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WAKE COUNTY, NC 439
LAURA M RIDDICK
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DECLARATION OF
COVENANTS AND RESTRICTIONS
FOR BRYARTON TOWNHOMES
RALEIGH, WAKE COUNTY, NORTH CAROLINA

Prepared by / Return to: Paul A. Arena, Holt York McDarris & High, LLP, P.O. Box 2060, Raleigh, NC 27602

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**DECLARATION OF
COVENANTS AND RESTRICTIONS
FOR BRYARTON TOWNHOMES
RALEIGH, WAKE COUNTY, NORTH CAROLINA**

THIS DECLARATION OF COVENANTS AND RESTRICTIONS is made on this 18th day of APRIL, in the year Two Thousand and ~~Four~~^{Five} by BILL CLARK HOMES OF RALEIGH, LLC, a North Carolina limited liability company and IC DEVELOPMENT INCORPORATED, a North Carolina limited liability company (hereinafter referred to as the "Declarants").

WITNESSETH:

WHEREAS, Declarants are the owner of that certain real property located in Wake County, North Carolina which real property is hereinafter identified as "Bryarton Townhomes Property" as described on Exhibit A; and

WHEREAS, the Declarants intend to develop single family townhomes on the Bryarton Townhomes Property; and

WHEREAS the Bryarton Townhomes Property is subject to that Master Declaration of Covenants, Conditions and Restrictions for The Crossroads Cluster Unit Development, recorded in Book 7859 at Page 852 in the Wake County Public Registry (the "Master Declaration");

WHEREAS, the Declarant desires to provide certain amenities, open spaces, green belts, parking areas and other facilities for the benefit of the persons who shall reside in the aforesaid townhomes on the "Lots" (as that term is hereinafter defined); and

WHEREAS, in order to insure the enjoyment of such amenities, open spaces, green belts, parking areas and other facilities by the residents of the said Lots, and in order to protect and enhance the value of the said Lots, it is desirable to create an association to own, maintain and administer such amenities, open spaces, green belts and other facilities, and to administer and enforce the covenants and restrictions imposed by this Declaration and the Master Declaration on the individually owned properties, and to collect, hold and disburse the charges and assessments provided for in this Declaration and the Master Declaration; and

WHEREAS, it is intended that every owner of any of the said Lots automatically, and by reason of such ownership and this Declaration, become a member of the aforesaid association and be subject to its valid rules and regulations and the assessments and charges made by such association;

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NOW, THEREFORE, the Declarant does hereby submit the "Lots" and the "Common Elements" (as those terms are hereinafter defined) to the provisions of this Declaration and the Master Declaration.

ARTICLE I

DEFINITIONS

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article I, such definitions being cumulative of those set forth elsewhere in this Declaration. In addition, all terms used in this Declaration which are defined in the Act shall have the meanings ascribed to them in the Act, unless other definitions are ascribed to them in this Declaration.

"Act" shall mean the North Carolina Planned Community Act, General Statutes of North Carolina Sections 47F-1-101 through 47F-3-120.

"Additional Bryarton Townhomes Property" shall mean the real property described on Exhibit B, hereto attached and made a part hereof.

"Annual Assessment" shall have the meaning specified in Section 6 of Article V hereof, and shall constitute the assessments which, pursuant to the provisions of Article V hereof, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in Section 3 of Article V hereof).

"Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

"Association" shall mean Bryarton Townhomes Association, Inc., a North Carolina non-profit membership corporation.

"Bryarton Townhomes Property" shall mean the entirety of the real property described on Exhibit A, hereto attached and made a part hereof.

"Backyard Area" shall mean the portion of each Lot which is located in the rear of the Townhome constructed on such Lot.

"Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

"Common Elements", "Common Area" and "Common Open Space" shall mean all portions of the Bryarton Townhomes Property which is conveyed and transferred to the Association pursuant to Section 1 of Article III of this Declaration and which does not include any Lot or real property dedicated to a governmental authority. Common Elements shall not

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include any Lot which shall be acquired by the Association through foreclosure of the lien in favor of the Association, as provided for in Article V of this Declaration. Common Area shall include the following, without limitation: (1) all private streets, the maintenance of which shall be the responsibility of the Association, (2) any stormwater device that serves more than one (1) Townhome, (3) any utility line located outside public street rights-of-way and public utility easements, and not located on a Lot, (4) any site or facility designated as "common area" or "common property" or "open space" or "common open space" on any Plat, and (5) any shared facility or open space required under the Raleigh City Code and not conveyed to the government.

"Co-Declarants" or "Declarants" shall mean BILL CLARK HOMES OF RALEIGH, L.L.C., a North Carolina limited liability company, and IC DEVELOPMENT, INC., a North Carolina corporation, and shall include any successor or assign of BILL CLARK HOMES OF RALEIGH, L.L.C. and/or IC DEVELOPMENT, INC. (other than a person acquiring fewer than five (5) Lots) who shall acquire the entire interest in the Bryarton Townhomes Property which was owned by the immediate predecessor-in-title of such successor or assign.

"Declaration" shall mean this Declaration of Covenants and Restrictions, as the same may be hereinafter amended in accordance with the terms and provisions of Article X hereof.

"Executive Board" shall mean the Board of Directors of the Association.

"First Mortgage" shall mean a Mortgage conveying a first priority lien upon or security title to any Lot.

"HUD" shall mean the United States Department of Housing and Urban Development, and, in the event that said Department shall be abolished and its operations transferred to another division of the United States government, such other division.

"Lot" shall mean each portion of Bryarton Townhomes Property which has been subdivided for use as an individual building lot and which is subjected to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration applicable to Lots by the recording of this Declaration.

"Mortgage" shall mean a mortgage, deed to secure debt, deed of trust, or other instrument conveying a lien upon or security title to the property.

"Owner(s)" or "owner(s)" or "Lot Owner(s)" shall mean the owner of a Lot(s).

"Person" shall mean a natural person, corporation, trust, partnership or any other legal entity.

"Plat" shall mean the Final Plat for Bryarton Townhomes prepared by Taylor, Wiseman and Taylor dated February 18 – March 8, 2003, recorded in the Book of Maps of Wake County, North Carolina in Book 2003, Pages 2238-2240 and shall include all other plats of survey which shall be recorded pursuant to the provisions of Article II, Sections 2 or 3.

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"Stormwater Agreement" shall mean a Stormwater Replacement Protection Easement and Access Maintenance Agreement and Installment Replacement Contribution applicable to the Additional Bryarton Townhomes Property between Declarant, the Association and the City of Raleigh, if and when such agreement is entered into in connection with the development of the Additional Bryarton Townhomes Property.

"Stormwater Control Measures" shall mean and refer to any bioretention area spreaders, drainage easements and all other stormwater measures including storm drainage pipes, which serve the Additional Bryarton Townhomes Property that are located outside public street rights-of-way (excluding those pipes and measures serving a single Lot).

"Stormwater Manual and Budget" shall mean and refer to the Stormwater Operations and Maintenance Manual and Budget attached to the Stormwater Agreement.

"Townhome" shall mean the single family dwelling constructed on each Lot by the Declarant.

"VA" shall mean the United States Department of Veterans Affairs and, in the event that said Department shall be abolished and its operations transferred to another division of the United States government, such other division.

All pronouns used in this Declaration are intended to be gender neutral, and the use of the masculine gender shall be deemed to include the feminine and neuter genders.

