

Prepared by: Ms. Jean Bartholomew, #4 Vauxhall, Chapel Hill, NC 27514
Return document to: falconbridge Homeowners Association, Inc.
Drawer 69, Chapel Hill, NC 27515

FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

BOOK 1835 PAGE 784

**AMENDED AND RESTATED
DECLARATIONS OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

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FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

**AMENDED AND RESTATED
DECLARATIONS OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

This amended and restated Declaration of Covenants, Conditions and Restrictions is made and entered into this the 4th day of April, 1993, by the Falconbridge Homeowners' Association, Inc. (hereafter "Association") whose address is P.O. Drawer 69, Chapel Hill, NC 27514

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Falconbridge Townhouses have heretofore been recorded in Book 1030, Page 395 and amended at Book 1056, Page 223, Book 1414, Page 338 and Book 1534, Page 551; Durham County Registry; and,

WHEREAS, Article XII, Section 3 of the Declaration provides that the Declaration may be further amended upon instrument signed by the Association, certifying that such amendment has been approved by the "owners of at least 60% of the lots subject to this declaration, evidenced by written instrument signed by such lot owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declaration and Bylaws;" and as of this date there are 173 owners of lots in Falconbridge Townhouses, that 60% of such number is 104 owners and that the necessary votes of at least 103 owners of such lots have been received and recorded at a duly convened meeting of the Association held for the purpose of considering this amended and restated Declaration of Covenants, Conditions and Restrictions.

NOW THEREFORE the Association does hereby amend and restate the Declaration of Covenants, Conditions and Restrictions as follows:

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to Falconbridge Homeowners Association, its successors and assigns.

Section 2. "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 part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property described on Exhibit A which is attached hereto and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property to be deeded to and owned by the Association for the common use and enjoyment of the owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map, or any recorded revised subdivision map(s) of the Properties, with the exception of the Common Area to be deeded to and owned by the Association.

Section 6. "Declarant" shall mean and refer to Goforth Properties, Inc., and its Successors and assigns.

ARTICLE II - 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 pass with the title to every Lot, subject to the following restrictions:

(a) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility 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 an instrument agreeing to such dedication or transfer has been agreed to by two-thirds (2/3) of all of the voting members in the Association.

(b) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property, and the rights of such mortgages in said properties shall be subordinate to the rights of the homeowners hereunder;

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except easements necessary for the utilities, drainage, and other common benefits, including any type of communication cable or wiring, on the date of completion of construction of all townhouse buildings on all Lots. The Declarant expressly reserves the right to alter and restructure existing Lot lines and the open space designated on the plats and surveys prepared by the John R. McAdams Company, Inc., as recorded in Condominium Drawer II, at Pages 57 and 58, Durham County Registry, provided that Declarant shall not increase or decrease the number of existing lots as shown on the aforesaid recorded plats, and provided that Declarant shall record a revised subdivision map or maps depicting said alterations.

Section 4. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in

and upon said parking areas. The parking of boats, trailers, motor homes, commercial vehicles of any type except delivery vehicles while making a delivery and other such items in the common areas or streets within the properties is prohibited. Only cars, vans and light trucks (1/2 to 3/4 ton rating), with current license plates and inspection stickers may be parked overnight within the properties.

Section 5. TV Antennas. The Association may provide one or more central television antennas for the convenience of the members and the cost of these may be included in annual or special assessments. The erection of exterior television and audio antennas on individual lots is prohibited.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Owners of Lots upon which improvements have been constructed and for which certificates of occupancy have been issued by the proper governmental authority shall be entitled to one vote upon all matters brought before the Association or the members, for each such Lot. Owners of Lots for which no certificates of occupancy have been issued, whether improved or not, shall not be entitled to any votes upon general matters brought before the Association or the members, for each such Lot; provided however, that owners of such Lots shall be entitled to one vote for each such Lot for which no certificate of occupancy has been issued, upon any further proposed amendments to the Declaration or Bylaws brought before the Association or the members. Upon issuance of a certificate of occupancy for any Lot, the Owner thereof shall thereafter be entitled to one vote therefore effective the 1st day of the next following calendar month.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause, pursuant to its rules and regulations.

Section 3. Whenever a printed ballot is required for revisions or amendments to the Declarations, changes in assessments, or any other matter for which printed ballots may be deemed necessary by the Board of Directors, failure to return a signed ballot within the time stipulated in the notice of a meeting mailed to the members, shall be taken as a vote in the affirmative when a "yes" or "no" vote is called for. In the case of elections of Directors, failure to return the signed ballot within the time stipulated in the notice shall be taken as a vote in favor of the Nominating Committee's nominations as listed on the ballot.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Obligation of Assessments. 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 agrees to pay to the Association: (1) annual assessments or charges, and (2) 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 attorney's fees, shall be a charge on the land, and shall be a continuing

lien upon the property with interest, costs, and reasonable attorney's fees, and shall be the obligation of the person who is the Owner of such property. This obligation for delinquent assessments shall pass to the successor in title to any lot. Annual and special assessments shall be levied on each Lot in direct proportion to the number of votes allowed to the Owner thereof upon general matters brought before the Association or the members. Owners of Lots for which a certificate of occupancy has been issued shall be subject to a uniform assessment per Lot. Owners of Lots for which no certificate of occupancy has been issued shall not be subject to any assessment per Lot for such Lots. Upon issuance of a certificate of occupancy for any Lot, the assessment therefore shall be adjusted in accordance with this section effective the first day of the next following calendar month.

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 in the Properties, and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be THREE HUNDRED AND NO/100 DOLLARS (\$300.00) per Lot.

(a) The maximum annual assessment may be increased effective January 1 of each year, without a vote of the membership, an amount equal to the rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding 12 month period October through September.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above or decreased below that established by the Consumer Price Index (or such Index as may succeed the Consumer Price Index) formula by a vote of the members, provided that any such change shall have received the consent of 60% of all of the members in the Association. Consent to any such action may be evidenced by written ballots signed by the members; by the record of the members voting in favor thereof at any meeting of members duly called and held in accordance with the provisions in this section 3(b); or by a combination of written ballot and such record of a meeting of members. Written notice of any meeting of members at which an increase in assessment under either Sections 3(b) or 4 is to be proposed shall be sent to all members not less than 21 days nor more than 60 days in advance of the meeting, and such notice shall set forth the purpose of the meeting.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount agreed upon by the members under Sections 3(b) or 4.

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

such assessment shall have received the consent of 60% of all of the members in the Association, evidenced in the manner set forth in Section 3(b) hereof.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than 21 days in advance of the meeting. Ten percent (10%) of the homeowners shall constitute a quorum. Approval of an increase in assessment allowed in Article IV shall be evidenced by an affirmative, signed ballot, either at the meeting or by mail proxy of 60% of the homeowners. Failure to return a signed ballot or proxy before the date of the meeting, or at the meeting, shall constitute an affirmative vote and will be counted toward the required percentage.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for each class of Lots, and may be collected on a monthly basis. Lots for which a certificate of occupancy has been issued shall be assessed at a uniform rate. Lots for which no certificate of occupancy has been issued shall not be subject to any assessment.

Section 7. Date of Commencement of Annual Assessment; Due Dates. The annual assessments provided for herein shall commence as to each Townhome on the first day of the month following the issuance of a Certificate of Occupancy by the City of Durham. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Townhome at least thirty (30) days in advance of each annual assessment period. Written notice of any change in the annual assessment shall be sent promptly to every Owner subject thereto. The due date shall be 30 days from date of invoice. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating that the assessment upon any Townhome shall commence upon the issuance of a certificate of occupancy therefore, effective the first day of the next following calendar month.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. For any dues not paid by the end of the quarter billed, a penalty of 5% on the unpaid balance will be assessed at that time. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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/her Townhome.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Townhome shall not affect the assessment lien. However, the sale or transfer of any Townhome pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Townhome from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and adopted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or

nonprofit organization exempt from taxation by the laws of the State of North Carolina. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V - ARCHITECTURAL CONTROL

No building or rebuilding, fence, wall, or other structure shall be commenced, erected, or maintained upon the properties; nor shall any exterior addition to or change or alteration, including repairs and reconstruction due to fire or other casualty, therein be made until detailed scale drawings and full specifications showing the quality, nature, kind, shape, dimensions, materials and location of the same shall have been submitted to and approved in writing by the Board of Directors as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design criteria set out below. The Board may appoint, and seek advice and recommendations from, an Architectural Committee composed of three (3) or more owner representatives. In the event said Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

Specific concerns and requirements for new buildings are noted below:

Section 1. Streets, street access, and parking areas. After consultation with officials of the Department of Engineering, City of Durham, NC, the following specifications and construction requirements for all streets and contiguous parking areas to be installed after April 15, 1993, in the townhome section of Falconbridge are hereby made a part of the Declarations of Covenants, Conditions, and Restrictions of Falconbridge Homeowners Association, Inc.

