



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2007 NOV 02 03:10:03 PM
BK:5787 PG:886-921 FEE:\$116.00

INSTRUMENT # 2007049791

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE TRINITY LOFTS TOWNHOMES

**THIS DOCUMENT REGULATES THE DISPLAY OF THE FLAG OF THE
UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA.**

THIS DOCUMENT PROHIBITS THE DISPLAY OF POLITICAL SIGNS.

Drawn by and mail to: Michael F. King
Kennedy Covington Lobdell & Hickman, L.L.P.
4350 Lassiter at North Hills Avenue, Suite 300
Raleigh, North Carolina 27609
P.O. Box 17047
Raleigh, North Carolina 27619-7047

4831-0584-6785.07

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made as of the date of its recordation in the Durham County Registry, by TRINITY TRUST PARTNERS, LLC, a North Carolina limited liability company (hereinafter referred to as the "Declarant"), and is consented to by Larry T. Loeser (the "Trustee"), as Trustee under that certain Construction Deed of Trust recorded on November 8, 2005 in Book 5014 at Page 50 of the Durham County Public Registry, as amended by Amendment to Deed of Trust recorded in Book 5787, Page 879, Durham County Registry (the "Deed of Trust") and by Harrington Bank, FSB (the "Beneficiary"), as Beneficiary and owner and holder of the Deed of Trust.

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described on Exhibit A attached hereto and incorporated herein by reference, which real property is more particularly described in Section 1 of Article II below, and desires to create thereon mixed use community of attached residential and commercial townhome units to be named **The Trinity Lofts Townhomes**; and

WHEREAS, Declarant desires to insure the attractiveness of the community, to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all property within the community and to provide for the maintenance and upkeep of the exterior of all units and the Common Area, as hereinafter defined; and to this end desires to subject the real property described in Section 1 of Article II, to the covenants, conditions, restrictions, assessments, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property described below and each owner thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities in the community and to ensure the residents' enjoyment of the specific rights, privileges and easements in the Common Area, to provide for the maintenance and upkeep of the exterior of all units, including the area of a Lot outside the unit and the Common Area as hereinafter set forth, and to create an organization to which will be delegated and assigned the power of owning, maintaining and administering the Common Area, and maintaining the exterior of the units, and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under North Carolina law, The Trinity Lofts Homeowners Association, Inc., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the property described in Exhibit A attached hereto and in Section 1 of Article II is and shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions, charges and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall 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.

This Declaration creates a planned community under the North Carolina Planned Community Act.

ARTICLE I

DEFINITIONS

Section 1. "Additional Property" shall mean and refer to any real estate contiguous, adjacent or in the vicinity of the Property, all or a portion of which may be made subject to the terms of this Declaration in accordance with the provisions of Article II, Section 2 of this Declaration.

Section 2. "Association" shall mean and refer to The Trinity Lofts Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and/or assigns.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association.

Section 4. "Common Area" shall mean and refer to all real property owned by the Declarant or the Association which is designated as "Private Access, Utilities and Common Area" and is for the common use and enjoyment of the Owners. The Common Areas shall be shown on the various plats of The Trinity Lofts Townhomes recorded or to be recorded in the Durham Public Registry and designated thereon as "Private Access, Utilities and Common Areas" or other similar designation. Any portion of the Property shown on the various plats of The Trinity Lofts Townhomes recorded or to be recorded in the Durham Public Registry designated as "Reserved for Future Development" shall not be Common Area until such time (if any) that such real property is designated Common Area on a recorded plat. Declarant and Association shall have the unilateral right to redesignate and reconfigure the Common Area as set forth in this Declaration

Section 5. "Declarant" shall mean and refer to Trinity Trust Partners, LLC, a North Carolina limited liability company, its successors and assigns, if such successors or assigns should acquire all of Declarant's interest in the Property.

Section 6. "Lot" shall mean and refer to any plot of land, with delineated boundary lines appearing on any recorded subdivision map of the Property with the exception of any Common Area and shall include all improvements thereon.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "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 any interest merely as security for the performance of an obligation.

Section 9. "Property" shall mean and refer to the real property described in Article II hereof.

Other terms not specifically defined herein shall have the meanings given to them under the North Carolina Planned Community Act, Chapter 47F of the North Carolina General Statutes (the "Planned Community Act").

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property.

The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and within the jurisdiction for the Association is located in Durham County, North Carolina, and is described on Exhibit A attached hereto and incorporated herein by reference.

Section 2. Additions to the Property.

(a) Declarant may cause Additional Property to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Office of the Register of Deeds for Durham County, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Declarant may develop the Additional Property in phases, and add portions of the Additional Property to the terms and scheme of this Declaration in separate phases by separate Supplemental Declarations. Declarant may, but is not obligated to, also cause common areas and recreational facilities (if any) adjacent to the Property, or within, or adjacent to, any Additional Property to be constructed and made subject to the terms and scheme of this Declaration by the filing of one or more Supplemental Declarations describing the additional common areas and recreational facilities to be added, and a statement by

Declarant of its intent to extend the operation and effect of this Declaration to the common areas and recreational facilities; and Declarant may in any such Supplemental Declaration provide for such common areas and recreational facilities to be owned, operated, repaired, replaced and maintained by the Association as Common Areas (as defined herein) for the use and benefit of the Owners, or of certain Owners to the exclusion of other Owners, and for the expense thereof to be paid in a similar manner as is provided herein. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for Amendment set forth in Article XII, Section 3 of this Declaration. Notwithstanding the foregoing, Declarant or the Association shall have the right, without meeting the requirements for Amendment set forth in Article XII, Section 3 of this Declaration, to reconfigure any Common Areas to reflect the actual final configuration of such areas as determined by Declarant or the Association.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

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

Section 2. Voting and Voting Rights. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two (2) classes of Lots with respect to voting rights:

Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same is hereinafter defined. Each Class A Lot shall entitle the Owner(s) of said Lot one (1) vote. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as the Owners thereof among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Class A Lot.

Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as provided in (a) or (b) below. The Declarant shall be entitled to ten (10) votes for each Class B Lot owned by it. The Class B Lots shall cease and be converted to Class A Lots on the happening of either of the following events, whichever occurs earlier;

(a) when the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots and the Declarant surrenders its right to annex any Additional Property to the Property pursuant to this Declaration and the Bylaws; provided, however, and notwithstanding anything to the contrary that may appear herein, if at any time prior to ten (10) years from the date of recordation of this Declaration, the Class B Lot Membership terminates for the foregoing reason and thereafter Declarant, (i) develops additional Lots on the Property or (ii) pursuant to Section 2 of Article II of the Declaration, annexes Additional Property to the Declaration such that, following such development or annexation, if votes are allocated to the Lots owned by Declarant at the rate of ten (10) votes per Lot, Declarant's total outstanding votes would exceed the total outstanding votes of the Class A Members, the Class B Lot Membership shall be reinstated until such time as it again terminates due to one of the events of termination stated herein. Prior to ten (10) years from the date of recordation of this Declaration or the voluntary termination of the Class B Lot Membership by Declarant, whichever first occurs, there shall be no limitation on the number of times the Class B Lot Membership may terminate and be reinstated in accordance with the provisions of this paragraph (a); or

(b) on December 31, 2017.