ARTICLE II

PROPERTY SUBJECT TO DECLARATION

Section 1. Property Hereby Subjected to this Declaration. The Declarant, for itself and its successors and assigns, does hereby covenant that the Bryarton Townhomes Property be, and the same hereby is, subjected to this Declaration and the Master Declaration.

The Declarant, for itself, its successors and assigns, hereby further covenants that the above-described property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in the Act and in this Declaration, in the Master Declaration and the city codes applicable to such Property (including, but not limited to, Sections 10-3072 and 10-3074 of the Ordinance of the City of Raleigh), including but not limited to, the lien provisions set forth in Article V hereof. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2. Additional Lots Hereafter Subjected to this Declaration. The Declarant may, at any time, and from time to time, prior to December 31, 2010, subject additional portions

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of the Bryarton Townhomes Property or other property within a one-mile radius of Bryarton Townhomes Property to the Act and the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration applicable to Lots by:

(a) executing and recording in the Office of the Register of Deeds of Wake County, North Carolina, a supplemental declaration to this Declaration describing such additional property, and stating that this Declaration is thereby intended to, and shall thereafter apply to, such additional property; and

(b) recording in the Office of the Register of Deeds of Wake County, North Carolina, a plat of survey showing and depicting the additional property being thereby subjected to this Declaration.

From and after the subjecting of such additional property to the Act and to this Declaration, such additional property shall thereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including without limitation, all lien and assessment provisions set forth in this Declaration, and such additional property thereafter shall be considered part of the Bryarton Townhomes Property for all purposes under this Declaration.

Any supplemental declaration which may be executed and recorded pursuant to the provisions of this Article II for the purpose of subjecting additional property to the terms and provisions of this Declaration may set forth certain easements and restrictions which will apply only to the property being subjected to this Declaration by such supplemental declaration. Any such easements and restrictions which shall be set forth in any supplemental declaration shall thereafter be as binding on the property which is the subject of such supplemental declaration as if such easements and restrictions were set forth in their entirety in this Declaration.

Except as otherwise provided in the Act, no approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject any portion of the Bryarton Townhomes Property to this Declaration as additional Lots.

Without limiting the foregoing in any manner, IC Development, Inc. or its successors or assigns as Declarant, without the consent of the other Declarant, any Owner, member of the Association or anyone else, prior to December 31, 2010, may (1) subject all or any portion of the Additional Bryarton Townhomes Property to the Act and the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by following the procedure set forth above in this Section 2; and (2) subdivide the Additional Bryarton Townhomes Property into Lots and Common Areas in such manner as IC Development, Inc. sees fit. From and after the annexation of such property to this Declaration, such property thereafter shall be considered part of the Bryarton Townhomes Property for all purposes under this Declaration.

Section 3. Rerecording of the Plat. As Townhomes are constructed on the Lots, the Declarant may, at any time, and from time to time, prior to December 31, 2010, re-record the

Plat to adjust the boundary lines of Lots owned by the Declarant. Notwithstanding any provision of this Declaration, or of any statutory or common law, which may provide to the contrary, from and after the date of each re-recording of the Plat by the Declarant, the boundary lines of all Lots shall be as the same are shown and depicted on such re-recorded Plat. The right of the Declarant under this Section 3 to re-record the Plat shall terminate at such time as the Declarant shall have re-recorded the Plat after a Townhome shall have been constructed on each of the Lots.

No approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to adjust the boundary lines of the Lots owned by the Declarant pursuant to the provisions of this Section 3.

Section 4. Party Walls.

(a) In General. The walls connecting adjacent Townhomes and situated on or about the boundary line separating said Townhomes shall be referred to herein as "Party Walls". To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for damage due to negligence or willful acts or omissions shall apply thereto. Notwithstanding the depiction of the boundaries of any Lot on the Plat, the centerline of any Party Wall shall constitute that portion of the common boundary line that runs between the attached areas of the Townhomes separated by said Party Wall. Irrespective of whether the deed of conveyance of a Lot and Townhome located thereon shall make a specific reference to the rights to a party wall or an easement for lateral support, conveyance of each Lot and Townhome located thereon shall be deemed to include all undivided interest in so much of the width of the entire length of the Party Wall separating such Townhome from the adjoining Townhome as is situated on said Townhome, together with a grant of easement of lateral support for such part of said wall as is situated on the adjoining Townhome; and there shall be deemed reserved in the conveyance of each of such Lots and Townhomes located thereon a like easement of lateral support.

(b) Sharing of Repair and Maintenance. The cost of repair and maintenance of a Party Wall shall be shared by the Owners sharing use of the wall in proportion to such use and benefit.

(c) 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 Party Wall may restore it, and if the other Owners thereafter make use of the Party 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.

(d) Reconstruction and Repair. The Owner of any Townhome may reconstruct or repair a Party Wall used by such Townhome, and shall have the right to go upon the adjoining Lot to the extent reasonably necessary to perform such work. Such work shall be done expeditiously. Upon completion of such work, such Owner shall restore the adjoining Lot to as

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near the same condition as prevailed on it before the commencement of such work as is reasonably practicable.

(e) Weatherproofing. Notwithstanding any other provision of this Section 4, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

(f) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Section 4 shall be appurtenant to the Lot owned by such Owner and shall pass to such Owner's successors in title.

(g) Certification by Adjoining Owner That No Contribution Is Due. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Section 4, request of the adjoining Owner(s) 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. However, where the adjoining Owner claims a right of contribution, the certificate shall contain a recital of the amount claimed.

Section 5. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration. Every person who is a record owner of a fee or undivided fee interest in any Lot does, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title to such Lot, agree to all of the terms and provisions of this Declaration. Each of the Lots is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 6. Easements Over the Lots. The Lots shall be subjected to, and the Declarant does hereby grant to the appropriate grantees thereof, the following easements:

(a) Each Lot shall be subject to all easements which are shown and depicted on the Plat as affecting and burdening such Lot, including but not limited to any and all blanket easements reserved for electric, cable, telephone and gas utilities;

(b) Each Lot shall be subject to an easement for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change; obstruct or retard drainage flow; and

(c) Each Lot, including the Townhome located thereon, shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go in such Townhome and upon such Lot under the circumstances, and for the purposes described in Articles IV, VII, VIII and IX of this Declaration.

Section 7. Additional Bryarton Townhomes Property. Notwithstanding any other provision of this Declaration the Additional Bryarton Townhomes Property is not and will not be subject to the Master Declaration. Owners of Lots within the Additional Bryarton Townhomes

Property will not be members of the Master Association (as defined in the Master Declaration), will not be liable for assessments or other charges imposed by the Master Association, and will have no right to use the Master Common Area (as defined in the Master Declaration).

Section 8. Cluster Unit Development. The Bryarton Townhomes Property is a part of a cluster unit development approved by the City of Raleigh in which residential density transfers are permitted. Therefore, even though some lots may appear to contain enough land area to construct additional dwelling units or create additional lots, prior density transfers approved within the cluster unit development may, in fact, preclude City approval of additional dwellings or further subdividing of lots.

The current zoning classification of the property within the Cluster Development (as defined in the Master Declaration) is R-6, which means that the maximum number of units per acre within the Cluster Development without rezoning the property within the Cluster Development to another zoning classification is six (6) lots per acre. However, because of the approval as a cluster open space development which permits density transfer within the property within the Cluster Development, portions of the Cluster Development may be developed into lots containing less than 1/6 acre (7,260 square feet). The approved density for the Cluster Development is reflected by the Site Plan (as defined in the Master Declaration) and for any portion thereof, may be lower or higher than the maximum number of units permitted by the "R-6" zoning classification. Notwithstanding any other provision of this Declaration, the Articles of Incorporation or Bylaws of the Association, the maximum amount of land area and the maximum number of Lots located in the Cluster Development shall not, without rezoning said property, exceed 150 acres or exceed a total of 900 dwelling units, or exceed a density in any area of fourteen (14) dwelling units per acre.

