened area, or buried underground; provided, however, that nothing contained herein shall prevent the Declarant or Association from erecting, placing or permitting the placing of tanks, or other apparatus, on the Property for uses related to the provision of utility or other service.

Section 16. Antennae. With exception to the Federal Communications Commission Restrictions identified in the Telecommunications Act of 1996, the following applies: Exterior radio and television antennae, aeriials, disks and dishes for reception of commercial broadcasts shall not be permitted on any Lot and no other aeriials, disks and dishes (for example, without limitation, amateur short wave or ship to shore) shall be permitted on any Lot without permission of the Board as to design, appearance and location or pursuant to Regulations issued for that purpose.

Section 17. Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion; and no hunting of any type shall be carried on or conducted on the Property.

Section 18. Drying Areas. Clotheslines or drying yards shall not be located upon any Lot without the prior written consent of the Board, which consent may be conditioned or withheld in the sole discretion of the Board, or as set forth in Regulations established for that purpose

Section 19. Outdoor Equipment. Except as may be permitted pursuant to Article VI herein, basketball goals, soccer nets, playground equipment and similar outdoor equipment shall be prohibited on any Lot.

Section 20. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 21. Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

Section 22. Leasing. Each Lot is hereby restricted to use by the Owner thereof, his employees, servants, guests, invitees and lessees. Lot Owners may lease the entire Lot but all leases and subleases must be in writing and the term must have a minimum duration of six (6) months. Any lease agreement shall be required to provide that the terms of the lease shall be subject to the provisions of this Declaration and the Association Bylaws and its rules and regulations, and that any failure of a lessee or sublessee to comply with the terms of such documents shall be a condition of default under the lease.

ARTICLE X

EASEMENTS

Section 1. Utility Easements. All of the Property, including Lots and Townhome Common Elements, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, cablevision, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Townhome Common Elements conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration.

Section 2. Adjoining Areas. Each Owner is hereby declared to have an easement, and the same is hereby granted by the Declarant, over all adjoining Lots and Townhome Common Elements for the purpose

of accommodating any encroachment due to engineering errors, errors in original construction, or additional settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachment, which include any encroachments created during the original construction of the Building and related structures on a Lot, settlement or shifting; provided however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot and the Townhome Common Elements agree that minor encroachments over adjoining Lots and the Townhomes Common Elements shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

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

Section 4. Overhanging Roofs and Eaves. Each Lot and its Owner within the Properties is hereby declared to have an easement, and the same is hereby granted by the Declarant, over each adjoining Lot and/or the Townhome Common Elements, as the case may be, for over-hanging roofs and eaves and the maintenance thereof.

Section 5. Easement for the Benefit of Governmental Authorities. An easement is hereby established for the benefit of the City of Durham or other governmental agency, over all Townhome Common Elements for the setting, removing and reading of water meters (which shall be separate for each Living Unit), maintaining and replacing water, and sanitary sewer facilities owned by the Town, for police protection, fire fighting and garbage collection, postal services, and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property.

Section 6. Easement for Benefit of Utility Company. The Declarant reserves the right to subject the Property, including the Townhome Common Elements, to a contract with Duke Energy for the installation of underground electric lines, cables and connector posts or for the installation of street lighting, either or both of which, may require an initial payment or a continuing annual payment to the utility by the owner of each Lot.

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

Section 8. Declarant Easement. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of a Lot to an Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 9. Structural Support. Every portion of a townhome 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 10. Emergencies. Every Lot and townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any townhome and that endangers any building or portion of the common area.

Section 11. Maintenance and Drainage Easement. The Association reserves an easement over and across every Lot for the purpose of performing the maintenance requirements of the Association as prescribed herein. The Declarant so long as it has Class B Membership, and thereafter the Association, may cut and create drains and drainways both above ground and underground for the purpose of facilitating the removal of surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and appearance along, over or across any Lot. Each Lot Owner shall maintain the drainage devices on its Lot at its own expense. Furthermore, each Lot Owner shall not allow the diversion or concentration of stormwater runoff, without the prior written approval of the Architectural Committee, and no drainage diversion or structure may be constructed in violation of any North Carolina Department of Transportation regulation.

Section 12. Easements for Repairs. Each lot owner shall have a perpetual access easement over the adjoining lot and Townhome Common Elements to the extent reasonably necessary to perform repair, maintenance, or reconstruction of his townhome. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the owner shall restore the adjoining lot and Townhome Common Elements to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

ARTICLE XI

INSURANCE

Section 1. Insurance to be Maintained by the Association. The following insurance coverage shall be maintained in full force and effect by the Association:

- (a) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, but public liability shall be an amount of at least \$1,000,000 for each occurrence.
- (b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.
- (c) Fidelity bond coverage covering those that shall be responsible or shall handle funds of the Association.
- (d) Such other insurance coverage as it may determine to be desirable and necessary, including fire and hazard insurance covering all buildings located on the Property as specified in Section 4, if determined to be better served by the Association procuring such insurance.

Section 2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged as a Townhome Common Expense to the Owners as an annual assessment according to the applicable provisions of this Declaration.

Section 3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

Section 4. Casualty Coverage. The Association shall maintain in full force and effect at all times fire and hazard insurance from an insurer selected by the Board, in an amount equal to the full replacement value of the Living Units, including the value of excavations and foundations.

Casualty coverage shall afford protection against:

- (A) Loss or damage to property by fire or other hazards covered by a standard extended coverage endorsement; and
- (B) Such other risks as from time to time shall be customarily covered with respect to buildings and improvements similar in construction, location and use as the buildings and improvements to be insured, including, but not limited to, vandalism and malicious mischief.