Notwithstanding the foregoing, until the expiration of the Period of Declarant Control, (as defined in Section 4 of this Article III) Declarant shall exercise the majority of votes in the Association. Notwithstanding anything set forth herein to the contrary, Declarant may, in its sole discretion, elect to terminate the Class B Lot Membership prior to the happening of the earlier of the foregoing events.

Section 3. Suspension of Voting Rights. Voting rights attributable to an ownership interest in a Lot shall be suspended throughout the term of any default under the rules and regulations and Bylaws of the Association or of this Declaration by an Owner of such Lot. Such rights may also be suspended after notice and a hearing, for a period not to exceed sixty (60) days, for infraction of published rules and regulations.

Section 4. Control by Declarant. Notwithstanding any other language or provision to the contrary herein or in the Bylaws of the Association, Declarant hereby retains the right to appoint and remove any members of the Board of Directors of the Association and any officer or officers of the Association until the expiration of the Period of Declarant Control (as hereinafter defined), or the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed and recorded by

Declarant. During the Period of Declarant Control, the Board shall have the sole and exclusive authority to exercise all powers and rights of and to act in all instances on behalf of the Association, and the Members shall have no authority to exercise such powers or rights or to act by exercise of their votes, except as provided with respect to the commencement of judicial or administrative proceedings as provided in Article XII, Section 1 of this Declaration and those acts that the Planned Community Act or other applicable laws provide may not be undertaken unilaterally by the Board. Upon the expiration of the Period of Declarant Control or Declarant's surrender as described above, the right to appoint and remove directors and officers of the Association shall automatically pass to the Owners, including Declarant, if Declarant then owns one or more Lots; and a special meeting of the Association shall be called for and held within ninety (90) days after the date of the expiration of the Period of Declarant Control, as hereinafter defined. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association, and Declarant shall deliver the books, accounts, and records, if any, which Declarant has kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section. The "Period of Declarant Control" shall be that period of time which commences with the filing of this Declaration and expires at such time as Declarant no longer owns any portion of the Property or at such earlier time as Declarant records a termination of its Declarant rights in the office of the Durham County Register of Deeds. Anything to the contrary in this Declaration, the articles of incorporation, the bylaws or the Act notwithstanding, if not sooner ended or terminated the Period of Declarant Control shall end on December 31, 2017.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Declarant to construct improvements in the Common Area for the use and benefit of the Owners;

(b) The right of the Association to limit the use of the Common Areas to Owners and to their families, tenants, contract purchasers and guests as provided in Section 2 of this Article IV;

(c) The right of the Declarant or the Association to dedicate or convey all or any part of the Common Area to any public agency, public authority, private or public utility or adjoining property owner for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective

unless the Members entitled to at least eighty percent (80%) of the votes in the Association agree to such dedication or conveyance and signify their agreement by a signed and recorded, written document, provided that this paragraph shall not preclude the Association or Declarant from granting easements upon, over, under and across the Common Area to (i) public authorities or others for the installation and maintenance of electrical, telephone, cablevision, water and sewerage utilities and drainage facilities, (ii) any public authority if such public authority shall require that any portion of the Common Area be subject to any form of conservation easement or if such public authority shall require that Declarant or the Association restrict the development of any portion of the Common Area, or (iii) any adjoining property owner for access and/or parking, without the assent of the membership when, in the sole opinion of the Board or Declarant, such easements do not interfere with the use and enjoyment of the Property or are necessary for the convenient use and enjoyment of the Property;

(d) The right and obligation of the Declarant to establish an assigned parking space within the Common Area for each Lot within the Property and to create perpetual, appurtenant, exclusive easements for parking purposes within such assigned parking space running to the benefit of each Lot as provided in Section 5 of Article X;

(e) The right of the Association, with the written assent of Members entitled to at least eighty percent (80%) of the votes in the Association to mortgage, pledge, deed in trust eighty percent (80%) of its real or personal property as for money borrowed or debts incurred for the purpose of improving the Common Area and facilities, with the rights of such creditors to be subordinate to the rights of the Owners hereunder;

(f) The right of the Association to adopt, publish, and enforce rules and regulations as provided in Article X;

(g) The right of the Association to enter any Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, including without limitation the landscaping obligations described in Article VI and the Owner of such Lot shall permit the Association or its representative to enter for such purpose at reasonable times and with reasonable advance notice;

(h) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate.

(i) The right of the Association to enter into third party vendor contracts to provide for the submetering of water and sanitary sewer services to Owners.

(j) The rights of the Declarant and the Association to redesignate the Common Area currently shown on the various plats of the Property recorded in the Durham Public Registry and to change Common Area plans.

(k) The rights of the Declarant and the Association with the written assent of assent of Members entitled to cast at least eighty percent (80%) of the votes in the Association to subdivide and convey portions of the Common Area to adjacent property owners as contemplated in Article XIV.

(l) The rights of the Declarant and the Association without the assent of the membership to grant cross-access rights and easements to the adjoining property owners to non-exclusive parking spaces not allocated to the Lots under Section 5 of Article X of this Declaration.

Section 2. Delegation of Use.

(a) Family. The rights and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owner's family who occupy the unit of the Owner within the Property as their principal residence in Durham County, North Carolina.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be delegated from the Owner to his tenants, employees, contractors, invitees or contract purchasers who use or occupy a unit within the Property, or a portion of said unit.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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; (a) annual assessments or charges and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, 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 and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property and in particular for the improvement and maintenance of the Common Areas and of the exterior of the dwellings and Lots, including without limitation the maintenance, repair, and reconstruction of private streets, driveways, walks, parking areas and walking paths situated on the Common Area, such maintenance to include the cutting and removal of weeds and grass, the removal of trash and rubbish, or any other maintenance, and for the exterior maintenance of the units situated upon the Property as hereinafter provided; for the use and enjoyment of the Common Area, including, but not limited to, the cost of repairs, replacements, and additions; the cost of labor, equipment, materials, management, and supervision; the cost of providing any utility services (excluding water and sanitary sewer, if submetered) that are provided through a common or central meter for the townhome building in which the townhome is located, which shall be assessed by the Association in equal shares against all townhome units in the building served by such central meter, as a common expense; and the payment of taxes and public assessments assessed against the Common Area. In addition, the assessments may be used for the procurement and maintenance of insurance in accordance with this Declaration; the employment of attorneys, accountants and management companies to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, roofs, paving, and any other major expense for which the Association is responsible; and such other needs as may arise. The cost of the water used to irrigate the Common Areas shall be a common expense. With respect to water and sanitary sewer services which are furnished to townhome units through submeters, the cost of water and sanitary sewer services furnished to the townhomes (the "Water and Sewer Charge") shall be paid by the Owners of each townhome unit in the amount billed by the third party vendor engaged by the Association to submeter water and sewer usage and render the bills therefore (the "Billing Company"). The payment of the Water and Sewer Charge shall be each respective Owner's responsibility and shall be paid by each Owner directly to the "Billing Company". The Billing Company under its agreement with the Association will bill the Owners directly for the Water and Sewer Charge. If an Owner fails to pay the Water and Sewer Charge to the Billing Company, when due, then such Owner shall be in violation of this Declaration and the Association shall have the right, but not the obligation, to exercise against such Owner all rights and remedies available to the Association under this Declaration and the Planned Community Act, including, without limitation, the right to impose a lien on such Owner's Lot for the overdue sums and the right to suspend the use of water and sanitary sewer service for such Owner.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas and those other portions of the Property which the Association may be obligated to maintain. Such reserve fund is to be established out of the annual assessments.