Subject to the development ordinances of the City of Raleigh, with regard to any portion of the Bryarton Townhomes Property and/or Additional Bryarton Townhomes Property owned by either Declarant, the Declarants shall have the right to create additional Lots, add Common Area, change unit types, reallocate units within, and/or transfer density between the Bryarton Townhomes Property and Additional Bryarton Townhomes Property, and withdraw property from the Cluster Development. This right shall include the right to develop such property for the construction of any type of residential units desired by the Declarants and permitted by the development ordinances of the City of Raleigh, provided that any such development or use is consistent with the Site Plan or with changes to the Site Plan which are approved by the City of Raleigh. The maximum amount of land that can be added to the Cluster Development pursuant to this paragraph is five (5) acres.

ARTICLE III

COMMON ELEMENTS

Section 1. Common Elements. The Declarant shall have the right to transfer and convey to the Association any portion of the Bryarton Townhomes Property. All portions of the Bryarton Townhomes Property which the Declarant shall so transfer or convey to the Association shall thereafter constitute Common Elements. Said right may be exercised by the Declarant any time, and from time to time, prior to December 31, 2010.

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All portions of Bryarton Townhomes Property which shall be transferred to the Association by the Declarant (a) shall be conveyed to the Association by limited warranty deed free of debt encumbrance, and (b) shall be conveyed to the Association subject to the rights and easements set forth in Sections 2 and 3 of this Article III, irrespective of whether the deed conveyance shall make a specific reference to such rights and easements, and all private streets shall comply with Section 10-307 and 10-2074 of the City of Raleigh Ordinance. In no case shall the City of Raleigh or State of North Carolina be responsible for maintaining private streets. Such responsibility shall rest with the Association and/or the Owners.

Declarant shall convey the Common Elements within the original Bryarton Townhomes Property to the Association prior to the conveyance of any Lot within the original Bryarton Townhomes Property to anyone other than Declarant. Declarant shall convey the Common Elements within the Additional Bryarton Townhomes Property to the Association prior to the conveyance of any Lot within the Additional Bryarton Townhomes Property to anyone other than Declarant. By joining in the execution of this Declaration, the Association does hereby covenant and agree to accept all conveyances of the Common Elements which may be made to it pursuant to, and in accordance with, the terms and provisions of this Section 1. The Association shall preserve all open space Common Elements and private streets for the perpetual benefit of the Owners, and such properties are restricted against public or private ownership for any other purpose.

Section 2. Members' Rights in the Common Elements. Every owner of any Lot and the Townhome located thereon shall have a non-exclusive right and easement of enjoyment and use in and to the Common Elements and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such owner. Such right and easement of enjoyment and use are and shall be subject to the easements which are described in Section 3 of this Article III and to the right of the Association to promulgate reasonable rules and regulations regarding the use of the Common Elements, and the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the owner of any Lot during any period in which any assessment which is due to the Association from such owner remains unpaid, and such period as the Executive Board may consider appropriate for any infraction of its published rules and regulations. No such suspension, however, shall prohibit the owner of any Lot from using the Common Elements to the extent necessary for such owner to have access to and from his Lot. In addition, the Executive Board may permit other persons who are not residents of any Lots to use the Common Elements upon such terms and conditions, and for the payment of such fees, as shall be determined by the Executive Board.

Section 3. Easements Over the Common Elements. All Common Elements shall be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) An easement across, in, under, over and through the Common Elements for the purposes of the construction, installation, repair, maintenance and use of all utility and drainage lines; wires, pipes and similar facilities as exist on the date of this Declaration;

(b) An easement in favor of Declarant for the exclusive use of such portions of the Common Elements as may be reasonably desirable, convenient or incidental to the construction

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and installation of improvements on, and the sale of, any Lots and Townhomes thereon, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by any and all persons whom the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and builders of residences upon the Lots, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate at such time as the construction of the Lots of all Townhomes has been completed and all of the Lots shall have been conveyed to owners thereof who shall not have acquired the Lots for the purpose of immediate resale of the same. Such easements shall and do exist without affecting the obligation of the owner of any Lot to pay assessments or charges coming due during such period of time as portions of the Common Elements shall be used by authorized persons pursuant to the exercise of the easements herein stated; and

(c) An easement for the continued maintenance, repair, replacement and use of the area on which the air-conditioning compressor serving any Townhome is located, such easement to be appurtenant to the Townhome served by such air-conditioning compressor.

(d) An easement in favor of the Owners across, in, under, over and through the Common Elements for the purposes of convenient ingress, egress and regress to and from the Common Elements by means of improved streets and walkways or pedestrian ways as shown on recorded plats of the BRYARTON TOWNHOME Property.

Section 4. Damage or Destruction. All damage that shall occur to any improvements on any Common Elements on account of the occurrence of any casualty shall be repaired in all events. Such repairs shall be undertaken and completed as soon after the occurrence of any casualty as is reasonably practicable. All repairs to any improvements located on the Common Elements shall be made in accordance with plans and specifications that shall be approved for the same by the Executive Board of the Association.

As provided in Section 47F-3-113 of the Act, it shall be the duty of the Association to obtain and maintain in effect at all times a policy of casualty insurance on all improvements located on the Common Elements. The amount of such policy shall be in an amount that is no less than eighty (80%) percent of the replacement cost of the improvements to be insured with deductibles in an amount to be determined by the Executive Board. It shall also be the duty of the Association to obtain and maintain in effect at all times a comprehensive policy of public liability insurance. The comprehensive policy of public liability insurance shall have a reasonable amount of coverage, as shall be determined by the Executive Board, and shall provide for such deductibles as shall be determined by the Executive Board. During the existence of the Class B membership of the Association, both insurances may be provided by a self-insurance program maintained by the Declarant.

The owner of each Lot and Townhome located thereon shall obtain and maintain in effect at all times a master multi-peril policy of property insurance covering all insurable portions of such Townhome not insured by the Association, on a replacement cost basis in an amount of not

less than one hundred (100%) percent of the insurable value, based upon replacement cost, of the same.

Section 5. Transfer or Encumbrance. Except as provided below in this Section 5 the Association shall not abandon, sell or transfer, directly or indirectly, any portion of the Common Elements unless such abandonment, sale or transfer shall be first approved in writing by the owners of no fewer than eighty (80%) percent of the Lots.

In no event shall the Association subdivide or convey any open space Common Element, provided that the Association may exchange all or portions of the Common Elements for other property if such exchange is done in compliance with the provisions of the Raleigh City Code (currently Code Section 10-3073(a)(2)).

The Association may mortgage or hypothecate the Common Elements, provided the rights of the mortgagee (or beneficiary under a deed of trust) are subordinated to the rights of the Owners and the Association.

Section 6. Maintenance of the Common Elements. The Association shall be responsible for the maintenance and repair of all Common Elements.

Section 7. Vehicles; Trailers; Boats; Automobiles. No commercial vehicle (as determined by the Executive Board), boat, trailer, boat trailer, camper, truck or utility trailer shall be permitted to be stored or repaired upon any part of Bryarton Townhomes Property, except with the permission of the Executive Board, and then, only in compliance with all requirements imposed by the Executive Board as a condition to the issuance of such permission. No automobile may be parked upon any Lot unless the same is parked on a pavement area located on such Lot for such purpose, and the same is in operating condition and has affixed thereto a then current license tag and, if applicable, operating sticker.