The concrete used shall be rated at a minimum of 3000 p.s.i., and meet the North Carolina DOT Specifications, Section 924. The paving material shall be six inches thick upon completion and poured upon a prepared sub-grade with a 95% compaction rating. Expansion joints, one-half inch minimum to five-eighths inch maximum, shall be provided every 50 feet and filled with pre-formed, non-extruded, resilient bituminous-type material, conforming to NC DOT Specifications, Section 928.

Forms for the pavement shall be set true to line and grade and held rigidly in position. They shall be of metal or wood, straight and without warp, constructed so as to be free of kinks or irregularities, especially around curves.

The concrete shall be placed in the forms in a manner to prevent segregation, and tamped or vibrated sufficiently to bring the mortar to the surface and prevent honeycombs. The concrete shall be finished smooth and even, by means of rollers and/or floats, or as otherwise approved by the Falconbridge Homeowners Association.

Borings may be taken by the Association if it deems this is necessary, and any cost of reconstruction required to meet specifications will be borne by the developer. The new homes may not be occupied until the work is reinspected and found to be satisfactory by a licensed engineer or inspector, approved by the Association.

Section 2. Buildings. All buildings to be erected on unimproved lots must conform in all primary aspects to the buildings in the townhome area nearest to the new development and must include the following features common to Falconbridge Townhomes, i.e.,

(a) Masonry courtyard walls, at least 66" high measured from baseline of building, and minimum 100 square feet interior size, with wrought iron gate(s) for access; two-coat stucco over concrete block.

(b) Masonry and wood side entrances, forming a covered shelter. Walls and support(s) are to be concrete block with two-coat stucco applied, after construction.

(c) Vertical cedar siding, of same dimensions and surface, two-coat stain to match existing homes, with sufficient time allowed for thorough drying between coats. Stain to be Cabots #547 solid-pigment stain or equivalent as specified by Association. Decks, rails, and stairs (if any) to be of treated lumber (20 year minimum rating, for decay or insects), stained same as siding. Trim is to be covered with two coats of #100 paint by Sherwin-Williams, or as specified by Association. (Note (c) above, regarding time between coats which also applies to stucco applications.)

(d) Windows are to be flush -- no bay windows.

(e) All walkways are to be poured concrete; a 4-inch minimum depth over compacted soil and/or gravel.

(f) Garages, if any, are to be enclosed.

(g) Power meters will be provided for street lights, which are an expense borne by the Association. Developers will install street lights and meters so as to provide the maximum number of lights possible per meter, and minimum number of sensors.

(h) All skylights, if any are provided, will be self-flashing design.

Section 3. Drainage.

(a) Drains from roof gutters are to be extended underground from downspout to nearest woods at lower level, or to storm drains, or to lakefront, as topography may dictate.

(b) Streets must be sloped, or exit drains installed, to prevent water runoff from collecting at sidewalks or in street areas.

Section 4. Trees, Shrubs, etc. All trees outside the footprint of the building(s) must be saved, insofar as possible. Prior discussion with, and approval by, the Association must be undertaken and secured, before removal. Any resulting hardwood tree trunks, or limbs, 4" and up in diameter, must be cut in approximately 20" lengths and stacked nearby. Shrubbery for perimeter of building(s) should be low and slow growing varieties, and none are to be planted closer than 30" from siding or masonry walls, at any point.

ARTICLE VI - EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon such Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, skylights, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, ventilation equipment, heat pumps, chimneys, screenings, or foundations.

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.

Maintenance and repairs under this Article VI rise from normal usage and weathering, and do not include maintenance and repairs made necessary by fire or other casualty damage, which is controlled by Article XI of these Declarations.

ARTICLE VII - EASEMENTS

All of the Properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration. The Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas when conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

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

ARTICLE VIII - PARTY WALLS, ROOFS, FOUNDATIONS, AND FOUNDATION WALLS

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

Section 2. Destruction by Fire or Other Casualty. If a party wall, roof, foundation, or foundation wall is destroyed or damaged by fire or other casualty, any Owner who has used the structure may restore it, and if the other Owners thereafter make use of the structure, 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 or law regarding liability for negligent or willful acts or omissions.

Section 3. The Owner of any Lot may construct, reconstruct, or extend a party wall, roof, foundation, or foundation wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall, roof, foundation, or foundation wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. 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 6. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to insure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VIII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided however that where the adjoining property owner claims a right of contribution, the certification shall contain a recital for the amount claimed.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE IX - INSURANCE

Section 1. Insurance coverage on the property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies upon the properties shall be purchased by the Homeowners Association for the benefit of all the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of townhouse owners. Townhouse 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.

(b) **Coverage.** All buildings and improvements upon the land and all personal property included in the common areas and facilities shall be insured in an amount equal to 90% insurable replacement value as determined annually by the Homeowners 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 covered by a standard extended coverage endorsement, and

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

(iii) Such policies shall contain clauses providing for waiver or subrogation. Public liability insurance shall be secured by the Homeowners Association in such amount and with such coverage as shall be deemed necessary by the Homeowners Association, including, but not limited to, an endorsement to cover liability of the townhouse owners as a group to a single townhouse owner. There shall also be obtained such other insurance coverage as the Homeowners Association shall determine from time to time to be desirable and necessary.

(c) **Premiums.** Premiums upon insurance policies purchased by the Homeowners Association shall be paid by the Homeowners Association and charged ratably to the townhouse owners as an assessment according to the provisions of Article IV above.

(d) **Proceeds.** All insurance policies purchased by the Homeowners Association shall be for the benefit of the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Homeowners Association as insurance trustees under this Declaration. The sole duty of the Homeowners Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the by-laws and for the benefit of the townhouse owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to common areas and facilities held for the Homeowners Association.

(ii) Proceeds on account of damage to townhouse shall be held in undivided shares for the owners of damaged townhouses in proportion to the cost of repairing the damage suffered by each townhouse owner, which cost shall be determined by the Homeowners Association.

(iii) In the event a mortgagee endorsement has been issued to a townhouse, the share of the townhouse owner shall be held in trust for the mortgagee and the townhouse owner as their interest may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Homeowners Association as insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

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

(b) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost as provided by Repair or Reconstruction Article hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.

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 front yard space of each Lot and the Common Areas.

Section 2. Use of Properties. No portion of the Properties shall be used except for residential purposes and for purposes incidental or necessary thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. All pets shall be under owner's control at all times and shall not be allowed to roam free on the properties.

ARTICLE XI - DAMAGE AND DESTRUCTION

Damage and Destruction. Except as hereinafter provided, damage to or destruction of a building shall be promptly repaired and restored by the Homeowner Association using the proceeds of insurance on the building for that purpose and owners of damaged townhouses shall be liable for assessment of any deficiency; provided, however, if a building be so damaged or destroyed by fire or other casualty that the same is untenable, the building shall be reconstructed.

Any reconstruction or repair shall be in accordance with the plans and specification of the original building, and subject to the provisions of Article V above.

ARTICLE XII - GENERAL PROVISIONS

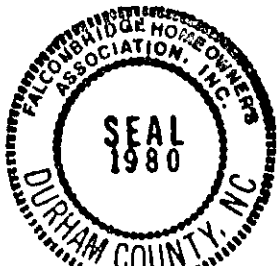
Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declarations and Bylaws may be amended by an instrument signed by the Association, certifying that such amendment has been approved by the Owners of at least 60% of the Lots subject to this Declaration, evidenced by written ballot signed by such Lot Owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declarations and Bylaws; provided however, that no amendment may be made which substantially diminishes or adversely affects the interest of the owner of a townhouse or Lot or, as a member of the Association. Any amendment must be recorded.