Section 4. Maximum Annual Assessment. The maximum annual assessment for the calendar year beginning January 1, 2007 is \$1500.00 per Lot and for successive calendar years thereafter shall be established by the Board subject to this Article V. The Board shall adopt a

proposed budget and fix the amount of the annual assessment as to each Lot for each calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Association shall send written notice of the amount of the annual assessment and a summary of the proposed budget, as well as the amount of the payment due, to each Owner on or before January 5 of such calendar year. To the extent that the annual assessments commence prior to the commencement of a calendar year, the Board shall adopt a proposed budget for the remainder of the then-current calendar year and fix the amount of the annual assessment within thirty (30) days after the conveyance of the first Lot by Declarant to an Owner other than Declarant, and shall send notice to each Owner as set forth above. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or other applicable law, the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be voted on at any such meeting is within the "maximum annual assessment increase" limits defined below, the budget is ratified unless at such meeting Members exercising all of the votes in the Association reject the budget. If the proposed budget to be voted on at any such meeting exceeds the "maximum annual assessment increase" limits, the budget is ratified unless at such meeting Members exercising a majority of the votes in the Association reject the budget. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay annual assessments.

The "maximum annual assessment increase" is the greater of ten percent (10%) of the prior year's amount, or the percentage increase in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for all cities over the preceding twelve (12) month period multiplied by the prior year's amount. The maximum annual assessment each year shall be an amount equal to the previous year's maximum annual assessment plus the maximum annual assessment increase.

Section 5. Special Assessment 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, repair or replacement of a capital improvement upon the Common Area or upon additional Common Areas which may be constructed, including all improvements located thereon, and fixtures related thereto, or in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of the Members entitled to cast no less than two-thirds (2/3) of the votes in the Association.

Section 6. Notice and Quorum for any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 5 of this Article shall be sent to all Members no less than ten (10) days nor more

than sixty (60) days in advance of the meeting. For those meetings called pursuant to Section 4, there shall be no requirement that a quorum be present at the meeting. For those meetings called pursuant to Section 5, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of the votes in the Association shall constitute a quorum. If the required quorum is not present at a meeting called pursuant to Section 5, another meeting may be called subject to the same notice requirement; and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting called pursuant to Section 5 shall be held more than sixty (60) days following the preceding meeting.

Section 7. Rate of Assessment.

(a) Except as otherwise set forth herein, both annual and special assessments shall be fixed at a uniform rate for all Lots, and shall be collected on a monthly basis.

(b) Anything to the contrary herein notwithstanding, the annual assessment for each Lot shall be in an amount equal to ten percent (10%) of the annual assessment established by the Board until such Lot has been improved with a dwelling unit and such dwelling unit is first occupied by an Owner other than Declarant or by a tenant; thereafter, the annual assessment for such Lot shall be the full amount established by the Board.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots upon which a single townhouse building is situated on the first day of the month following the conveyance of the first townhome in such single townhome building located on the Lot by Declarant to an Owner other than Declarant. The first assessment year shall be the period commencing on the date annual assessments commence and ending on the December 31 next following. The annual assessment for the first assessment year shall be prorated from the amounts fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot as set forth in Section 4 of this Article V; and in the event the Board elects not to fix such assessment rate as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any change in the assessment rate shall be sent to every Owner. The due dates for the payment of annual and special assessments shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be assessed a late charge in the amount of Fifteen and No/100 Dollars (\$15.00) or in an amount to be determined

from time to time by the Board, and the assessment with late charge shall bear interest from the due date at an annual rate determined from time to time by the Board, not to exceed fifteen percent (15%) per annum. The Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment related; and, in either event interest, costs, and reasonable attorneys' fees of any such action shall be added to the assessment to the extent allowed by law. The Association may also exercise all powers provided for in the Planned Community Act for such non-payment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. 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 first mortgage or deed of trust on a Lot and to any ad valorem taxes for such Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer; provided, however, that the Board of Directors of the Association may in its sole discretion determine such unpaid assessments to be an annual assessment collectible from all Owners including the foreclosure sale purchaser. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All Common Area shall be exempt from assessments. In addition, all Common Area dedicated to, and accepted by, a local public authority and all Common Area owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no Lots shall be exempt from said assessments.

Section 12. Working Capital Fund. At the time of closing of the sale of each Lot, a sum equal to two (2) month's full assessment for each Lot shall be collected from the purchaser of such Lot and transferred to the Association to be held as a Working Capital Fund. The purpose of said fund is to ensure that the Association will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

ARTICLE VI

MAINTENANCE

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Area and all improvements located thereon. This maintenance shall include without limitation maintenance, repair and replacement, subject to any insurance then

in effect, of all landscaping and grass areas, driveways, sidewalks, streets, private walking paths or nature trails, and other improvements situated on the Common Area. The Association shall maintain and keep in good repair all landscaping and grass areas within the boundaries of Lots; provided however, that any plantings or gardens installed or planted by Owners shall be maintained by such Owners. The Association shall maintain and keep in good repair all paved, gravel or concrete walkways, driveways and parking areas; and all water, sewer, gas and electricity lines serving more than one (1) Lot, even though located partially or wholly within the boundaries of a Lot.

The Association shall provide exterior maintenance upon Lot improvements as follows: paint, stain, repair, replace and care for roof surfaces and roof systems, gutters and downspouts and all exterior building surfaces, including the painting and staining of entry doors and garage doors (if any); but excluding repair and replacement of entry doors and garage doors (if any) and their appurtenant hardware; and further excluding all exterior glass including windows and patio doors.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, for which the Association is responsible hereunder.

Section 2. Owner's Responsibility. Except as provided in Section 1 of this Article, above, all maintenance of the improvements on the Lot shall be the responsibility of the Owner thereof. Each Owner shall maintain, repair and replace, at his expense, all exterior portions of the improvements on his Lot not specified as the Association's Responsibilities in Section 1 above, and all interior portions of the improvements on his Lot which shall need repair, including without limitation bathroom and kitchen fixtures, light fixtures or other electrical or plumbing equipment, pipes and fittings serving an Owner's Lot. Further, each Owner shall repair, maintain and replace, at his own expense, when necessary, the heating and air-conditioning systems servicing his dwelling, whether located on his Lot or the Common Area adjacent to his Lot. Each Owner shall be responsible for interior pest control, and each Owner shall maintain any plantings or gardens installed or planted by such Owner upon such Owner's Lot.

In the event that the Board of Directors of the Association determines that (a) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees, and is not covered or paid for by insurance, in whole or in part, then the Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement, at the Owner's sole cost and expense. The notice

shall set forth with reasonable particularity the maintenance, repairs or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair or replacement; or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Management Agreement. The Association shall have the right to hire a management company to undertake any of its responsibilities set forth in the Declaration. However, any such management agreement shall be terminable by the Association, without liability, upon not more than ninety (90) days' notice to the other party.

ARTICLE VII

PARTY WALLS

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

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance for a party wall shall be shared in equal shares by the Owners of the two (2) adjoining Lots utilizing such wall.

Section 3. Maintenance and Use of Party Walls. No party wall shall be altered or modified in any fashion, and the Owners of the two (2) adjoining Lots utilizing such party wall shall maintain such party wall as originally constructed. No Owner shall place a speaker or other sound amplification equipment within a party wall.