Section 8. Governmental Access. Any governmental agency with jurisdiction over the Bryarton Townhomes Property shall have a perpetual right of access over all Common Elements for the purpose of installing, removing and reading water meters, maintaining and replacing water and sewer facilities, fire lines and acting for other purposes consistent with public safety and welfare including without limitation, law enforcement, fire protection, emergency services, garbage collection and the delivery of mail.

Section 9. Stormwater Control Measures -- Additional Bryarton Townhomes Property. The Raleigh City Code requires that stormwater runoff from the Additional Bryarton Townhomes Property be controlled, and that nitrogen loading from stormwater runoff from the Additional Bryarton Townhomes Property be reduced. If and when the Additional Bryarton Townhomes Property is annexed to this Declaration and developed the Association shall enter into the Stormwater Agreement, and shall accept a conveyance of, and shall maintain, the Stormwater Control Measures. To comply with the City Code, Stormwater Control Measures will be installed and maintained in the Bryarton Townhomes Property and/or Additional Bryarton Townhomes Property. Failure to maintain the Stormwater Control Measures is a violation of the Raleigh City Code potentially subjecting each Owner of a Lot in the Additional Bryarton Townhomes Property to significant daily civil penalties and other enforcement actions.

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Consequently, on behalf of each such Owner, the Association shall maintain, repair, replace and reconstruct the Stormwater Control Measures so that at all times the Stormwater Control Measures shall perform as designed and at all times shall comply with all applicable laws, ordinances, regulations, rules, and directives of governmental authorities. In addition, the Association shall perform maintenance and repair of the Stormwater Control Measures as set forth on the Stormwater Manual and Budget. In the event that the Association neglects or fails to maintain, repair, replace, or reconstruct the Stormwater Control Measures, each Owner of a Lot in the Additional Bryarton Townhomes Property shall be jointly and severally responsible for such tasks, as required by the City of Raleigh. In the event that any such Owner thereafter performs such maintenance, repair, replacement, or reconstruction, said Owner shall be entitled to reimbursement from the Association for the cost thereof, or, if the Association should fail to reimburse the Owner, said Owner shall be entitled to a pro-rata contribution for such costs from the Owner of every other Lot in the Additional Bryarton Townhomes Property.

ARTICLE IV

THE ASSOCIATION

Section 1. The Association. Prior to the sale of any Lot to anyone other than a Declarant, the Declarant shall cause the Association to be organized and in legal existence. The Association is and shall be responsible for the following: (1) the payment of premiums for liability insurance (as provided in Article V, Section 4), (2) ownership, management, maintenance and operation of the Common Elements, (3) the enforcement of the covenants and restrictions set forth in this Declaration, (4) the payment of assessments for public and private capital improvements made to or for the benefit of the Common Elements, (5) the payment of property taxes assessed against the Common Elements, (6) the expense of the maintenance of Stormwater Control Measures in accordance with the Stormwater Manual and Budget and utility easements granted in favor of the Association and any drainage or utility facilities located therein which are not maintained by the City of Raleigh or any public utility company, (7) the expenses associated with the implementation of the terms of the Stormwater Agreement, and (8) the performance of such other duties and services as the Executive Board shall deem to be in the best interests of the members of the Association. The Association shall have all the power and authority provided in the Association by the provisions of Section 47F-3-102 of the Act.

Section 2. Membership. Every person who is, or who becomes, a record owner of a fee or undivided fee interest in any Lot is and shall be a member of the Association; provided, however, that any such person who holds such interest merely as security for the performance of an obligation shall not be a member of the Association. The transfer of ownership of a fee or undivided fee interest in any Lot shall automatically transfer membership in the Association, and in no event shall such membership be severed from the ownership of such Lot.

Section 3. Classes of Membership; Voting Rights. The Association shall have two (2) classes of voting membership: Class A and Class B.

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(a) Class A. The Class A members shall be all those persons holding an interest required for membership in the Association, as specified in Section 2 of this Article IV, except for those persons who are Class B members. Until such time as the Class A members shall be entitled to full voting privileges, as hereinafter specified, the Class A membership shall be entitled to vote only in regard to the following matters: (a) any proposal of merger, consolidation or dissolution of the Association; (b) any proposal to transfer or encumber any portion of the Common Elements; (c) any proposal pursuant to Article X of this Declaration to amend this Declaration; (d) any proposal to modify or amend the Articles of Incorporation or by the Bylaws; and (e) any other matter for which it is herein specifically provided, or for which it is provided by the Act, the North Carolina Non-profit Corporation Code or any other law, that approval of each and every class of membership of the Association is required. Except in regard to the foregoing matters, the Class A membership shall be a non-voting membership until such time as the Class B membership shall terminate, at which time the Class A membership shall be the sole class of membership and shall be entitled to full voting privileges.

When entitled to vote, Class A members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership by Section 2 of this Article IV.

(b) Class B. The Co-Declarants shall be the sole Class B members and shall be entitled to cast four (4) votes for each Lot in which they hold an interest. Class B membership shall be entitled to vote on all matters and in all events.

(c) The Class B membership for BILL CLARK HOMES OF RALEIGH, L.L.C. shall terminate and cease to exist, and the Class B membership of BILL CLARK HOMES OF RALEIGH, L.L.C. shall be and become a Class A member insofar as it may then hold any interest required for membership by Section 2 of this Article IV, upon the earliest to occur of: (i) the date on which the Co-Declarant shall have conveyed to individual owners thereof seventy-five (75%) percent of the Lots, or (ii) December 31, 2010, or (iii) on such earlier date as the Co-Declarant shall designate in a written notice delivered to the Association.

(d) The Class B membership for IC DEVELOPMENT, INC. shall terminate and cease to exist, and the Class B membership of IC DEVELOPMENT, INC. shall be and become a Class A member insofar as it may then hold an interest required for membership by Section 2 of this Article IV, upon the earliest to occur of: (i) such time as IC Development, Inc. or its successors or assigns no longer owns any portion of the Bryarton Townhomes Property or Additional Bryarton Townhomes Property, or (ii) December 31, 2010, or (iii) on such earlier date as the Co-Declarant shall designate in a written notice delivered to the Association.

From and after the date at which the Class B membership automatically terminates and ceases to exist, such membership shall not be renewed or reinstated.

Section 4. Suspension of Membership Rights. The membership rights of any member of the Association, including the right to vote and to use the Common Elements (except for the right to use the Common Elements for access to and from the Lot owned by such member), may be suspended by the Executive Board pursuant to the authority granted in the Bylaws. Any such

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suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the member's property in favor of the Association.

Section 5. Meetings of the Membership. All matters concerning the meeting of the members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be specified in the Act, in the North Carolina Nonprofit Corporation Act, in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 6. Association Acts Through Its Executive Board. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by authority of the Executive Board of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the members of the Association must vote. No member of the Executive Board of the Association or any officer of the Association (including, without limitation, any such individual who shall have been elected by a vote of the Class B member) shall be personally liable to any owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 7. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any person or other entity to manage the affairs of the Association, or any part thereof, and may enter into such agreements for the management of the Common Elements as the Executive Board deems to be in the best interests of the Association.