In witness whereof, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 3rd day of April, 1980.

Amended: April 4, 1993



By: *Joseph M. Elkins*
President
Attest: *Clark Langworthy*
Secretary

STATE OF North CAROLINA
County of Orange

I, a Notary Public of the County and State aforesaid, certify that Clark Langworthy, personally came before me this day and acknowledged that he is Secretary of FALCONBRIDGE HOMEOWNERS' ASSOCIATION, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary.

Witness my hand and official stamp or seal, this the 3 day of April, 1993.

Barton Belle Meyer
Notary Public

My commission expires:

1-23-95

State of North Carolina-Durham County

The foregoing certificate(s) of

Barton Belle Meyer

A Notary (Notaries) Public for the Designated Governments units is (are) certified to be correct.

This the 13 day of April, A.D. 1993

Ruth C. Garrett
Register of Deeds

By: *Richard W. Thompson*
Assistant, Deputy
Register of Deeds

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RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, N.C.



Prepared by | Joan Bartholomew

mail to James A Wilson

c/o Robert Johnson

5 Waltham Pl. Chapel Hill NC

FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

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BOOK 2467 PAGE 996

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WILLIE L. COVINGTON
REGISTER OF DEEDS
DURHAM COUNTY, N.C.

(i)

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FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

**AMENDED AND RESTATED
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CONDITIONS, AND RESTRICTIONS**

This amended and restated Declaration of Covenants, Conditions and Restrictions is made and entered into this the 26th day of April, 1998, by the Falconbridge Homeowners' Association, Inc. (hereafter "Association") whose address is P.O. Drawer 9105, Chapel Hill, NC 27514

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Falconbridge Townhouses have heretofore been recorded in Book 1030, Page 395 and amended at Book 1056, Page 223, Book 1414, Page 338 and Book 1534, Page 551; Book 1835, Page 796; Book 2068, Page 400; Durham County Registry; and,

WHEREAS, Article XII, Section 3 of the Declaration provides that the Declaration may be further amended upon instrument signed by the Association, certifying that such amendment has been approved by the "owners of at least 60% of the lots subject to this declaration, evidenced by written instrument signed by such lot owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declaration and Bylaws;" and as of this date there are 163 owners of lots in Falconbridge Townhouses, that 60% of such number is 98 owners and that the necessary votes of at least ___ owners of such lots have been received and recorded at a duly convened meeting of the Association held for the purpose of considering this amended and restated Declaration of Covenants, Conditions and Restrictions.

NOW THEREFORE the Association does hereby amend and restate the Declaration of Covenants, Conditions and Restrictions as follows:

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to Falconbridge Homeowners Association, its successors and assigns.

Section 2. "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 part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property described on Exhibit A which is attached hereto and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property to be deeded to and owned by the Association for the common use and enjoyment of the owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map, or any recorded revised subdivision map(s) of the Properties, with the exception of the Common Area to be deeded to and owned by the Association.

Section 6. "Declarant" shall mean and refer to Goforth Properties, Inc., and its Successors and assigns.

ARTICLE II - 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 pass with the title to every Lot, subject to the following restrictions:

(a) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility 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 an instrument agreeing to such dedication or transfer has been agreed to by two-thirds (2/3) of all of the voting members in the Association.

(b) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property, and the rights of such mortgages in said properties shall be subordinate to the rights of the homeowners hereunder;

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except easements necessary for the utilities, drainage, and other common benefits, including any type of communication cable or wiring, on the date of completion of construction of all townhouse buildings on all Lots. The Declarant expressly reserves the right to alter and restructure existing Lot lines and the open space designated on the plats and surveys prepared by the John R. McAdams Company, Inc., as recorded in Condominium Drawer II, at Pages 57 and 58, Durham County Registry, provided that Declarant shall not increase or decrease the number of existing lots as shown on the aforesaid recorded plats, and provided that Declarant shall record a revised subdivision map or maps depicting said alterations.

Section 4. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The parking of boats, trailers, motor homes, commercial vehicles of any type except delivery vehicles while making a delivery and other such items in the common areas or streets within the properties is prohibited. Only cars, vans and light trucks (1/2 to 3/4 ton rating), with current license plates and inspection stickers may be parked overnight within the properties.

Section 5. TV Antennas. A homeowner may install (have installed) a satellite dish antenna up to one (1) meter in diameter on his structure as required to provide satisfactory reception, taking into account *Guidelines* published by the Association for the safety and general welfare of all residents. It is the intention of the Board to comply with subsequent regulations published by the Federal Communications Commission and interpreted by the courts, without further change to these covenants.

The Homeowner (or successor) shall be responsible for any damage or deterioration to the structure during installation, use, maintenance or removal of the antenna. The Association shall be held harmless for any personal injury occurring during installation, use, maintenance or removal of the antenna.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Owners of Lots upon which improvements have been constructed and for which certificates of occupancy have been issued by the proper governmental authority shall be entitled to one vote upon all matters brought before the Association or the members, for each such Lot. Owners of Lots for which no certificates of occupancy have been issued, whether improved or not, shall not be entitled to any votes upon general matters brought before the Association or the members, for each such Lot; provided however, that owners of such Lots shall be entitled to one vote for each such Lot for which no certificate of occupancy has been issued, upon any further proposed amendments to the Declaration or Bylaws brought before the Association or the members. Upon issuance of a certificate of occupancy for any Lot, the Owner thereof shall thereafter be entitled to one vote therefore effective the 1st day of the next following calendar month.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause, pursuant to its rules and regulations.

Section 3. Whenever a printed ballot is required for revisions or amendments to the Declarations, changes in assessments, or any other matter for which printed ballots may be deemed necessary by the Board of Directors, failure to return a signed ballot within the time stipulated in the notice of a meeting mailed to the members, shall be taken as a vote in the affirmative when a "yes" or "no" vote is called for. In the case of elections of Directors, failure to return the signed ballot within the time stipulated in the notice shall be taken as a vote in favor of the Nominating Committee's nominations as listed on the ballot.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Obligation of Assessments. 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 agrees to pay to the Association: (1) annual assessments or charges, and (2) 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 attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property with interest, costs, and reasonable attorney's fees, and shall be the obligation of the person who is the Owner of such property. This obligation for delinquent assessments shall pass to the successor in title to any lot. Annual and special assessments shall be levied on each Lot in direct proportion to the number of votes allowed to the Owner thereof upon general matters brought before the Association or the members. Owners of Lots for which a certificate of occupancy has been issued shall be subject to a uniform assessment per Lot. Owners of Lots for which no certificate of occupancy has been issued shall not be subject to any assessment per Lot for such Lots. Upon issuance of a certificate of occupancy for any Lot, the assessment therefore shall be adjusted in accordance with this section effective the first day of the next following calendar month.

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 in the Properties, and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be THREE HUNDRED AND NO/100 DOLLARS (\$300.00) per Lot.

(a) The maximum annual assessment may be increased effective January 1 of each year, without a vote of the membership, an amount equal to the rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding 12 month period October through September.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above or decreased below that established by the Consumer Price Index (or such Index as may succeed the Consumer Price Index) formula by a vote of the members, provided that any such change shall have received the consent of 60% of all of the members in the Association. Consent to any such action may be evidenced by written ballots signed by the members; by the record of the members voting in favor thereof at any meeting of members duly called and held in accordance with the provisions in this section 3(b); or by a combination of written ballot and such record of a meeting of members. Written notice of any meeting of members at which an increase in assessment under either Sections 3(b) or 4 is to be proposed shall be sent to all members not less than 21 days nor more than 60 days in advance of the meeting, and such notice shall set forth the purpose of the meeting.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount agreed upon by the members under Sections 3(b) or 4.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above; the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have received the consent of 60% of all of the members in the Association, evidenced in the manner set forth in Section 3(b) hereof.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than 21 days in advance of the meeting. Ten percent (10%) of the homeowners shall constitute a quorum. Approval of an increase in assessment allowed in Article IV shall be evidenced by an affirmative, signed ballot, either at the meeting or by mail proxy of 60% of the homeowners. Failure to return a signed ballot or proxy before the date of the meeting, or at the meeting, shall constitute an affirmative vote and will be counted toward the required percentage.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for each class of Lots, and may be collected on a monthly basis. Lots for which a certificate of occupancy has been issued shall be assessed at a uniform rate. Lots for which no certificate of occupancy has been issued shall not be subject to any assessment.