Section 4. 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 the Owner of the other Lot adjoining such wall shall contribute one half of the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omission.

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.

Section 6. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

Section 8. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner with whom such Owner shares a party wall to the extent reasonably necessary to perform repair, maintenance, or reconstruction of such party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the repairing Owner shall restore the adjoining Lot or Lots and Common Areas to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 9. Certification by Adjoining Property 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 property owner has a right of contribution as provided in this Article VII, request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of such adjoining Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. If certification is requested in writing and not delivered within seven (7) business days, it shall be conclusively deemed no contribution is owed.

ARTICLE VIII

ARCHITECTURAL CONTROL

No building, fence, signs, wall, statuary or other structure or improvements of any kind shall be commenced, erected, or maintained upon any Lot or upon the Common Areas nor shall any exterior addition to or change or alteration therein (including but not limited to, color or painting of the exterior and type of exterior finish) be made, including the erection of antennae, satellite dishes or disks, aerials, awnings, the placement of reflective or other material in the windows of a dwelling or other exterior attachment (including storm doors, garage doors, patio doors, entrance doors and all other doors), the planting of flowers, bushes, shrubs and other plantings upon an Owner's Lot and the installation of playground equipment, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by an architectural committee composed of three (3) representatives appointed by the Board of Directors of the Association

(said committee being hereinafter referred to as the "Architectural Control Committee"). Absent such approval, the proposed improvement may not be commenced.

Failure of the Architectural Control Committee to respond to proposed plans and specifications submitted by any Owner within thirty (30) days after such submittal shall be deemed approval by the Architectural Control Committee of the plans and specifications.

The vote of majority of the members of the Architectural Control Committee shall be binding.

The Architectural Control Committee shall be subject to appointment by, and removal by, the Board from time to time, and shall report to and be ultimately responsible to the Board for its decisions.

In the event an Owner of any Lot in the Property shall make unauthorized changes to the premises and the improvements situated thereon in a manner unsatisfactory to the Board of Directors of the Association or the Architectural Control Committee, the Board of Directors of the Association or the Architectural Control Committee shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance and any other costs or attorneys' fees incurred in the enforcement of the rights under these provisions shall be added to and become a part of the assessments to which such Lot is subject. Any approval by the Board of Directors of the Association or the Architectural Control Committee shall be in accordance with the requirements set forth hereafter.

The provisions of this Article VIII shall not apply to improvements of any kind constructed upon any Lot or upon the Common Area by Declarant and Declarant is expressly exempt from the provisions of this Article VIII.

ARTICLE IX

INSURANCE

Section 1. By Owners. Each Owner shall procure and maintain fire and extended coverage insurance as follows:

(a) Coverage. Each Lot and improvements upon a Lot shall be insured in an amount equal to one hundred percent (100%) insurable replacement value. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief; and

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing form waiver of subrogation.

(b) Liability. Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand and No/100 (\$300,000.00) Dollars per occurrence.

Copies of said policies and renewals thereof shall be furnished to the Association. Upon failure by any Owner to promptly obtain the required coverage or to pay the premiums due on such policy, the Association may, but is not required to, obtain the required coverage, and add the cost of the premium and all other costs of obtaining such coverage to the annual assessment against the subject Lot. Such cost shall be due and payable on or before the first day of the calendar month following payment of same by the Association. If the insurance company permits the Association to be named as an additional insured, all such policies shall name the Association as an additional insured as its interest appears.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

Section 2. By Association. The Association shall procure and maintain insurance coverage as follows:

(a) Common Areas. All insurance policies upon the Common Area shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of Owners.

(b) Coverage. All buildings and improvements upon the Common Area and all personal property of the Association included in the Common Areas or otherwise owned by the Association shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief:

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

iii) Such policies shall contain clauses providing form waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 (\$1,000,000.00) Dollars per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner, the Association, its directors and officers. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary, including, but not limited to, directors and officers errors and omissions insurance coverage.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the Annual Assessment described in Article V above.

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Areas are to be held for the Association.

(ii) If applicable due to insured casualty occurring on the Common Area, proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

(iii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owners shall be held in trust for the mortgagee and the Owners as their interests may appear.

(f) Subrogation. Each insurer shall waive its right to subrogation under any policy maintained pursuant to this Section 2 of this Article against any Owner or member of Owner's household.

(g) Act or Omission of Owner. No act or omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under any of the policies maintained pursuant to this Section 2 of this Article.

(h) Other Insurance. If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary insurance.

(i) Issuance of Certificates; Cancellation. Any insurer that has issued an insurance policy under this Article shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurer issuing an insurance policy under this Article may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non renewal has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

Section 3. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefore.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Common Area and, if applicable due to insured casualty occurring on the Common Area, proceeds on account of damage to Lots shall be paid to defray the cost of repair to the Lots. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners as provided in Section 2 (e)(ii) of this Article.

Section 4. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount at least equal to six (6) months' assessments of all Lots plus reserves accumulated. Premiums for such insurance shall be included as part of the annual assessment described in Article V herein.

Section 5. Obligation to Rebuild. Any portion of the Property for which insurance is required under Section 1 of this Article shall be promptly and diligently repaired, replaced, and restored by the Owner thereof, unless (i) this Declaration is terminated, or (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance.

Any portion of the Property for which insurance is required under Section 2 of this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) this Declaration is terminated, (ii) repair or replacement would be illegal under any state or local health, environmental or safety statute or ordinance, or (iii) the Owners decides at a duly called meeting not to rebuild by an eighty percent (80%) or more-of-the-votes entitled to be cast in the Association. The cost of repair or replacement of Common Areas in excess of insurance proceeds and reserves is a common expense, and the cost thereof may be recovered by

one or more special assessments levied by the Board equally against all Owners. If any portion of the Common Area is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition compatible with the remainder of the Property and (ii) the remainder of the proceeds shall be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Common Area liabilities of all the Lots.

ARTICLE X

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 Lots and of the portions of the Lots located outside of the dwelling units located thereon and the use and enjoyment of the Common Areas. 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. Antennas/Satellite Dishes. No outside radio or transmission tower or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner without the prior approval of the Architectural Control Committee. Notwithstanding anything to the contrary set forth herein, no restrictions set forth in this Declaration shall be construed to prohibit any antenna or satellite dish that is specifically allowed by applicable governmental regulations; provided however, the applicable Owner shall, to the extent permitted by law, submit plans for such antenna or satellite dish and the screening thereof to the Architectural Control Committee, and shall work with the Architectural Control Committee in good faith to screen such antenna or satellite dish.

Section 3. Restrictions on Use. Absent written approval from the Board of Directors of the Association authorizing the commercial use of a Lot, each Lot shall be occupied and used by Owners for residential purposes only and no trade or business may be conducted in or from any Lot, except for those commercial uses if any that are authorized in writing and determined by the Board of Directors in its sole discretion. If the Board of Directors authorizes the commercial use of any Lot, the Board shall formulate, publish and enforce reasonable rules and regulations concerning the commercial use and enjoyment of such Lot.

This section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Property or its use of any Lots which it owns within the Property.