ARTICLE V

ASSESSMENTS

Section 1. Assessments; Lien Therefor. Each person other than the Declarant who shall own any Lot, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title thereto, shall be deemed to covenant and agree to pay to the Association all assessments and charges which are levied by the Association and levied pursuant to the Master Declaration against the Lot(s) owned by such person in accordance with the terms and provisions of this Act, this Declaration and the Master Declaration.

As more fully provided in Section 47F-3-116 of the Act, all sums lawfully assessed by the Association against any Lot and the owner thereof, which shall remain unpaid for a period of thirty (30) days from the date of such assessment, shall constitute a lien in favor of the Association on such Lot when a claim of lien is filed of record in the office of the Clerk of Superior Court of the county in which the Lot is located. Such lien shall be prior and superior to all other liens whatsoever, except:

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- (a) liens for ad valorem taxes and other governmental assessments on the Lot;
- (b) any lien that was properly recorded prior to the docketing of the claim of lien in the office of the Clerk of Superior Court;
- (c) the lien of any First Mortgage or the lien of any prior Mortgage recorded in the Deed Records of Wake County, North Carolina; or
- (d) the lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Lot.

Section 2. Personal Obligation of Members. Each member of the Association other than the Declarant, by acceptance of a deed or other conveyance to the Lot(s) owned by such member, irrespective of whether it shall be so expressed in any such deed or other conveyance, and by acceptance of ownership of such Lot(s), and by taking record title to such Lot(s), shall be deemed to covenant and agree to pay to the Association:

- (a) His share of the Annual Assessments which shall be levied by the Association in accordance with Section 6 of this Article V; and
- (b) When properly authorized in accordance with Section 7 of this Article V, special assessments, such annual and special assessments to be fixed, established and collected from time to time as hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be the personal obligation of the person who is the owner of the Lot against which such assessments are levied at the time such assessments become due and payable. The covenant to pay assessments herein stated is and shall be a covenant running with the land.

Section 3. Purposes of Assessments. The assessments levied by the Association pursuant to this Article V shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, this Declaration, the Master Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of repair and maintenance of all Common Elements and the repair and maintenance of the Lots as provided in this Declaration; payment of all governmental charges, taxes and assessments which shall be levied against all Common Elements; payment of all costs and expenses incurred by the Association in connection with its operations, including, without limitation, the payment of electricity charges for all lighting located at Bryarton Townhomes Property which does not serve a particular Lot; payment of the premiums for all policies of property and liability insurance maintained by the Association with respect to Common Elements and Townhomes; payment of the premiums for all fidelity bonds which shall be obtained by the Association; the maintenance of reserves for the repair and replacement of the Townhomes and improvements located on the Common Elements and for such other purposes as the Executive Board shall determine, in all

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cases in such amounts as the Executive Board shall determine; the payment of the fees of such management firms as the Executive Board shall employ; and payment of the fees for the provision of such professional services as the Executive Board shall determine to be required by the Association, including legal, accounting and architectural services.

The Executive Board or the duly authorized agent of the Association shall have the authority to obtain, and shall obtain, insurance policies upon the insurable improvements located with Bryarton Townhomes Property subjected to this Declaration for the benefit of Owners and their first mortgagees as their interest may appear and provision shall be made for the issuance of the renewals thereof.

Section 4. Casualty Insurance. The Executive Board shall maintain, to the extent available, casualty insurance upon the Common Elements and the Townhome buildings. "Buildings" shall mean the structures erected upon a Lot. Such insurance shall be an amount equal to but not less than one hundred (100%) percent of the full insurable value of the Buildings to the unfinished walls of a Building, including any fixtures, appliances, improvements and alterations that are part of the Building, on a replacement cost basis exclusive of land, excavation, foundations and other items normally excluded from property policies, and shall insure against such risk and contain such provisions as the Executive Board from time to time shall determine.

Section 5. Other Insurance. The Executive Board shall obtain such other insurance coverages as the Executive Board shall determine from time to time to be desirable.

Section 6. Determination of Annual Assessment. Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws), the Executive Board shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year, and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Executive Board shall thereupon adopt a budget for the Association's expenditures and reserve fundings based upon such estimate and providing for the total annual assessment to be levied against the members of the Association for such fiscal year (the total assessment which shall be so determined and levied against all of the members of the Association for any fiscal year in herein referred to as the "Annual Assessment"). The amounts so determined by the Executive Board shall be levied against all of the members of the Association other than the Declarant, and all Lots not owned by the Declarant. The amount of the Annual Assessment levied against each Lot shall be the same as the amount levied against every other Lot. Each Lot not owned by the Declarant shall be liable for that share of every Annual Assessment which is so determined by the Executive Board. The Executive Board shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the owner of every Lot prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Lot shall be due and payable to the Association in such installments the Executive Board shall determine, and after notice of the same shall have been given to all of the members of the

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Association by the Executive Board, and shall be paid to the Association when due without further notice.

In order to establish a working capital fund for the Association, each Owner of a Lot shall pay to the Association, at the time of the closing of the first sale of a Lot after the construction of a Townhome thereon, a deposit of an amount equal to the greater of \$300.00 or one month assessments due on the Lot as an initial contribution to the working capital fund (not as a credit to future assessments).

Section 7. Special Assessments. If for any reason, including non-payment of any assessments to the Association by the persons liable therefor, the budget adopted by the Executive Board for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Executive Board shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Executive Board shall have the authority to levy a special assessment against the Lots and the owners thereof (other than the Declarant) to raise such needed funds. Any special assessment levied by the Executive Board pursuant to the provisions of this Section 7 shall be payable at such times and such installments as the Executive Board shall determine. Each Lot not owned by the Declarant shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this Article V.

In addition to the special assessments above, the Association may levy from time to time on a particular Lot, rather than all Lots within the Property special individual assessments immediately due and payable consisting of fines assessed by the Association under authority herein and in the Bylaws and in the Act for an Owner's violations of the terms and conditions of this Declaration, any liquidated damages or summary charges imposed under authority contained in the Bylaws, together with costs, fees and expenses (including reasonable attorneys' fees) incurred by the Association incidental to the enforcement of any rules and regulations, the collection of assessments (both annual and special) or the collection of damages or charges arising under the Bylaws of the Association.

Section 8. Lots Owned by Declarant. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Lot owned by the Declarant shall be subject to any assessment provided for in this Article V. Rather, all Lots owned by the Declarant shall be exempt from the payment of all assessments for so long as such Lots are owned by the Declarant. At such time as any Lot which is owned by the Declarant shall be conveyed or transferred away by the Declarant, all liens and assessments provided for in this Article V shall become immediately levied against such Lot and the owner of such Lot shall immediately become liable for the payment of all such assessments. The amount of each Annual Assessment which shall become so payable with respect to any Lot shall be prorated according to the respective portions of the fiscal year that such Lot was owned by the Declarant and by such successor owner.

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association:

(a) In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual or special assessment, or any installment of any annual or special assessment which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Executive Board to be immediately due and payable in full to the Association. As more fully set out in the Act, all such amounts so declared by the Executive Board to be due and payable in full to the Association shall be secured by the lien of the Association on every Lot owned by the delinquent member, which lien shall bind such Lot or Lots in the hands of the then owner, and his heirs, devisees, successors and assigns.