Section 7. Date of Commencement of Annual Assessment; Due Dates. The annual assessments provided for herein shall commence as to each Townhome on the first day of the month following the issuance of a Certificate of Occupancy by the City of Durham. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Townhome at least thirty (30) days in advance of each annual

assessment period. Written notice of any change in the annual assessment shall be sent promptly to every Owner subject thereto. The due date shall be 30 days from date of invoice. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating that the assessment upon any Townhome shall commence upon the issuance of a certificate of occupancy therefore, effective the first day of the next following calendar month.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. For any dues not paid by the end of the quarter billed, a penalty of 5% on the unpaid balance will be assessed at that time. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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/her Townhome.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Townhome shall not affect the assessment lien. However, the sale or transfer of any Townhome pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Townhome from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and adopted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V - ARCHITECTURAL CONTROL

No building or rebuilding, fence, wall, or other structure shall be commenced, erected, or maintained upon the properties; nor shall any exterior addition to or change or alteration, including repairs and reconstruction due to fire or other casualty, therein be made until detailed scale drawings and full specifications showing the quality, nature, kind, shape, dimensions, materials and location of the same shall have been submitted to and approved in writing by the Board of Directors as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design criteria set out below. The Board may appoint, and seek advice and recommendations from, an Architectural Committee composed of three (3) or more owner representatives. In the event said Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

Specific concerns and requirements for new buildings are noted below:

Section 1. Streets, street access, and parking areas. After consultation with officials of the Department of Engineering, City of Durham, NC, the following specifications and construction requirements for all streets and contiguous parking areas to be installed after April 15, 1993, in the townhome section of Falconbridge are hereby made a part of the Declarations of Covenants, Conditions, and Restrictions of Falconbridge Homeowners Association, Inc.

The concrete used shall be rated at a minimum of 3000 p.s.i., and meet the North Carolina DOT Specifications, Section 924. The paving material shall be six inches thick upon completion and poured upon

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a prepared sub-grade with a 95% compaction rating. Expansion joints, one-half inch minimum to five-eighths inch maximum, shall be provided every 50 feet and filled with pre-formed, non-extruded, resilient bituminous-type material, conforming to NC DOT Specifications, Section 928.

Forms for the pavement shall be set true to line and grade and held rigidly in position. They shall be of metal or wood, straight and without warp, constructed so as to be free of kinks or irregularities, especially around curves.

The concrete shall be placed in the forms in a manner to prevent segregation, and tamped or vibrated sufficiently to bring the mortar to the surface and prevent honeycombs. The concrete shall be finished smooth and even, by means of rollers and/or floats, or as otherwise approved by the Falconbridge Homeowners Association.

Borings may be taken by the Association if it deems this is necessary, and any cost of reconstruction required to meet specifications will be borne by the developer. The new homes may not be occupied until the work is reinspected and found to be satisfactory by a licensed engineer or inspector, approved by the Association.

Section 2. Buildings. All buildings to be erected on unimproved lots must conform in all primary aspects to the buildings in the townhome area nearest to the new development and must include the following features common to Falconbridge Townhomes, i.e.,

(a) Masonry courtyard walls, at least 66" high measured from baseline of building, and minimum 100 square feet interior size, with wrought iron gate(s) for access; two-coat stucco over concrete block.

(b) Masonry and wood side entrances, forming a covered shelter. Walls and support(s) are to be concrete block with two-coat stucco applied, after construction.

(c) Vertical cedar siding, of same dimensions and surface, two-coat stain to match existing homes, with sufficient time allowed for thorough drying between coats. Stain to be Cabots #547 solid-pigment stain or equivalent as specified by Association. Decks, rails, and stairs (if any) to be of treated lumber (20 year minimum rating, for decay or insects), stained same as siding. Trim is to be covered with two coats of #100 paint by Sherwin-Williams, or as specified by Association. (Note (c) above, regarding time between coats which also applies to stucco applications.)

(d) Windows are to be flush -- no bay windows.

(e) All walkways are to be poured concrete; a 4-inch minimum depth over compacted soil and/or gravel.

(f) Garages, if any, are to be enclosed.

(g) Power meters will be provided for street lights, which are an expense borne by the Association. Developers will install street lights and meters so as to provide the maximum number of lights possible per meter, and minimum number of sensors.

(h) All skylights, if any are provided, will be self-flashing design.

Section 3. Drainage.

(a) Drains from roof gutters are to be extended underground from downspout to nearest woods at lower level, or to storm drains, or to lakefront, as topography may dictate.

(b) Streets must be sloped, or exit drains installed, to prevent water runoff from collecting at sidewalks or in street areas.

Section 4. Trees, Shrubs, etc. All trees outside the footprint of the building(s) must be saved, insofar as possible. Prior discussion with, and approval by, the Association must be undertaken and secured, before removal. Any resulting hardwood tree trunks, or limbs, 4" and up in diameter, must be cut in approximately 20" lengths and stacked nearby. Shrubbery for perimeter of building(s) should be low and slow growing varieties, and none are to be planted closer than 30" from siding or masonry walls, at any point.

ARTICLE VI - EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon such Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, skylights, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, ventilation equipment, heat pumps, chimneys, screenings, or foundations.

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.

Maintenance and repairs under this Article VI rise from normal usage and weathering, and do not include maintenance and repairs made necessary by fire or other casualty damage, which is controlled by Article XI of these Declarations.

ARTICLE VII - EASEMENTS

All of the Properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration. The Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas when conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

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

ARTICLE VIII - PARTY WALLS, ROOFS, FOUNDATIONS, AND FOUNDATION WALLS

Section 1. General Rules of Law to Apply. Each wall, roof, foundation, and foundation wall which is built as a part of the original construction of the homes upon the Properties, and placed on or traverse to

the dividing line between the Lots and, all reconstruction or extensions of such structures shall constitute party walls, roofs, foundations, and foundation walls, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Destruction by Fire or Other Casualty. If a party wall, roof, foundation, or foundation wall is destroyed or damaged by fire or other casualty, any Owner who has used the structure may restore it, and if the other Owners thereafter make use of the structure, 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 or law regarding liability for negligent or willful acts or omissions.

Section 3. The Owner of any Lot may construct, reconstruct, or extend a party wall, roof, foundation, or foundation wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall, roof, foundation, or foundation wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. 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 6. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to insure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VIII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided however that where the adjoining property owner claims a right of contribution, the certification shall contain a recital for the amount claimed.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE IX - INSURANCE

Section 1. Insurance coverage on the property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies upon the properties shall be purchased by the Homeowners Association for the benefit of all the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of townhouse owners. Townhouse 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.

(b) Coverage. All buildings and improvements upon the land and all personal property included in the common areas and facilities shall be insured in an amount equal to 90% insurable replacement value as determined annually by the Homeowners 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 covered by a standard extended coverage endorsement, and

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

(iii) Such policies shall contain clauses providing for waiver or subrogation. Public liability insurance shall be secured by the Homeowners Association in such amount and with such coverage as shall be deemed necessary by the Homeowners Association, including, but not limited to, an endorsement to cover liability of the townhouse owners as a group to a single townhouse owner. There shall also be obtained such other insurance coverage as the Homeowners Association shall determine from time to time to be desirable and necessary.

(c) Premiums. Premiums upon insurance policies purchased by the Homeowners Association shall be paid by the Homeowners Association and charged ratably to the townhouse owners as an assessment according to the provisions of Article IV above.

(d) Proceeds. All insurance policies purchased by the Homeowners Association shall be for the benefit of the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Homeowners Association as insurance trustees under this Declaration. The sole duty of the Homeowners Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the by-laws and for the benefit of the townhouse owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to common areas and facilities held for the Homeowners Association.