The foregoing provisions of this Section or any other provision of this Declaration notwithstanding, Declarant shall have an easement to maintain sales offices and models for sales of Lots throughout the Property. Declarant shall have the right to relocate, and to discontinue and reestablish, sales offices and models within the Property from time to time until

all of the Lots have been conveyed to Owners other than Declarant. Declarant also shall have the right to change use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales offices or models.

Declarant shall also have an easement to maintain signs on the Common Area advertising the Property until all of the Lots have been conveyed to Owners other than Declarant.

Section 4. Nuisances. No activity deemed noxious or offensive by the Architectural Control Committee shall be carried on upon any Lot or within the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Architectural Control Committee. Examples of such offensive activities shall include, but not be limited to, the origination or emission of any loud or disturbing noise or vibrations, the maintenance of an auto repair site, the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces or yards, or similar unsightly activity not in keeping with the aesthetic character and high level of appearance of the community. The Architectural Control Committee, with the approval of the Board of Directors of the Association, may establish reasonable rules and regulations for enforcing the provision of this Section 4.

No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed two (2) in number, except for newborn offspring of such household pets which are under nine (9) months in age. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal of, any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products and those allowed by law which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent lots or property, wetlands area, ponds or buffers. No activity shall be allowed which violates local, state or federal laws or regulations; provided however, the Board shall have no obligation to take enforcement action in the event of a violation.

Section 5. Temporary Structures and Parking of Vehicles Onstreet and Offstreet. No structure of a temporary nature shall be erected or allowed to remain on the Property, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used on the Property, either temporarily or permanently.

The provisions of this Section 5 shall not preclude temporary buildings and other structures used during the construction period by Declarant for sale of Lots, such as a temporary sales office or construction trailer.

The Declarant shall provide and the Association shall maintain at least the minimum number of parking spaces required by the City of Durham for the Property. At the Closing of each Lot, Declarant shall assign one parking space on the Property to such Lot and shall include a reference to such assigned parking space in the conveyance deed. An exhibit of the exclusive assigned parking spaces is shown on Exhibit B attached hereto. Such assignment shall constitute the creation of a perpetual, appurtenant, exclusive easement for parking purposes running to the benefit of the Lot. The Board of Directors of the Association shall maintain a list of the assigned parking spaces, and the Owner of each Lot shall provide the Association with the make, model, color and license plate number of each vehicle owned or normally driven by the Owner and his family, any person regularly residing with the Owner, and/or any lessee or sublessee of such Owner. An Owner shall always have the right to park in its assigned parking space. Until such time (if any) that additional parking is made available on the Common Area of the Property, each Owner shall park in its assigned space and in no other location on the Property. If additional parking is made available on the Property, the Board of Directors shall adopt, implement and enforce parking rules and regulations to govern such additional parking within such Common Area, and the Board of Directors shall have the right and authority to enforce same, including, but not limited to, the right to levy fines for violations thereof.

No Owner or a member of his family, lessee or sublessee of an Owner shall: (i) park any vehicle on the public streets adjoining the Property except in a designated paved parking space; (ii) park or keep on any Lot or public or private street within or adjoining the Property any abandoned, partly dismantled or inoperative vehicle or vehicle not having current registration and inspection stickers displayed; or (iii) park or keep on any Lot or any public or private street within or adjoining the Property any boat or boat trailer, utility or other trailer, recreational vehicle, motor home, camper, bus, truck in excess of one ton weight, commercial vehicle, truck or van, or anything else other than a vehicle normally intended for use as a private passenger vehicle. For the purpose of the preceding sentence, the term "keep" shall mean present for either a period of more than ten (10) consecutive hours or overnight, whichever is less. This paragraph shall also not preclude trucks and other construction vehicles used during construction of dwellings and Lot development by Declarant or its contractors, agents and employees.

The Association shall have the right and authority to have impose fines or to have towed any vehicle parked or maintained in violation of this Declaration or subsequently-adopted parking rules and regulations, and the cost of such fines or the cost of towing and storage shall be the responsibility of the Owner of the Lot to which such vehicle is registered or the Owner of the vehicle, as appropriate.

Notwithstanding the foregoing, no vehicle of any type or size which transports inflammatory or explosive cargo or which stores or transports materials or substances defined as hazardous or toxic by any applicable law, code, ordinance or regulation shall be kept or stored or allowed to remain in or on the Property at any time, except as may be required to effectuate transportation or removal of such prohibited materials and substances through or from the Property, or, with respect to explosive materials, as may be reasonably required in connection with the construction or installation of streets and utilities in the Property, or as may be allowed by Declarant, during the Declarant Control Period, and thereafter, the Board, when reasonably required for the construction of other improvements within the Property.

Notwithstanding the above, any restriction on the right to park vehicles on public streets contained in this Declaration shall only be applicable to the Owners and their family members and tenants.

Section 6. Signs and Flags. No signs, including, without limitation, political signs, and no other advertising devices shall be erected upon or displayed or otherwise exposed to view on any Lot or any improvement thereon, except that Declarant may post temporary "For Sale" and other advertising signs on the Property until such time as all Lots owned by Declarant have been sold and conveyed. Except for such signs which may be posted by Declarant, no "For Sale" or "For Rent" signs may be placed on the exterior of any Lot or on the interior of any Lot if such sign is visible from the exterior, including without limitation in any windows of a dwelling unit. However, a "For Sale" or "For Rent" sign may be displayed in windows of a dwelling unit subject to such rules and regulations as may be implemented by the Board. Furthermore, no ornamental flags or banners of any kind, (excluding the flags of the United States or of the State of North Carolina), and no political signs of any kind shall be erected upon or displayed or otherwise exposed to view on any Lot or any improvements thereon.

Section 7. Control of Dogs. Every person owning or having possession, charge, care, custody or control of any dog shall keep such dog exclusively upon his own Lot; provided, however, that such dog may be off the Lot if it is under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

Section 8. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, and all trash, garbage or other waste shall be stored in sanitary containers in accordance with the rules and regulations of the Association and of any health or public safety authority having jurisdiction over the property. No trash, garbage or other waste may be placed within the Common Area, except in containers approved by the Association.

Section 9. Prohibition of Renting for Transient or Hotel Purposes. No Owner shall rent his Lot or the dwelling unit thereon for transient or hotel purposes, which, for the purposes of this Declaration shall be defined as either a rental for any period less than thirty (30) days or any rental if the lessee of the Lot or the dwelling unit thereon is provided customary hotel services. Each permitted lease shall lease an entire Lot and dwelling unit thereon, shall be in writing, and shall be subject to this Declaration and the Bylaws of the Association, and any failure of the lessee to comply with the terms of such documents shall be a default under the

lease. Any Owner who enters into a lease of his Lot or the dwelling unit thereon shall promptly notify the Association of the name and address of each lessee, the Lot or the dwelling unit thereon rented, and the term of the lease. Other than the foregoing restrictions, each unit Owner shall have the full right to lease his Lot or the dwelling unit thereon.

Section 10. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Property shall be installed, constructed, or operated within the Property. All sprinkler and irrigation systems serving the Property shall draw upon public water supplies only and shall be subject to approval in accordance with Article VIII of this Declaration. Private irrigation wells are prohibited on the Property.

Section 11. Water and Mineral Operations. No oil or water drilling, oil or water development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on the Property. No derrick or other structure designed for use in boring for water, oil, natural gas, or other minerals shall be erected and maintained or permitted on the Property.