(d) All amounts which the Executive Board shall declare to be due and payable pursuant to this Section 9 shall bear interest from the date of delinquency at the lower of the rate of eighteen (18%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the member of the Association personally obligated to pay the same, or foreclose its lien upon the Lot or Lots of such member, in either of which events such member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

Section 10. Stormwater Assessments. If the Additional Bryarton Townhomes Property is annexed to this Declaration, the Association's authority to levy assessments as provided in this Article V shall include the authority and responsibility to levy special assessments against the Lots located within the Additional Bryarton Townhomes Property (and only said Lots) for any monies owed by the Association to the City of Raleigh pursuant to the Stormwater Agreement (hereinafter, a "City Stormwater Assessment"). City Stormwater Assessments, together with interest, collection costs, late payment charges and attorney's fees (all as provided in the Stormwater Agreement), shall be a lien upon the Lot against which each such assessment is made upon the filing of a claim of lien, any time after default, against said Lot by the Association, or by the City of Raleigh as the assignee of the Association's lien rights, as provided in § 47F-3-116 of the Planned Community Act. Any claim of lien filed by the City of Raleigh shall be signed by the City Manager.

ARTICLE VI

DAMAGE OR DESTRUCTION OF TOWNHOMES

In the event of the occurrence of any damage or destruction by fire or other casualty to any one or more Townhomes covered by insurance written in the name of the Association, the Executive Board shall have such damage or destruction repaired or rebuilt by the Association. The Executive Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing and restoring the Townhomes to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or

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improvements necessitated by changes in applicable building codes. The Executive Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

Section 1. Repair and Restoration. Any damage or destruction to Townhomes covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least eighty (80%) percent of the voting membership otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether or not destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the costs thereof, the Executive Board shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners except Declarant in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair or reconstruction or if the improvements are not repaired or reconstructed, such expenses shall be deposited to the benefit of the Association.

In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event, the Townhome Lot shall be restored to its natural state and maintained as an undeveloped portion of Bryarton Townhomes Property by the Association in a neat and attractive condition.

Section 2. Duty to Repair. In the event of damage or destruction of any Townhome or Common Element as a result of fire or other casualty, the Executive Board shall arrange for the prompt repair and restoration of the Townhome and/or Common Element (including any damaged Building upon the Lot but not including any decoration or coverings for walls, ceilings or floors or other furniture, furnishings, fixtures or equipment in the Townhome, or an Owner's or occupant's personal property, furniture, fixtures, or equipment) and the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost of such repair and restoration in excess of the insurance proceeds shall constitute a common expense. Any surplus insurance proceeds remaining after repairs have been completed shall be treated as a common surplus. Any reconstruction or repair shall be in accordance with the plans and specifications of the original Townhomes and Common Elements or according to the plans and specifications approved by the Executive Board.

Section 3. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the persons who are responsible hereunder, or under any declaration or contract requiring the

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Association to obtain such insurance, for maintenance or repair of the damaged or destroyed property.

Section 4. Individual Insurance. Each Owner shall obtain insurance, at his own expense, insuring personal property, additional living expense, personal liability, and any other coverage obtainable to the extent and in the amount such Owner deems necessary to protect his own interest; provided that such policy shall insure one hundred (100%) percent of the cost of the improvements and betterments of the Townhomes, including but not limited to the wall coverings, paint, carpet, appliances, cabinets, plumbing fixtures and heating and air conditioning systems. Provided further that any such insurance shall contain waivers of claims against the Executive Board, or employees or agents thereof, or against any manager retained by the Executive Board, or its officers, directors, employees or agents, for any loss or damage to any of the improvements upon the Lot, or to any Owner or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided, however, that this waiver shall not apply to any such loss or damage due to intentional acts. Provided further that any such insurance shall provide that it is without contribution as against the insurance purchased by the Executive Board. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Executive Board to the proration of insurance purchased by an Owner under this Section 4, such Owner shall be liable to the Executive Board to the extent of such reduction and shall pay the amount of such reduction to the Executive Board upon demand and assign the proceeds of his or her insurance, to the extent of such reduction, to the Executive Board.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. Architectural Restrictions.

(a) No Townhome shall be constructed on any Lot unless such Townhome contains no less than Sixteen Hundred Fifty (1650) square feet of interior, heated space, and no more than Eighteen Hundred Fifty (1850) square feet of interior, heated space.

(b) No structure other than a fence shall be constructed, placed or installed upon any Lot, in a location which encroaches beyond any front, side or rear building set-back line which is depicted on the Plat. No fence shall be constructed or erected upon any Lot in any location other than entirely in the rear yard of the Lot as approved by the Executive Board.

Section 2. Architectural Control.

(a) No building, fence, wall, garage, carport, playhouse, swimming pool, mail-box or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to, change in (including, without limitation, any change in the type of roofing material or in the color of the paint, stain or varnish), or alteration of, the Townhome located on any Lot

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or any other structure located on any Lot be made until complete and final plans and specifications, setting forth the information hereinafter described, shall have been submitted to, and approved in writing by, the Executive Board as to the harmony of the exterior design and general quality with the existing standards of the improvements located on the other Lots, and as to location in relation to surrounding structures and topography.

(b) The plans and specifications which must be submitted to the Executive Board prior to the alteration or addition to any Townhome or the commencement of any structure upon any Lot, as hereinabove provided, shall contain at least the following information:

(i) A site plan showing the shape and size of the proposed structure and its location on the Lot on which the same is proposed to be constructed; and

(ii) Building plans of the proposed structure which shall include an exterior elevation drawing of the proposed structure;

(iii) In the case of any fence proposed to be erected on any Lot, a site plan showing the location of the proposed fence and a statement of which of the "Approved Fence Details" (as that term is defined in paragraph (c) hereinbelow) said proposed fence shall conform to; and

(iv) In the case of the alteration of any Townhome, a complete description of the alteration proposed to be made, including a sample of any varnishes or paints proposed to be used.

(c) It shall be the duty of the Executive Board to maintain in effect a series of guidelines of standardized designs for architectural controls and of fences that may be erected upon any Lot. Said standardized fence designs which shall be so maintained by the Executive Board are hereinafter referred to as the "Approved Fence Details". The Executive Board may modify and change the Approved Fence Details, and adopt additional Approved Fence Details, at any time, and from time to time, as the Executive Board believes to be in the best interests of the owners of the Lots. The Executive Board shall furnish the owner of any Lot with a copy of the then existing Approved Fence Details upon such Lot owner's request.

In no event shall any fence be erected on any Lot unless the design of such fence shall conform to the then existing Approved Fence Details.

(d) The Association shall upon demand at any time, furnish to any member of the Association a certificate in writing signed by an officer of the Association, stating whether any building, fence, wall, garage, carport, playhouse, swimming pool, mail-box or other structure erected upon such owner's Lot, or any exterior addition to, change in, or alteration of any Townhome or other structure owned by such member on a Lot, is in compliance with the provisions of this Section 2 of Article VII, and such certificate shall be conclusive as to whether the same is in such compliance.

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(e) In the event that any construction or alteration work is undertaken or performed upon any Lot without application having been first made and approval obtained as provided in paragraph (a) of this Section 2, said construction or alteration work shall be deemed to be in violation of this covenant, and the person upon whose Lot said construction or alteration work was undertaken or performed may be required to restore to its original condition, at his sole expense, the property upon which said construction or alteration was undertaken or performed. Upon the failure or refusal of any person to perform the restoration required herein, the Executive Board, or their authorized agents or employees, may, after fourteen (14) days' notice to such person, enter upon the property upon which such unauthorized construction or alteration work has been performed, and make such restoration as the Executive Board, in the exercise of its discretion, may deem necessary or advisable. The person upon whose Lot such restoration work shall have been so performed shall be personally liable to the Association for all direct and indirect costs which the Association shall incur in the performance of such restoration work, and the liability for such cost shall be secured by all the liens, and shall be subject to the same means of collection, as the assessments provided for in Article V of this Declaration. Such costs shall be paid to the Association by the person liable for the same at the same time as the next due Annual Assessment payment, as provided in Section 6 of Article V of this Declaration, or at such earlier time, and in such installments, as the Executive Board shall determine.