(ii) Proceeds on account of damage to townhouse shall be held in undivided shares for the owners of damaged townhouses in proportion to the cost of repairing the damage suffered by each townhouse owner, which cost shall be determined by the Homeowners Association.

(iii) In the event a mortgagee endorsement has been issued to a townhouse, the share of the townhouse owner shall be held in trust for the mortgagee and the townhouse owner as their interest may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Homeowners Association as insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

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

(b) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost as provided by Repair or Reconstruction Article hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.

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 front yard space of each Lot and the Common Areas.

Section 2. Use of Properties. No portion of the Properties shall be used except for residential purposes and for purposes incidental or necessary thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. All pets shall be under owner's control at all times and shall not be allowed to roam free on the properties.

ARTICLE XI - DAMAGE AND DESTRUCTION

Damage and Destruction. Except as hereinafter provided, damage to or destruction of a building shall be promptly repaired and restored by the Homeowner Association using the proceeds of insurance on the building for that purpose and owners of damaged townhouses shall be liable for assessment of any deficiency; provided, however, if a building be so damaged or destroyed by fire or other casualty that the same is untenantable, the building shall be reconstructed.

Any reconstruction or repair shall be in accordance with the plans and specification of the original building, and subject to the provisions of Article V above.

ARTICLE XII - GENERAL PROVISIONS

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

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

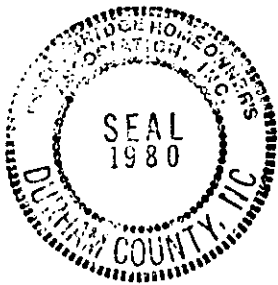
Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declarations and Bylaws may be amended by an instrument signed by the Association, certifying that such amendment has been approved by the Owners of at least 60% of the Lots subject to this Declaration, evidenced by written ballot signed by

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such Lot Owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declarations and Bylaws; provided however, that no amendment may be made which substantially diminishes or adversely affects the interest of the owner of a townhouse or Lot or, as a member of the Association. Any amendment must be recorded.

In witness whereof, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 3rd day of April, 1980.

Amended: April 26, 1998



Jean Bartholomew
Jean Bartholomew, Secretary

James R. Wilson
James R. Wilson, President

STATE OF NORTH CAROLINA
County of Orange

I, a Notary Public of the County and State aforesaid, certify that Jean Bartholomew personally came before me this day and acknowledged that he is Secretary of FALCONBRIDGE HOMEOWNERS' ASSOCIATION, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary.

Witness my hand and official stamp or seal, this the 20 day of May 1998.

Lisa H. Elliott
Notary Public



My commission expires: 4-11-99

State of North Carolina - Durham County
The foregoing or annexed certificate(s) of Lisa H. Elliott
A Notary(Notaries) Public for the Designated Governmental
units is(are) certified to be correct.

This the 22 day of May A.D. 1998
WILLIE L. COVINGTON Monica Miller
Register of Deeds By: Assistant / Deputy
Register of Deeds

Prepared by - Milton Hansman
Milk - Falconbridge Homeowners Assoc.
NORTH CAROLINA Drawer 69

ORANGE COUNTY

Chapel Hill, NC
27514

AMENDMENT OF THE
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
AND THE BY-LAWS OF THE
FALCONBRIDGE HOMEOWNERS
ASSOCIATION, INC., AS RE-
CORDED IN BOOK 1030 PAGE 395
AND AMENDED IN BOOK 1056
PAGE 223, DURHAM COUNTY
REGISTRY.

BOOK ~~1014~~ PAGE 338

THIS AMENDMENT made and entered into this the thirteenth
day of November 1987 by Falconbridge Homeowners Association,
Inc.

Article XII Sec. 3 of the Declaration provides as follows:
"The Declaration may be amended by an instrument signed by not
less than seventy-five percent (75%) of the lot owners." As
there are at this time 130 lots owned by individuals qualified
to vote, 98 votes (75%) are required to approve the proposed
amendments. These votes having been received and recorded, the
Falconbridge Homeowners Association, Inc., does HEREBY amend
the aforementioned declaration and By-Laws as follows:

THE DECLARATION

Article III

Sec. 1, Instead of "Lot owners shall be entitled to
one vote for each lot owned" it shall be amended to
read "Lot owners shall be entitled to one vote for
each unit completely constructed and occupied or
'accepted for occupancy'."

Article IV

Sec. 3a. Delete entire section and insert the following:
"The maximum annual assessment may be increased effective
January 1 of each year without a vote of the membership
an amount equal to the rise in the Consumer Price Index
(published by the Department of Labor, Washington, D.C.)
for the preceding 12 month period October through
September."

Sec. 3b. Instead of "...not less than 10 days nor
more than 60 days," it shall be amended to read: "not
less than 21 days."

Instead of "...consent of 2/3 of all the members..."
It shall be amended to read " ...consent of 60% of all
the members..."

Sec. 5 shall be amended in its entirety and shall read
as follows:

"Notice and Quorum for any Action Authorized Under
Sections 3 and 4.

"Written notice of any meeting called for the purpose
of taking any action authorized under Sections 3 and 4
shall be sent to all members not less than 21 days in
advance of the meeting. 10% of the homeowners shall
constitute a quorum. Approval of an increase in
assessment allowed in Article IV shall be evidenced
by an affirmative, signed ballot either at the
meeting or by mail or proxy of 60% of the homeowners.
Failure to return a signed ballot or proxy before the
date of the meeting or at the meeting shall constitute
an affirmative vote and will be counted toward the
required percentage."

NORTH CAROLINA
ORANGE COUNTY

BOOK 1414 PAGE 339

THE BY-LAWS

Article 1

Delete the entire article and insert the following:

"The name of the corporation is Falconbridge Home-owners Association. The address of the corporation is Drawer 69, Chapel Hill, N.C. 27514. Meetings of members and directors may be held at such places within the State of North Carolina, County of Durham, as may be designated by the Board of Directors."

Article III

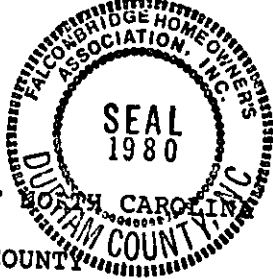
Sec. 2. Delete the words "of the class A membership"

Sec. 4. Instead of "the presence at the meeting of members entitled to cast, or of proxies entitled to cast, the majority of the votes of the membership shall constitute a quorum." it shall be amended to read "The presence at the meeting of members entitled to cast, or of proxies entitled to cast, 10% of the votes of the membership shall constitute a quorum."

To Article III add a Sec. 6 as follows:

"Sec. 6. Whenever a printed ballot is required for revisions or amendments of the by-laws, changes in assessments, or any other matter for which printed ballots may be deemed necessary by the Board of Directors, failure to return a signed ballot within the time stipulated in the notice of a meeting mailed to the members shall be taken as a vote in the affirmative when a 'yes' or 'no' vote is called for. In the case of elections of Directors failure to return the signed ballot within the time stipulated will be taken as approval of the Nominating Committee's nominations as listed on the ballot. They shall be counted as affirmative votes in calculating the percentages required by the by-laws."

IN WITNESS WHEREOF, FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC., has caused this instrument to be signed in its name by its President, attested by its Secretary, and its corporate seal to be attached, all by order of its Board of Directors, on this Eighteenth day of November 1987.



Signed Milton Hausman pres.
Clark Langworthy sec.

STATE OF NORTH CAROLINA
DURHAM COUNTY

I Phil C. Clark (Person) a Notary Public of the foregoing County and State certify that Clark Langworthy personally appeared before me this day and acknowledged that he is Secretary of the FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with the corporate seal, and attached by himself as its secretary.

NORTH CAROLINA
ORANGE COUNTY

BOOK 1414 PAGE 340

Witness my hand and notarial seal, this thirteenth
day of November 1987.



Gail C. Crank
Notary Public

My Commission Expires: 4-19-1992

State of North Carolina - Durham County
The foregoing certificate(s) of

Gail C. Crank
Notary Public for the Designated Governments
is/are true and correct.