Section 12. Prohibited Uses. Notwithstanding anything contained herein to the contrary, the following uses shall be prohibited on the Property:

- (a) Warehousing, industrial and manufacturing uses;
- (b) Any use which involves the breeding of any animals, livestock or poultry;
- (c) Dangerous or unsafe uses such as the sale or storage of explosives;
- (d) Junk or salvage yards, mobile home park, trailer court, labor camp or stock yard;
- (e) Laundromat or washateria except for laundry facilities ancillary to and located within a building on a Lot and intended only for use by Owners, occupants or tenants of such Lot;
- (f) Above-ground swimming pools (which is not intended to prohibit a swimming pool incorporated into the roof or into an above-ground floor in the interior of a structure);
- (g) Bingo hall;
- (h) Pool hall;
- (i) Adult book store or adult video store where obscene, pornographic or "adult" materials or paraphernalia, including, but not limited to, movies, videotapes, devices, books, magazines, or other related items are sold or displayed;
- (j) Massage parlor (excepting licensed, therapeutic massage facilities, which are not prohibited) or facility which hosts obscene, nude or semi-nude live performances;
- (k) The sale or exhibition of pornographic materials or sexual paraphernalia;
- (l) Facilities used for the sale, display or advertisement of any paraphernalia used in the preparation or consumption of controlled substances;
- (m) An abortion clinic;
- (n) Dry cleaning plant;
- (o) Funeral home or store selling caskets; and

- (p) Uses which are predominantly outdoor uses, including, without limitation, flea markets.

ARTICLE XI

EASEMENTS

Section 1. General. All of the Property, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewer facilities, storm drainage facilities, gas lines, telephone lines, electric power lines; and other public utility facilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Property to this Declaration or by recording of the map; and the Declarant, prior to conveying the Common Area to the Association, and the Association, after conveyance of the Common Area to the Association, shall have the power and authority to grant and establish upon, over, under, and across the Common Area such further easements as are requisite for the convenient use, development and enjoyment of the Property and adjoining properties. All new utilities shall be installed underground. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress, and regress across all Common Area, now or hereafter owned by the Association, for the purpose of development of the Property and construction of improvements within the Property.

All Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves and walls.

Each Lot upon which shall be located any electrical overcurrent device or meter or water, natural gas, or other utility meter (or similar component necessary to the proper operation and monitoring of the utility) that pertains to any other Lot shall be subject to an easement appurtenant to and for the benefit of said other Lot. This easement shall be for the limited purpose of permitting access to the burdened Lot for necessary maintenance, repair, and monitoring of the component by the owner of the benefited Lot and appropriate governmental officials and utility service providers. This easement is a covenant that runs with the land and shall survive the termination of the Association.

Section 2. Construction. Declarant hereby reserves a construction easement over the Property for the purposes reasonably related to the installation of streets and utilities and construction of dwellings and improvements on the Lots and Common Area.

Section 3. Emergency. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, policemen and all similar persons to enter upon the Property or any portion thereof which is now or hereafter made subject to this Declaration in the performance of their respective duties but only in the case of an emergency. The Association and its agents shall also have the right to

enter the Lots and any improvements located thereon for the purpose of making any emergency repairs or replacements.

Section 4. Joint Driveways. All Owners sharing joint driveways shall have non-exclusive easements for the use of such driveways located upon such Owners' Lots and/or upon the Common Areas.

ARTICLE XII

GENERAL PROVISIONS

Section 1. Enforcement; Litigation. The Association, Declarant or any Owner shall have the right, but not the obligation, on its own behalf or on behalf of others, to enforce the provisions of this Declaration or any Supplemental Declaration. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by a proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien, either to restrain such violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charge or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof. Except as otherwise expressly provided in this Declaration, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of no less than sixty-seven percent (67%) of all votes entitled to be cast by the Class A Lot Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with the Bylaws. The immediately preceding sentence shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration, (b) the imposition and collection of assessments, charges or other fees hereunder, (c) proceedings involving challenges to ad valorem taxation, (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services to the Project.

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. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land. Subject to the limitations hereinafter contained, this Declaration or any Supplemental Declaration hereto may be amended or modified at any time by an instrument signed by the Owners entitled to exercise not less than seventy five (75%) of the total votes in the Association as set forth in this Declaration, provided, however, that no such amendment shall be effective without the written consent of Declarant so long as Declarant owns any portion of the Property or the Additional Property, and in no event shall any amendment limit

the rights of Declarant under this Declaration so long as Declarant owns any portion of the Property or the Additional Property.

In addition to the foregoing rights, and notwithstanding anything to the contrary that may appear herein, Declarant may (at Declarant's option) at any time and from time to time during the Period of Declarant Control amend or modify this Declaration (or any Supplemental Declaration) without obtaining the consent or approval of the Members or any other person or entity if such amendment or modification is necessary for any one or more of the following purposes: to correct a typographical error or to clarify any inconsistencies; to cause this Declaration or any such Supplemental Declaration to comply with the requirements of FHA (Federal Housing Administration), VA (Veterans Administration), Fannie-Mae (Federal National Mortgage Administration) or other similar agency; or as may be necessary to establish or maintain the tax exempt status of the Association under the laws of the United States or the State of North Carolina.

Notwithstanding the terms of the immediately preceding paragraphs of this Article XII, Section 3, during the Period of Declarant Control, Declarant, without obtaining the approval of any Member or any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provision of this Declaration; provided that the amendment has no material adverse effect upon any right of any Owner and does not materially increase the financial burden imposed by this Declaration on the Lot owned by such Owner and does not adversely affect the title to the Lot owned by such Owner unless the affected Owner shall consent in writing.

Any such amendment shall not be effective until such amendment has been filed for record in the Durham County Public Registry. Such amendment shall be prepared, executed, certified and recorded by the President, Vice-President or Secretary of the Association with the exception of any amendment which Declarant may make as set forth above, which need only be executed by Declarant.

Section 4. Management and Contract Rights of Association. Declarant shall enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the Property. However, no such contract shall be binding upon the Association except through express adoption or ratification of the terms and conditions of such contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer of management by Declarant to the Association.

Section 5. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association with

ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnations or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage, (e) receive written notice of any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any Lot on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of any insurance policy maintained by the Association.

ARTICLE XIII

CONSENT OF TRUSTEE AND BENEFICIARY

Trustee and Beneficiary do hereby consent to the imposition of this Declaration, and all the terms and provisions hereof, upon the Property, and do hereby agree that no foreclosure of the Deed of Trust shall extinguish this Declaration, and that the purchaser at any foreclosure sale held pursuant to the Deed of Trust or grantee of any deed in lieu of foreclosure shall take subject to the terms of this Declaration.