Such insurance shall be issued with an insurer licensed to do business in North Carolina and holding a rating of "A" or better by Best's Insurance Reports, and such policy must provide that the insurer will not cancel, reduce or substitute coverage without first giving the Association and any mortgagee named in the policy thirty (30) days prior written notice thereof.

Section 5. Contents Coverage. Owners shall procure at their sole expense coverage on the contents of their Living Unit and liability insurance for occurrences within that Living Unit or Lot.

ARTICLE XII

REPAIR, RESTORATION OR RECONSTRUCTION OF CASUALTY DAMAGE

Section 1. Repair and Restoration. Except as otherwise herein provided, damage to or destruction of Living Units or Lots shall be repaired, restored or reconstructed by the affected Owners within one hundred and eighty (180) days from damage, such repair and restoration or reconstruction, insofar as possible, to be in accordance with the original plans and specifications of the original building. In the event that the Owners of damaged Living Units and Lots default in the obligation to repair and restore or reconstruct as herein provided, the Association, after thirty days prior notice, may (but shall be under no obligation to) repair and restore or reconstruct the damaged Living Unit or Lot. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association and its agents the right to unobstructed access over and upon each Lot at all reasonable times to perform repair and restoration or reconstruction as provided in this Article. In the event of action by the Association as herein permitted, the Owners of damaged Living Units and Lots shall be liable for assessment for the entire cost of such repair and restoration or reconstruction and subject to exercise of the enforcement remedies herein provided in the event of failure of timely payment of the assessment.

ARTICLE XIII

RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Administration, Federal National Mortgage Association and other reputable mortgage lenders, guarantors and insurers of first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

- A. To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected

and operating expenses, such Financial Statement and Report to be furnished within 120 days of the end of each calendar year.

- B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.
- C. To be given notice of default in the payment of assessments by any Owner of a Lot of sixty (60) days or more encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.
- D. To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours and to obtain copies thereof.
- E. To be given notice by the Association of any substantial damage to any part of the Townhome Common Elements.
- F. To be given notice by the Association if any portion of the Townhome Common Elements, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.
- G. To be given notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- H. Any proposal requiring consent of the mortgage holders.

Whenever any Institutional Lender desires the benefits of the provisions of this section, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XIV

GENERAL PROVISIONS

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

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. General Amendments. The covenants and restrictions of this Declaration shall run and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time

they shall be automatically extended for successive periods of ten (10) years unless terminated as hereinafter provided. This Declaration may be terminated only with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association. This Declaration may be amended with the consent of the Owners entitled to cast at least eighty percent (80%) of the votes of the Association. The foregoing notwithstanding, however, during Declarant's Development Period, this Declaration may not be amended or terminated without Declarant's consent; and no termination and no amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection. In addition, no alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Declarant or of the obligations imposed herein on Declarant shall be made without the written consent of Declarant being first had and obtained and no alteration, amendment or modification of any easement rights established in favor of any property not a part of the Property shall be effective without the written consent of the owner(s) of such property. Any notice of termination or amendment must: (1) be executed on behalf of the Association by its duly authorized officers; (2) contain an attestation by the officers executing the instrument on behalf of the Association that the requisite Owner and Declarant approval has been obtained and is evidenced by written acknowledgment(s) signed by the Owners approving the termination or amendment and, as the case may be, if required, Declarant, and that such acknowledgments have been made a part of the Minute Book of the Association; and (3) be properly recorded in the Office of the Register of Deeds, Durham County, North Carolina. For the purpose of this section, additions to existing property by Declarant pursuant to Section 4 of this Article shall not constitute an "amendment." In the event this Declaration is terminated in accordance with the provisions hereinabove provided, Declarant, for each Lot owned within the Property, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay a pro rata share of the cost of the maintenance of all permanent retention or detention ponds. Notwithstanding the foregoing, Declarant may at any time unilaterally amend this Declaration to terminate or restrict any right reserved hereunder by Declarant, and Declarant during Declarant's Development Period, and thereafter, the Board of Directors of the Association, may amend this Declaration as shall be necessary, in its opinion, to correct obvious errors and omissions herein. Any Amendment shall not be effective until approved by the applicable governmental authorities, if such approval is required or unless applicable laws provide approval is deemed granted by the failure of applicable governmental authority to respond during the designated period.

Section 4. Recordation. No amendment shall be effective until recorded in the County in which the Property is situate.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 27 day of MARCH, 2018.

751 South, Inc., (SEAL)
a North Carolina corporation

By: [Signature] (SEAL)
John A. Mitchell, President

STATE OF NORTH CAROLINA)
)
COUNTY OF Wake)

I certify that the following persons personally appeared before me this day, each acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: President of 751 South, Inc.

Witness my hand and notarial stamp or seal, this 27 day of March, 2018.

My commission expires: William A. Clark
Notary Public
9, 2018 Typed or Printed Name: William A. Clark



EXHIBIT "A"

BEING all of Lots 1 – 33; Lots 47 - 55; Lots 71 – 78; Lots 86 – 89; Lots 279 – 282; Lots 297 – 305; Lots 318 – 329; Lots 338 – 343; and Lots 355 – 359 as shown on that plat entitled “Subdivision Plat 751 South – Phase 1A Southeast Park Section 5” by Murphy Geomatics, dated MARCH 2017 and recorded in Plat Book 119, pages 105 - 123 Durham County Registry.