This is 13 day of Nov. A.D. 1987
Ruth C. Garrett
Register of Deeds
Gail Crank
Assistant Deputy
Register of Deeds

FILED
BOOK 1414 PAGE 338-340
Nov 13 10 09 AM '87
RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, NC

Prepared By: John A. Northen
Return To: Northen, Blue Law Firm
Post Office Box 2208, Chapel Hill, NC 27515-2208

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND BYLAWS OF THE FALCONBRIDGE HOMEOWNERS' ASSOCIATION, INC.

This Amendment is made and entered into this the 5th day of July, 1989 by the Falconbridge Homeowners' Association, Inc., hereinafter referred to as the "Association", whose address is Post Office Drawer 69, Chapel Hill, North Carolina.

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Falconbridge Townhouses has heretofore been recorded in Book 1030, Page 395, as amended by instruments recorded in Book 1056, Page 223 and Book 1414, Page 338; and

WHEREAS, Article XII, Section 3 of the Declaration provides that the Declaration may be amended "by an instrument signed by not less than 75% of the lot owners", that as of this date (a) there are 122 owners of lots in the Falconbridge Townhouses, that 75% of such number is 91 owners, and that the necessary votes of at least 91 owners of such lots have been received and recorded at a duly convened meeting for such purpose held by the Association;

NOW THEREFORE, the Association does hereby amend on behalf of the lot owners the aforementioned Declaration and Bylaws as follows:

1. Article III, Section 1 of the Declaration is hereby amended to read as follows:

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ORANGE CITY, LA. 10 18 1989

NORTHEN, BLUE, LITTLE,
ROOKS, THIBAUT
& ANDERSON
ATTORNEYS AT LAW
CHAPEL HILL, N. C. 27514

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Every owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Owners of Lots upon which improvements have been constructed and for which certificates of occupancy have been issued by the proper governmental authority shall be entitled to one vote upon all matters brought before the Association or the members, for each such Lot. Owners of Lots for which no certificates of occupancy have been issued, whether improved or not, shall not be entitled to any votes upon general matters brought before the Association or the members, for each such Lot; provided however, that owners of such Lots shall be entitled to one vote for each such Lot for which no certificate of occupancy has been issued, upon any further proposed amendments to the Declaration or Bylaws brought before the Association or the members. Upon issuance of a certificate of occupancy for any Lot, the Owner thereof shall thereafter be entitled to one vote therefore, effective the 1st day of the next following calendar month.

2. Article III of the Declaration is hereby amended to add the following section:

Section 3. Whenever a printed ballot is required for revisions or amendments of the Declaration, changes in assessments, or any other matter for which printed ballots may be deemed necessary by the Board of Directors, failure to return a signed ballot within the time stipulated in the notice of a meeting mailed to the members shall be taken as a vote in the affirmative when a "yes" or "no" vote is called for. In the case of elections of Directors, failure to return the signed ballot within the time stipulated in the notice shall be taken as a vote in favor of the Nominating Committee's nominations as listed on the ballot.

3. Article IV, Section 1 of the Declaration is hereby amended to delete the sentence reading "The Declarant shall pay any assessments only on those units that are completely constructed, ready for occupancy and owned by Declarant", and to insert in lieu thereof the following:

Annual and special assessments shall be levied on each Lot in direct proportion to the number of votes allowed to the Owner thereof upon general matters brought before the Association or the members. Owners

of Lots for which a certificate of occupancy has been issued shall be subject to a uniform assessment per Lot. Owners of Lots for which no certificate of occupancy has been issued shall not be subject to any assessment per Lot for such Lots. Upon issuance of a certificate of occupancy for any Lot, the assessment therefore shall be adjusted in accordance with this section effective the first day of the next following calendar month.

4. Article IV, Section 3(b), Section 4 and Section 5 of the Declaration are hereby amended to provide that any change in assessments as provided in Section 3(b) or any special assessment as provided in Section 4 must be approved by Lot Owners holding at least 60% of the outstanding votes available to be cast upon such general matters, evidenced by written instrument or ballot signed by such Lot Owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declaration and Bylaws.

5. Article IV, Section 6 of the Declaration is hereby amended to read as follows:

Both annual and special assessments must be fixed at a uniform rate for each class of Lots, and may be collected on a monthly basis. Lots for which a certificate of occupancy has been issued shall be assessed at a uniform rate. Lots for which no certificate of occupancy has been issued shall not be subject to any assessment.

6. Article IV, Section 7 of the Declaration shall be amended to provide further that assessments upon any Lot shall commence upon the issuance of a certificate of occupancy therefore, effective the first day of the next following calendar month.

7. Article XII, Section 3 of the Declaration is hereby amended to provide that the Declaration and Bylaws may be further

BOOK 1534 PAGE 554

amended by an instrument signed by the Association, certifying that such amendment has been approved by the Owners of at least 60% of the Lots subject to this Declaration, evidenced by written instrument signed by such Lot Owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declaration and Bylaws; provided however, that no amendment may be made which substantially diminishes or adversely affects the interest of any Owner in any Lot or as a member in the Association.

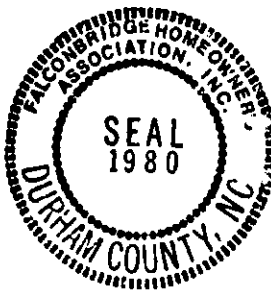
Except as expressly set forth hereinabove, the Declaration (recorded in Book 1030, page 395) and Bylaws of the Association, as previously amended in Book 1056, Page 223 and in Book 1414, Page 338, are hereby ratified and confirmed in all respects.

IN WITNESS WHEREOF, the Falconbridge Homeowners' Association, Inc. has caused this instrument to be signed in its name by its President, attested by its Secretary, and its corporate seal attached, all by order of its Board of Directors on this the 5 day of July, 1989.

FALCONBRIDGE HOMEOWNERS' ASSOCIATION, INC.

By: *Frederick Kilgus*
President

Attest: *Clark Langworthy*
Secretary



NORTHERN, BLUE, LITTLE,
ROOKS, THIBAUT
& ANDERSON
ATTORNEYS AT LAW
CHAPEL HILL, N. C. 27514

STATE OF NORTH CAROLINA
COUNTY OF Orange

I, a Notary Public of the County and State aforesaid, certify that Clark Langworthy, personally came before me this day and acknowledged that he is _____ Secretary of FALCONBRIDGE HOMEOWNERS' ASSOCIATION, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its corporate seal and attested by him as its _____ Secretary.

Witness my hand and official stamp or seal, this the 5 day of July, 1989.

John A. Northern Notary Public

My Commission Expires: 12/22/90



FILED
BOOK 1534 PAGE 551-555

JUL 7 3 15 PM '89

RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, NC

State of North Carolina, Orange County
The foregoing certificate(s) of John A. Northern
A Notary (Notaries) Public for the Designated Governments units is (are) certified to be correct.
This the 7 day of July A.D. 1989
Ruth C. Garrett John A. Northern
Register of Deeds By: Assistant, Deputy Register of Deeds

NORTHERN, BLUE, LITTLE,
ROOKS, THIBAUT
& ANDERSON
ATTORNEYS AT LAW
CHAPEL HILL, N. C. 27514

Prepared by: Ms. Jean Bartholomew, #4 Vauxhall, Chapel Hill, NC 27514
Return document to: falconbridge Homeowners Association, Inc.
Drawer 69, Chapel Hill, NC 27515

FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

BOOK 1835 PAGE 784

**AMENDED AND RESTATED
DECLARATIONS OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

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FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

**AMENDED AND RESTATED
DECLARATIONS OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

This amended and restated Declaration of Covenants, Conditions and Restrictions is made and entered into this the 4th day of April, 1993, by the Falconbridge Homeowners' Association, Inc. (hereafter "Association") whose address is P.O. Drawer 69, Chapel Hill, NC 27514

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Falconbridge Townhouses have heretofore been recorded in Book 1030, Page 395 and amended at Book 1056, Page 223, Book 1414, Page 338 and Book 1534, Page 551; Durham County Registry; and,

WHEREAS, Article XII, Section 3 of the Declaration provides that the Declaration may be further amended upon instrument signed by the Association, certifying that such amendment has been approved by the "owners of at least 60% of the lots subject to this declaration, evidenced by written instrument signed by such lot owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declaration and Bylaws;" and as of this date there are 173 owners of lots in Falconbridge Townhouses, that 60% of such number is 104 owners and that the necessary votes of at least 103 owners of such lots have been received and recorded at a duly convened meeting of the Association held for the purpose of considering this amended and restated Declaration of Covenants, Conditions and Restrictions.