ARTICLE XIV

DISCLOSURES

ALL OWNERS ARE HEREBY PLACED ON NOTICE THAT PETROLEUM AND HEAVY METAL IMPACTED SOIL HAS BEEN DISCOVERED ON A PORTION OF THE COMMON AREA OF THE PROPERTY, AS NOTED IN THE ASSESSMENT OF IMPACTED SOILS REPORT, DATED OCTOBER 10, 2007, PREPARED BY ECS CAROLINAS, LLP, ECS PROJECT NO. 06.15329-A (THE "SOILS REPORT"), WHICH REPORT HAS BEEN MADE AVAILABLE FOR REVIEW BY OWNERS. THE AFFECTED PROPERTY MAY BE ACQUIRED BY THE ASSOCIATION. IT IS THE PRESENT INTENTION OF THE DECLARANT AND THE ASSOCIATION TO CONVEY THE AFFECTED PROPERTY TO A THIRD PARTY PURSUANT TO THE RIGHTS GRANTED TO THE DECLARANT AND THE ASSOCIATION UNDER SECTION 4.1. EACH OWNER ACKNOWLEDGES THAT SUCH OWNER HAS REVIEWED THE SOILS REPORT AND AGREES THAT IT IS TO THE BENEFIT OF EACH OF THE OWNERS AND THE ASSOCIATION TO CONVEY ALL OR A PORTION OF THE AFFECTED PROPERTY TO A THIRD PARTY.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration, the day and year first above written.

TRINITY TRUST PARTNERS, LLC, a North Carolina limited liability company

By:



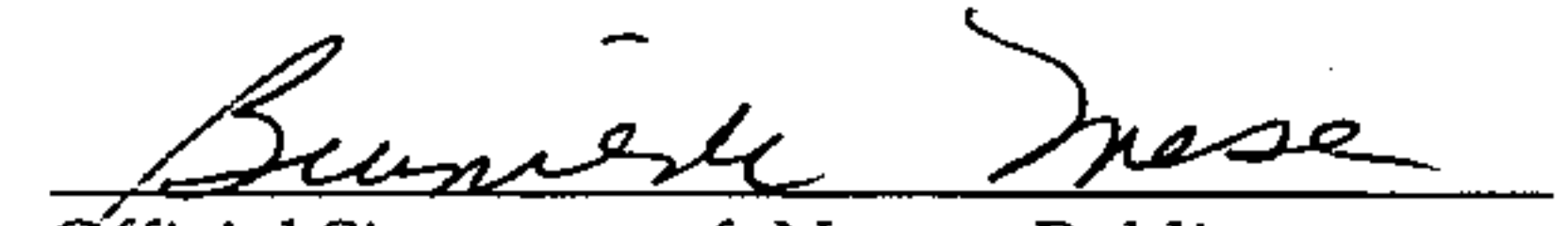
Name: Alexandross Washburn

Title: Manager

STATE OF New York
~~NORTH CAROLINA~~
CITY
~~COUNTY~~ OF New York

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Alexandross Washburn.

Date: Oct 25, 2007


Official Signature of Notary Public

BRUNILDA MESA
Notary printed or typed name

[OFFICIAL SEAL]

My commission expires: Oct. 2, 2010

BRUNILDA MESA
Notary Public, State of New York
No. 01ME4873044
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires Oct. 6, ~~2008~~ 2010

BENEFICIARY:

HARRINGTON-BANK, ESB

By: 

Name: Chris Lawrence

Title: SVP

STATE OF NORTH CAROLINA

COUNTY OF Durham

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: SVP Chris Lawrence.

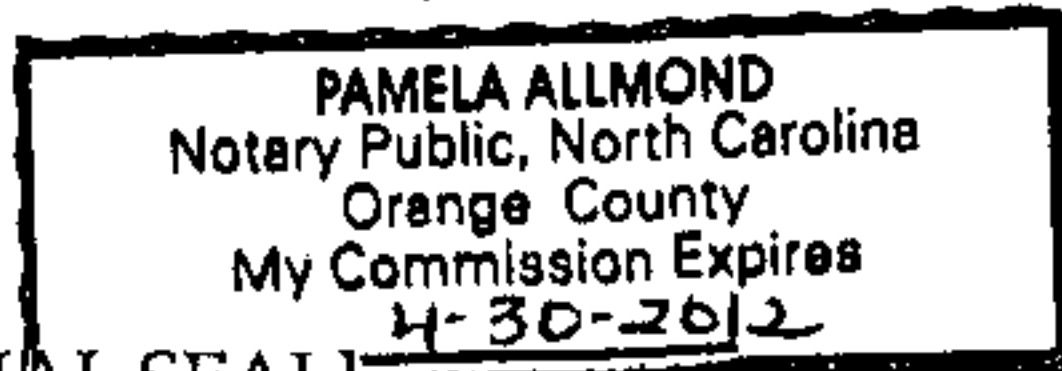
Date: 11-2-2007



Official Signature of Notary Public

Pamela Allmond

Notary printed or typed name



[OFFICIAL SEAL]

My commission expires: 4-30-2012

TRUSTEE:

Lawrence T. Loeser

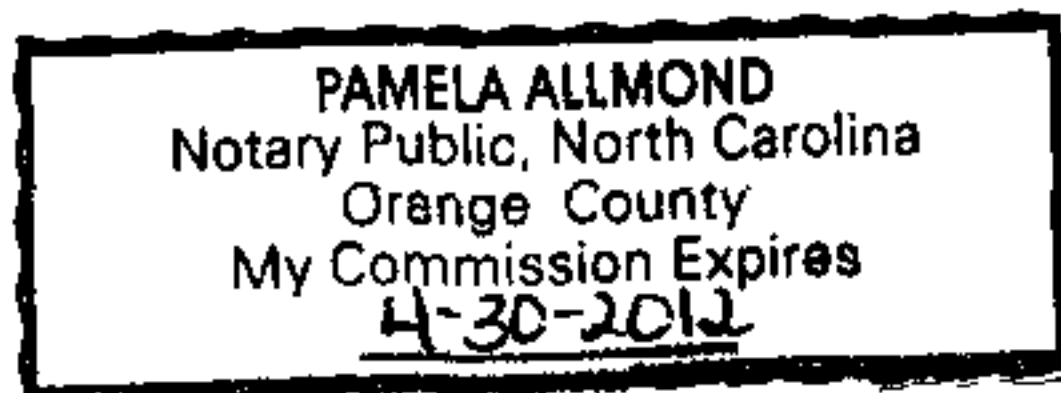
Larry T. Loeser
Lawrence

STATE OF NORTH CAROLINA

COUNTY OF Durham

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated; Larry T. Loeser
Lawrence

Date: 11-2-07



[OFFICIAL SEAL]