Section 3. Declarant Exemption. Notwithstanding anything stated to the contrary herein, nothing contained in this Article VII shall be construed as prohibiting any construction by the Declarant upon any Lot while such Lot is owned by the Declarant. Any new construction performed by the Declarant upon any Lot while such Lot is owned by the Declarant shall be exempt from the provisions of Section 2 of this Article VII.

Section 4. Architectural Advisory Committee. The Executive Board shall be authorized to appoint an architectural advisory committee to advise it and assist it in connection with its performance of its responsibilities under Section 2 of this Article VII. The functions which may be performed by any such architectural advisory committee shall include reviewing plans and specifications which are submitted to the Executive Board in connection with proposals to construct or alter improvements upon the Lots and to make recommendations to the Executive Board with respect to such plans and specifications.

ARTICLE VIII

RESTRICTIONS

In order to provide for the maximum enjoyment of the Lots and Townhomes located thereon by all of the residents thereof and to provide protection for the value of the same, the use of the Lots and Townhomes located thereon shall be restricted to, and shall be only in accordance with, the following provisions:

Section 1. Single-Family Use. All of the Lots shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Lot shall at any time be used for any

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commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this Section 1 shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Lot as said Declarant shall determine (including but not limited to, using any Townhome as a model home and sale office; or (b) the owner of any Townhome from using a portion of a Townhome as an office, provided that such use does not create regular customer or client traffic to and from such Lot and Townhome located thereon and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Lot.

Section 2. Prohibited Activities. No noxious or offensive activity shall be conducted on any Lot. Each owner of any Lot, his family, tenants, guests and invitees, shall refrain from any act or use of his property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Lot.

Section 3. Nuisances. No nuisance shall be permitted to exist upon any Lot. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except for security devices used exclusively for security purposes, shall be located, used or placed on any Lot, or any portion thereof.

Section 4. Trash; Animals. No portion of any Lot shall be used as a dumping ground for rubbish, trash or garbage, nor shall any trash or garbage be permitted to accumulate upon any Lot. Garbage containers shall be placed in garage or screened on each Lot so that the same shall not be visible from the street or from any part of any other Lot.

No Lot or Townhome located thereon shall be used for the keeping or breeding of livestock, animals or poultry of any kind, except that two (2) household pets may be kept, provided that they are neither kept for breeding nor maintained for any commercial purpose, and provided that none of such pets are permitted to be a source of annoyance to any other resident or residents of any other Lot.

Section 5. Signs. No sign of any kind or character shall be erected on any portion of any Lot, or displayed to the public on any portion of any Lot, without the prior written consent of the Executive Board, except for customary name and address signs and one "for sale" sign advertising a Lot for rent or sale. The restriction herein stated shall include the prohibition of placement of any sign within a Townhome in a location from which the same shall be visible from the outside and the placement of any sign in or upon any motor vehicle.

Section 6. Antennas; Aerials; Satellite Dishes. No antennas, aerials, satellite dishes or other reception devices having a diameter or diagonal measurement greater than one meter shall be installed on any Lot. So long as reception of an acceptable quality is not precluded, the antenna, aerial, satellite dish or other reception device of appropriate size shall be located only on that portion of the Lot which is least visible from public view and shielded so as to minimize any risk and to ensure a nuisance is not created.

Section 7. Clotheslines. No clothesline shall be erected on any portion of any Lot.

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Section 8. Window Air-Conditioners. No air-conditioner shall be installed in any window of any Townhome, nor shall any air-conditioner be installed on any Townhome on any Lot so that the same protrudes through an exterior wall of such Townhome.

Section 9. Temporary Structures. Subject to the right of the Declarant to promote the sale of Lots, no structure of a temporary character, including, without limitation, any trailer, tent, shack, garage or other building, shall be permitted on any Lot at any time, whether temporarily or permanently, except with the prior written consent of the Executive Board; provided; however, that temporary structures may be erected or placed upon a Lot for use in connection with the repair or construction of structures upon such Lot.

Section 10. Subdivision of Lots. No Lot may be further subdivided into any smaller Lot except by Declarant.

Section 11. Enforcement by Members. In the event that the owner of any Lot, or any person who is entitled to occupy any Lot, shall fail to comply with or abide by any restriction set forth in this Article VIII, then the owner of any other Lot who is aggrieved by such failure of compliance or abidance shall have the right to proceed at law or in equity to compel such owner or such occupant to comply therewith and abide thereby. Additionally, any owner of any Lot who, or whose lessee, shall fail to comply with or abide by any such restriction shall be liable for any damages as may be suffered by any other owner of any Lot as a consequence of such failure.

Section 12. Other Restrictions. In addition to the aforementioned restrictions, the Executive Board shall have the authority to adopt, publish and enforce rules and regulations governing all Common Elements and all Lots, except those Lots owned by the Declarant, and which are hereby subjected to this Declaration. The Declarant shall have the right in its sole discretion to agree to be bound by any additional rules and regulations promulgated by the Executive Board pursuant to this Section 12.

ARTICLE IX

MAINTENANCE OF TOWNHOMES, LOTS, BACKYARD AREAS AND LANDSCAPING

Section 1. Maintenance and Repair of Townhomes. The owner of each Townhome shall be obligated to maintain and repair the interior of his or her Townhome, which excludes the walls and the roof of such Townhome, at his or her sold cost and expense. The exterior of the Townhomes shall be maintained and repaired by the Association. In no event shall any change be made in the Exterior appearance of any Townhome (including, without limitation, painting and the application of any brick, stucco, paneling or other siding) by an Owner.

Section 2. Maintenance of Lots and Backyard Areas.

(a) The Association shall be responsible for maintaining the grass and the grounds of each Lot which is not located inside a fence. Such maintenance shall consist of normal grass

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mowing and any other activity necessary to keep such grounds in a condition that is satisfactory to the Executive Board.

(b) The owner of each Lot shall be obligated to keep and maintain any portion of the Backyard Area of such Lot which is enclosed within a fence erected in accordance with this provision in a neat, sanitary and attractive condition which is satisfactory to the Executive Board. Such maintenance shall include, without limitation, cutting the grass, weeds and other vegetation, removing dead trees, shrubs and other plants and pruning and otherwise maintaining all plants, shrubbery, trees, flowers, bushes, grass, ivy and other foliage as may be planted in and on such Backyard Area.

Section 3. Fences. No fence shall be allowed upon a Lot without the prior written approval of the Executive Board.

In the event that the owner of any Lot shall be permitted by the Executive Board to erect a fence pursuant to the provisions of this Section 3, the owner of such Lot shall be responsible for the repair, maintenance and replacement of such fence.

Section 4. Failure of Maintenance. In the event that the owner of any Lot shall fail to maintain any portion of his Lot, including the Townhome that is located on such Lot and the Backyard Area of such Lot, (including any fence that may have been erected in such Backyard Area), all as required under the terms and provisions of this Article IX, the Executive Board shall have the right, exercisable by it or through its agents or employees, and after giving the owner of such Lot at least five (5) days notice and an opportunity to correct the unsatisfactory condition, to enter upon the Lot, and correct the unsatisfactory condition. The owner of the Lot upon which such maintenance work is performed by the Association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all of the liens, and shall be subject to the same means of collection, as are the assessments and charges provided for in Article V of this Declaration. In addition, all such costs shall be paid to the Association by such owner at the same time as the next due annual assessment payment, as provided in Article V of this Declaration, or at such earlier time, and in such installments, as the Executive Board shall determine.