NOW THEREFORE the Association does hereby amend and restate the Declaration of Covenants, Conditions and Restrictions as follows:

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to Falconbridge Homeowners Association, its successors and assigns.

Section 2. "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 part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property described on Exhibit A which is attached hereto and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property to be deeded to and owned by the Association for the common use and enjoyment of the owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map, or any recorded revised subdivision map(s) of the Properties, with the exception of the Common Area to be deeded to and owned by the Association.

Section 6. "Declarant" shall mean and refer to Goforth Properties, Inc., and its Successors and assigns.

ARTICLE II - 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 pass with the title to every Lot, subject to the following restrictions:

(a) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility 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 an instrument agreeing to such dedication or transfer has been agreed to by two-thirds (2/3) of all of the voting members in the Association.

(b) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property, and the rights of such mortgages in said properties shall be subordinate to the rights of the homeowners hereunder;

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except easements necessary for the utilities, drainage, and other common benefits, including any type of communication cable or wiring, on the date of completion of construction of all townhouse buildings on all Lots. The Declarant expressly reserves the right to alter and restructure existing Lot lines and the open space designated on the plats and surveys prepared by the John R. McAdams Company, Inc., as recorded in Condominium Drawer II, at Pages 57 and 58, Durham County Registry, provided that Declarant shall not increase or decrease the number of existing lots as shown on the aforesaid recorded plats, and provided that Declarant shall record a revised subdivision map or maps depicting said alterations.

Section 4. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in

and upon said parking areas. The parking of boats, trailers, motor homes, commercial vehicles of any type except delivery vehicles while making a delivery and other such items in the common areas or streets within the properties is prohibited. Only cars, vans and light trucks (1/2 to 3/4 ton rating), with current license plates and inspection stickers may be parked overnight within the properties.

Section 5. TV Antennas. The Association may provide one or more central television antennas for the convenience of the members and the cost of these may be included in annual or special assessments. The erection of exterior television and audio antennas on individual lots is prohibited.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Owners of Lots upon which improvements have been constructed and for which certificates of occupancy have been issued by the proper governmental authority shall be entitled to one vote upon all matters brought before the Association or the members, for each such Lot. Owners of Lots for which no certificates of occupancy have been issued, whether improved or not, shall not be entitled to any votes upon general matters brought before the Association or the members, for each such Lot; provided however, that owners of such Lots shall be entitled to one vote for each such Lot for which no certificate of occupancy has been issued, upon any further proposed amendments to the Declaration or Bylaws brought before the Association or the members. Upon issuance of a certificate of occupancy for any Lot, the Owner thereof shall thereafter be entitled to one vote therefore effective the 1st day of the next following calendar month.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause, pursuant to its rules and regulations.

Section 3. Whenever a printed ballot is required for revisions or amendments to the Declarations, changes in assessments, or any other matter for which printed ballots may be deemed necessary by the Board of Directors, failure to return a signed ballot within the time stipulated in the notice of a meeting mailed to the members, shall be taken as a vote in the affirmative when a "yes" or "no" vote is called for. In the case of elections of Directors, failure to return the signed ballot within the time stipulated in the notice shall be taken as a vote in favor of the Nominating Committee's nominations as listed on the ballot.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Obligation of Assessments. 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 agrees to pay to the Association: (1) annual assessments or charges, and (2) 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 attorney's fees, shall be a charge on the land, and shall be a continuing

lien upon the property with interest, costs, and reasonable attorney's fees, and shall be the obligation of the person who is the Owner of such property. This obligation for delinquent assessments shall pass to the successor in title to any lot. Annual and special assessments shall be levied on each Lot in direct proportion to the number of votes allowed to the Owner thereof upon general matters brought before the Association or the members. Owners of Lots for which a certificate of occupancy has been issued shall be subject to a uniform assessment per Lot. Owners of Lots for which no certificate of occupancy has been issued shall not be subject to any assessment per Lot for such Lots. Upon issuance of a certificate of occupancy for any Lot, the assessment therefore shall be adjusted in accordance with this section effective the first day of the next following calendar month.

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 in the Properties, and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be THREE HUNDRED AND NO/100 DOLLARS (\$300.00) per Lot.

(a) The maximum annual assessment may be increased effective January 1 of each year, without a vote of the membership, an amount equal to the rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding 12 month period October through September.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above or decreased below that established by the Consumer Price Index (or such Index as may succeed the Consumer Price Index) formula by a vote of the members, provided that any such change shall have received the consent of 60% of all of the members in the Association. Consent to any such action may be evidenced by written ballots signed by the members; by the record of the members voting in favor thereof at any meeting of members duly called and held in accordance with the provisions in this section 3(b); or by a combination of written ballot and such record of a meeting of members. Written notice of any meeting of members at which an increase in assessment under either Sections 3(b) or 4 is to be proposed shall be sent to all members not less than 21 days nor more than 60 days in advance of the meeting, and such notice shall set forth the purpose of the meeting.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount agreed upon by the members under Sections 3(b) or 4.

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

such assessment shall have received the consent of 60% of all of the members in the Association, evidenced in the manner set forth in Section 3(b) hereof.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than 21 days in advance of the meeting. Ten percent (10%) of the homeowners shall constitute a quorum. Approval of an increase in assessment allowed in Article IV shall be evidenced by an affirmative, signed ballot, either at the meeting or by mail proxy of 60% of the homeowners. Failure to return a signed ballot or proxy before the date of the meeting, or at the meeting, shall constitute an affirmative vote and will be counted toward the required percentage.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for each class of Lots, and may be collected on a monthly basis. Lots for which a certificate of occupancy has been issued shall be assessed at a uniform rate. Lots for which no certificate of occupancy has been issued shall not be subject to any assessment.

Section 7. Date of Commencement of Annual Assessment; Due Dates. The annual assessments provided for herein shall commence as to each Townhome on the first day of the month following the issuance of a Certificate of Occupancy by the City of Durham. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Townhome at least thirty (30) days in advance of each annual assessment period. Written notice of any change in the annual assessment shall be sent promptly to every Owner subject thereto. The due date shall be 30 days from date of invoice. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating that the assessment upon any Townhome shall commence upon the issuance of a certificate of occupancy therefore, effective the first day of the next following calendar month.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. For any dues not paid by the end of the quarter billed, a penalty of 5% on the unpaid balance will be assessed at that time. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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/her Townhome.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Townhome shall not affect the assessment lien. However, the sale or transfer of any Townhome pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Townhome from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and adopted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or

nonprofit organization exempt from taxation by the laws of the State of North Carolina. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V - ARCHITECTURAL CONTROL

No building or rebuilding, fence, wall, or other structure shall be commenced, erected, or maintained upon the properties; nor shall any exterior addition to or change or alteration, including repairs and reconstruction due to fire or other casualty, therein be made until detailed scale drawings and full specifications showing the quality, nature, kind, shape, dimensions, materials and location of the same shall have been submitted to and approved in writing by the Board of Directors as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design criteria set out below. The Board may appoint, and seek advice and recommendations from, an Architectural Committee composed of three (3) or more owner representatives. In the event said Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

Specific concerns and requirements for new buildings are noted below:

Section 1. Streets, street access, and parking areas. After consultation with officials of the Department of Engineering, City of Durham, NC, the following specifications and construction requirements for all streets and contiguous parking areas to be installed after April 15, 1993, in the townhome section of Falconbridge are hereby made a part of the Declarations of Covenants, Conditions, and Restrictions of Falconbridge Homeowners Association, Inc.

The concrete used shall be rated at a minimum of 3000 p.s.i., and meet the North Carolina DOT Specifications, Section 924. The paving material shall be six inches thick upon completion and poured upon a prepared sub-grade with a 95% compaction rating. Expansion joints, one-half inch minimum to five-eighths inch maximum, shall be provided every 50 feet and filled with pre-formed, non-extruded, resilient bituminous-type material, conforming to NC DOT Specifications, Section 928.