Pamela Allmond

Official Signature of Notary Public

Pamela Allmond

Notary printed or typed name

My commission expires: 4-30-2012

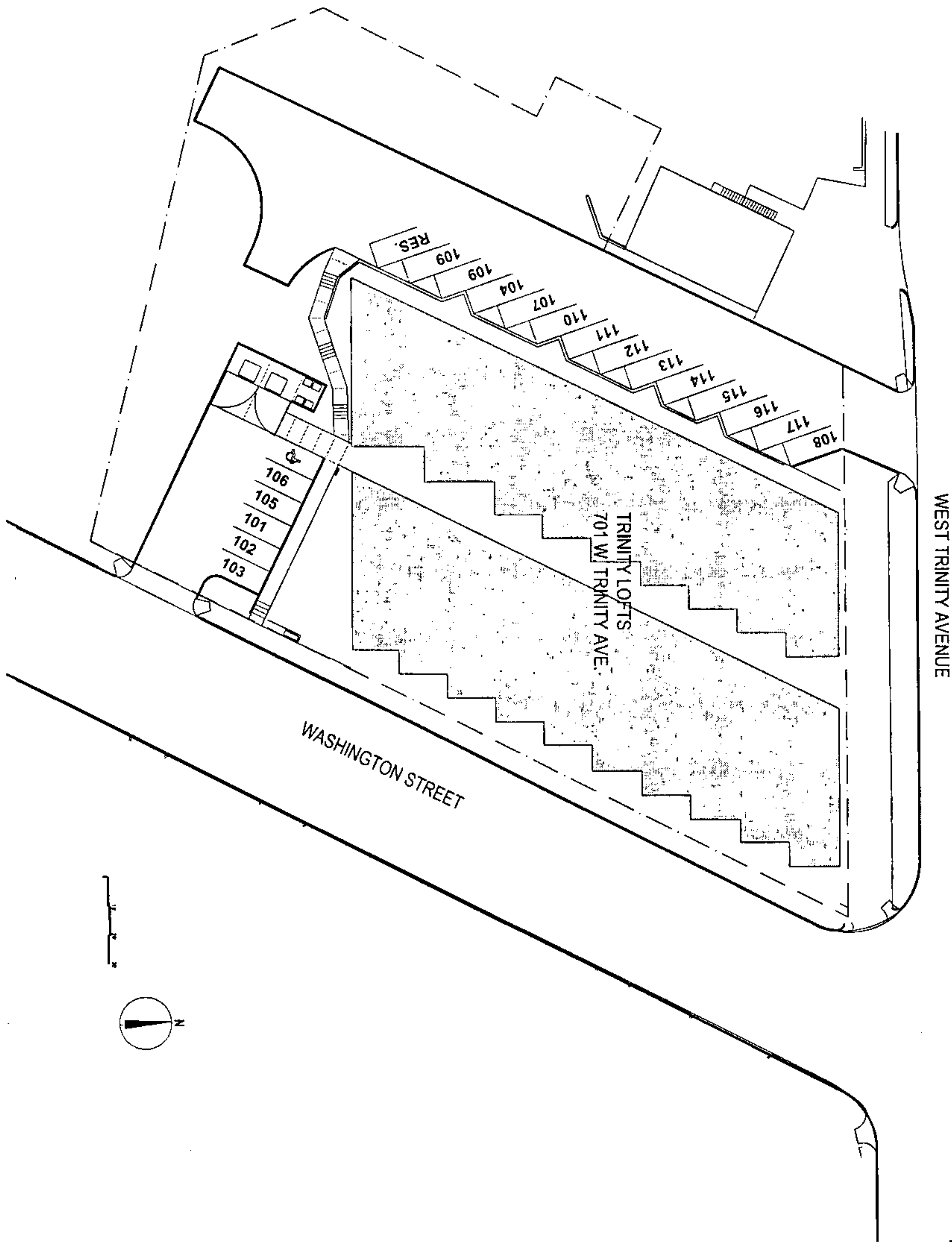
EXHIBIT A

The Property

Being all of that property shown on plat recorded in Book 179, Page 234 of the Durham County Public Registry.

EXHIBIT B

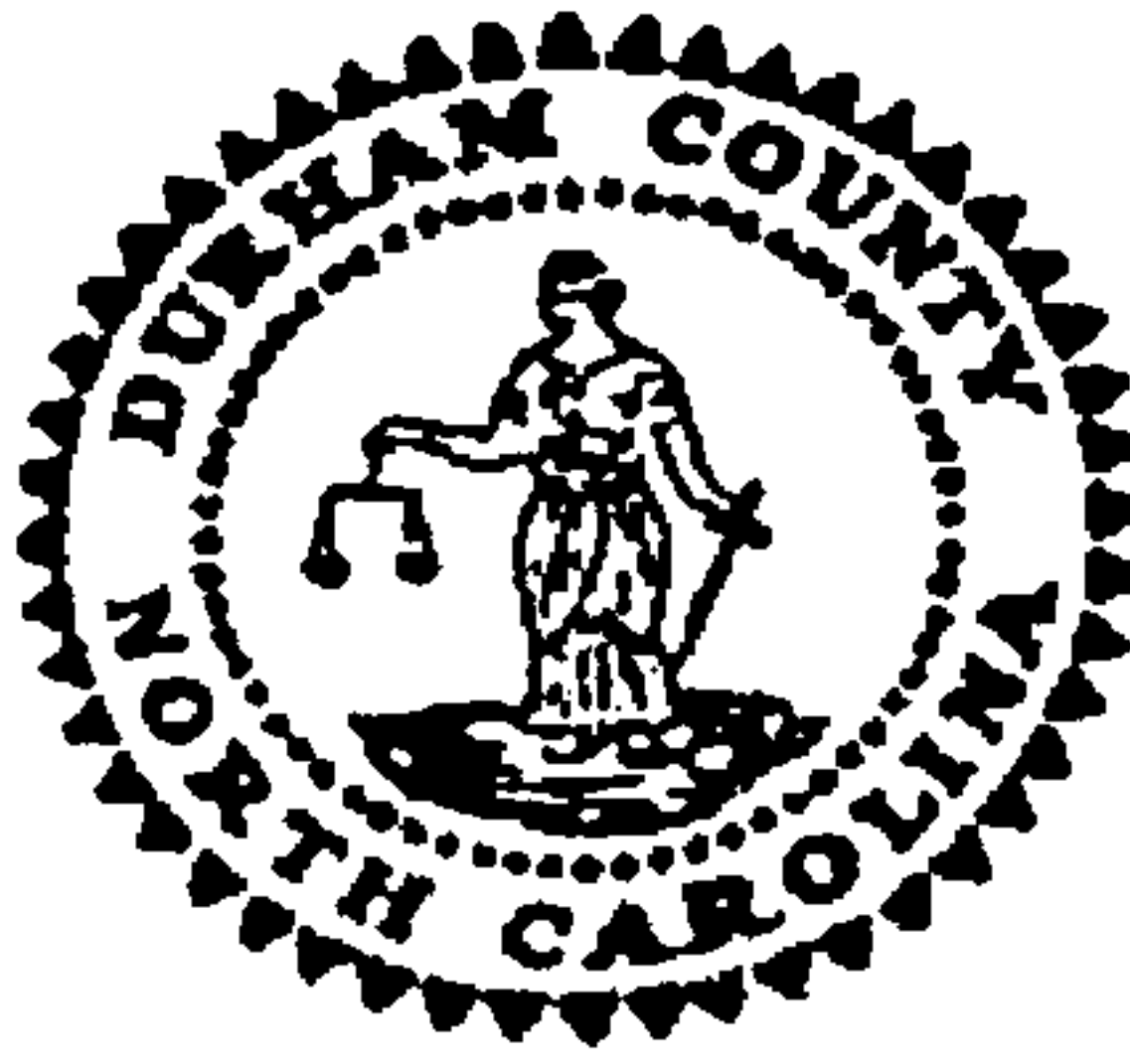
Parking Space Assignment Diagram



PARKING ASSIGNMENTS

701 W. TRINITY AVE.
CHICAGO, IL 60611
project ref. 6-10010

TRINITY LOFTS



WILLIE L. COVINGTON
REGISTER OF DEEDS, DURHAM COUNTY
DURHAM COUNTY COURTHOUSE
200 E. MAIN STREET
DURHAM, NC 27701

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 11/02/2007 03:10:03 PM
Book: RE 5787 Page: 886-921
Document No.: 2007049791
DECL 36 PGS \$116.00
Recorder: SHARON M CEARNEL



2007049791