ARTICLE X

AMENDMENT

The terms, provisions, covenants and restrictions of this Declaration may be amended upon the approval of such amendment by (a) those members of the Association who own no fewer than sixty-seven (67%) percent of the Lots and (b) the Declarant, if the Declarant shall then own any Lot. The approval of any such amendment by the members of the Association shall be given by each such member either casting a vote in favor of such amendment at a meeting of the members of the Association duly called for such purpose, or by such member signing a written approval of such amendment after the date on which such meeting was held

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notwithstanding anything set forth to the contrary in the Articles of Incorporation or Bylaws. If any such amendment is required to be approved by the Declarant, such approval shall be given only by such Person executing a written approval of the same.

Any amendment to the terms, provisions, covenants or restrictions of this Declaration shall become effective only upon the recording with the Register of Deeds Records of Wake County, North Carolina, of an instrument certified by the incumbent President of the Association setting forth such amendment and stating that the approval of the members of the Association which, under the provisions of this Article X, is required for such amendment to be effective, has been given and obtained; and (c) containing the written approval of the Declarant, if the same is required (as hereinafter provided).

The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate.

Each person who shall own any Lot, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title hereto, and each holder of a Mortgage upon any portion of any Lot, by acceptance of such Mortgage, thereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided in this Article X.

Notwithstanding any authority or power conferred on the Declarant or the Association by this Declaration or Article 2 of Chapter 47F of the North Carolina General Statutes, any amendment to this Declaration relating to stormwater, including without limitation provisions related to Stormwater Control Measures, the funding of the Stormwater Agreement, or the definitions of Stormwater Agreement, Stormwater Control Measures or Stormwater Manual and Budget, shall be void *ab initio* unless the Raleigh City Attorney or assistant City Attorney has approved the amendment prior to its adoption. The sole and exclusive means to show such approval shall be by the signature of the Raleigh City Attorney or assistant City Attorney on the amendment recorded in the Wake County Registry.

ARTICLE XI

MISCELLANEOUS

Section 1. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the owner of any Lot, then the owner of any other Lot shall have the right to file an action in a court of competent jurisdiction for an order from such court requiring that the Association enforce such compliance; provided, however, in no event shall the Executive Board, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

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Section 2. Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 3. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with and bind the Bryarton Townhomes Property, shall be and shall remain in effect, and shall inure to the benefit of, and be enforceable by, the Association, and by any owner of any Lot, their respective legal representatives, heirs, successors and assigns, perpetually.

Section 4. Notices. Any notice required to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of any Lot owned by such member. The date of service shall be the date of mailing.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of such provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 6. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons or other entities violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Lots, to enforce any liens created by this Declaration.

Section 7. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of the Declarant by operation of law or through purchase of the Declarant's interest in all or any portion of Bryarton Townhomes Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant.

Section 8. Interpretation of Declaration. Whenever appropriate singular may read as plural, plural may read as singular, and the masculine gender may be read as the feminine or

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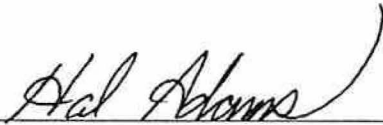
neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

Section 9. HUD, FHA and VA Approvals. In the event HUD, FHA or VA approval shall be required for any Lot, Declarant shall have the unilateral right, without the approval of the members of the Association, to amend this Declaration to include any provisions required by HUD, FHA or VA.

Section 10. Exculpation of City. In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police or other public service to the Bryarton Townhomes Property or its occupants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, Association or occupants.

IN WITNESS WHEREOF, the Declarants have caused this Declaration to be executed by their duly authorized officers on the day and year first above written.

BILL CLARK HOMES OF RALEIGH, LLC
a North Carolina limited liability company

By: 
Hal Adams, Manager

IC DEVELOPMENT, INC.
a North Carolina corporation

By: 
Khaled Al-Zoubi, President

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, Debra Garver, Notary Public for said County and State, certify that Hal Adams personally came before me this day and acknowledged that he is Manager of **Bill Clark Homes of Raleigh, LLC**, a North Carolina limited liability company, and that he, as Manager, and being authorized to do so, executed the foregoing on behalf of the Company.

Witness my hand and seal, this the 19 day of April, 2005.

Debra Garver
Notary Public



My Commission Expires: 06/30/2008

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, Amy L. Johnson, Notary Public for said County and State, certify that Khaled Al-Zoubi personally came before me this day and acknowledged that he is President of **IC Development Inc.**, a North Carolina corporation, and that he, as President, and being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and seal, this the 18th day of April, 2005.

Amy L. Johnson
Notary Public

My Commission Expires: 5-12-2008

AMY L. JOHNSON
NOTARY PUBLIC
WAKE COUNTY, NC
My Commission Expires 5-12-2008.

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EXHIBIT A

Bryarton Townhomes Property

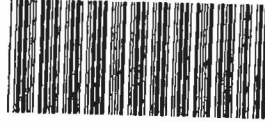
Commence at North Carolina Geodetic Survey monument "Swift Creek", having NAD 83 grid coordinates N-726,474.37, E-2,079,106.32; thence North 36° 51' 13" West 101.83 feet to an iron pipe found at N.C. Grid Coordinates N-726,555.85, E-2,079,045.25, the point of BEGINNING; thence North 11° 37' 26" West 681.81 feet to an iron pipe found; thence North 74° 49' 43" East 800.42 feet to an iron pipe found; thence South 01° 03' 03" West 763.96 feet to an iron pipe found; thence South 79° 38' 51" West 631.42 feet to an iron pipe found, the point of BEGINNING, as shown on plat entitled "Final Subdivision Plat of Bryarton Village Townhomes" by Taylor Wiseman & Taylor dated February 18 - March 8, 2003 and recorded in Book of Maps 2003, pages 2238-2240, and re-recorded in Book of Maps 2004, page 128, Wake County registry.

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EXHIBIT B

Additional Bryarton Townhomes Property

Commence at North Carolina Geodetic Survey monument "Swift Creek", having NAD 83 grid coordinates N-726,474.37, E-2,079,106.32; thence North 36° 51' 13" West 101.83 feet to an iron pipe found at N.C. Grid Coordinates N-726,555.85, E-2,079,045.25; thence North 79° 38' 51" East 631.42 feet to an iron pipe found, the point of BEGINNING; thence North 79° 37' 19" East 173.78 feet to an iron pipe found; thence North 01° 39' 32" East 777.26 feet to an iron pipe found; thence South 76° 06' 02" West 184.84 feet to an iron pipe found; thence South 01° 03' 03" West 763.96 feet to an iron pipe found, the point of BEGINNING, and being all of the property labeled "Thomas Allen Prince Heirs c/o Peggy D. Prince", as shown on plat entitled "Final Subdivision Plat of Bryarton Village Townhomes" by Taylor Wiseman & Taylor dated February 18 - March 8, 2003 and recorded in Book of Maps 2003, pages 2238-2240, and re-recorded in Book of Maps 2004, page 128, Wake County registry.



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



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

North Carolina - Wake County

The foregoing certificate 5 of Debra Garver
Amy L Johnson

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: [Signature]
Assistant/Deputy Register of Deeds

This Customer Group
of Time Stamps Needed

This Document
32 New Time Stamp
of Pages