Forms for the pavement shall be set true to line and grade and held rigidly in position. They shall be of metal or wood, straight and without warp, constructed so as to be free of kinks or irregularities, especially around curves.

The concrete shall be placed in the forms in a manner to prevent segregation, and tamped or vibrated sufficiently to bring the mortar to the surface and prevent honeycombs. The concrete shall be finished smooth and even, by means of rollers and/or floats, or as otherwise approved by the Falconbridge Homeowners Association.

Borings may be taken by the Association if it deems this is necessary, and any cost of reconstruction required to meet specifications will be borne by the developer. The new homes may not be occupied until the work is reinspected and found to be satisfactory by a licensed engineer or inspector, approved by the Association.

Section 2. Buildings. All buildings to be erected on unimproved lots must conform in all primary aspects to the buildings in the townhome area nearest to the new development and must include the following features common to Falconbridge Townhomes, i.e.,

(a) Masonry courtyard walls, at least 66" high measured from baseline of building, and minimum 100 square feet interior size, with wrought iron gate(s) for access; two-coat stucco over concrete block.

(b) Masonry and wood side entrances, forming a covered shelter. Walls and support(s) are to be concrete block with two-coat stucco applied, after construction.

(c) Vertical cedar siding, of same dimensions and surface, two-coat stain to match existing homes, with sufficient time allowed for thorough drying between coats. Stain to be Cabots #547 solid-pigment stain or equivalent as specified by Association. Decks, rails, and stairs (if any) to be of treated lumber (20 year minimum rating, for decay or insects), stained same as siding. Trim is to be covered with two coats of #100 paint by Sherwin-Williams, or as specified by Association. (Note (c) above, regarding time between coats which also applies to stucco applications.)

(d) Windows are to be flush -- no bay windows.

(e) All walkways are to be poured concrete; a 4-inch minimum depth over compacted soil and/or gravel.

(f) Garages, if any, are to be enclosed.

(g) Power meters will be provided for street lights, which are an expense borne by the Association. Developers will install street lights and meters so as to provide the maximum number of lights possible per meter, and minimum number of sensors.

(h) All skylights, if any are provided, will be self-flashing design.

Section 3. Drainage.

(a) Drains from roof gutters are to be extended underground from downspout to nearest woods at lower level, or to storm drains, or to lakefront, as topography may dictate.

(b) Streets must be sloped, or exit drains installed, to prevent water runoff from collecting at sidewalks or in street areas.

Section 4. Trees, Shrubs, etc. All trees outside the footprint of the building(s) must be saved, insofar as possible. Prior discussion with, and approval by, the Association must be undertaken and secured, before removal. Any resulting hardwood tree trunks, or limbs, 4" and up in diameter, must be cut in approximately 20" lengths and stacked nearby. Shrubbery for perimeter of building(s) should be low and slow growing varieties, and none are to be planted closer than 30" from siding or masonry walls, at any point.

ARTICLE VI - EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon such Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, skylights, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, ventilation equipment, heat pumps, chimneys, screenings, or foundations.

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.

Maintenance and repairs under this Article VI rise from normal usage and weathering, and do not include maintenance and repairs made necessary by fire or other casualty damage, which is controlled by Article XI of these Declarations.

ARTICLE VII - EASEMENTS

All of the Properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration. The Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas when conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

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

ARTICLE VIII - PARTY WALLS, ROOFS, FOUNDATIONS, AND FOUNDATION WALLS

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

Section 2. Destruction by Fire or Other Casualty. If a party wall, roof, foundation, or foundation wall is destroyed or damaged by fire or other casualty, any Owner who has used the structure may restore it, and if the other Owners thereafter make use of the structure, 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 or law regarding liability for negligent or willful acts or omissions.

Section 3. The Owner of any Lot may construct, reconstruct, or extend a party wall, roof, foundation, or foundation wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall, roof, foundation, or foundation wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. 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 6. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to insure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VIII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided however that where the adjoining property owner claims a right of contribution, the certification shall contain a recital for the amount claimed.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE IX - INSURANCE

Section 1. Insurance coverage on the property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies upon the properties shall be purchased by the Homeowners Association for the benefit of all the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of townhouse owners. Townhouse 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.

(b) **Coverage.** All buildings and improvements upon the land and all personal property included in the common areas and facilities shall be insured in an amount equal to 90% insurable replacement value as determined annually by the Homeowners 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 covered by a standard extended coverage endorsement, and

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

(iii) Such policies shall contain clauses providing for waiver or subrogation. Public liability insurance shall be secured by the Homeowners Association in such amount and with such coverage as shall be deemed necessary by the Homeowners Association, including, but not limited to, an endorsement to cover liability of the townhouse owners as a group to a single townhouse owner. There shall also be obtained such other insurance coverage as the Homeowners Association shall determine from time to time to be desirable and necessary.

(c) **Premiums.** Premiums upon insurance policies purchased by the Homeowners Association shall be paid by the Homeowners Association and charged ratably to the townhouse owners as an assessment according to the provisions of Article IV above.

(d) **Proceeds.** All insurance policies purchased by the Homeowners Association shall be for the benefit of the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Homeowners Association as insurance trustees under this Declaration. The sole duty of the Homeowners Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the by-laws and for the benefit of the townhouse owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to common areas and facilities held for the Homeowners Association.

(ii) Proceeds on account of damage to townhouse shall be held in undivided shares for the owners of damaged townhouses in proportion to the cost of repairing the damage suffered by each townhouse owner, which cost shall be determined by the Homeowners Association.

(iii) In the event a mortgagee endorsement has been issued to a townhouse, the share of the townhouse owner shall be held in trust for the mortgagee and the townhouse owner as their interest may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Homeowners Association as insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

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

(b) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost as provided by Repair or Reconstruction Article hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.

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 front yard space of each Lot and the Common Areas.

Section 2. Use of Properties. No portion of the Properties shall be used except for residential purposes and for purposes incidental or necessary thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. All pets shall be under owner's control at all times and shall not be allowed to roam free on the properties.

ARTICLE XI - DAMAGE AND DESTRUCTION

Damage and Destruction. Except as hereinafter provided, damage to or destruction of a building shall be promptly repaired and restored by the Homeowner Association using the proceeds of insurance on the building for that purpose and owners of damaged townhouses shall be liable for assessment of any deficiency; provided, however, if a building be so damaged or destroyed by fire or other casualty that the same is untenable, the building shall be reconstructed.

Any reconstruction or repair shall be in accordance with the plans and specification of the original building, and subject to the provisions of Article V above.

ARTICLE XII - GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declarations and Bylaws may be amended by an instrument signed by the Association, certifying that such amendment has been approved by the Owners of at least 60% of the Lots subject to this Declaration, evidenced by written ballot signed by such Lot Owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declarations and Bylaws; provided however, that no amendment may be made which substantially diminishes or adversely affects the interest of the owner of a townhouse or Lot or, as a member of the Association. Any amendment must be recorded.

In witness whereof, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 3rd day of April, 1980.

Amended: April 4, 1993



By: Joseph M. Elkins
President
Attest: Clark Langworthy
Secretary

STATE OF North CAROLINA
County of Orange

I, a Notary Public of the County and State aforesaid, certify that Clark Langworthy, personally came before me this day and acknowledged that he is Secretary of FALCONBRIDGE HOMEOWNERS' ASSOCIATION, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary.

Witness my hand and official stamp or seal, this the 3 day of April, 1993.

Barton Belle Meyer
Notary Public

My commission expires:

1-23-95

State of North Carolina-Durham County

The foregoing certificate(s) of

Barton Belle Meyer

A Notary (Notaries) Public for the Designated Governments units is (are) certified to be correct.

This the 13 day of April, A.D. 1993

Ruth C. Garrett Ruth C. Garrett
Register of Deeds By: Assistant, Deputy
Register of Deeds

FILED

BOOK 1835 PAGE 784-796

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RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, N.C.



Drafted By: Mallory M. Oldham

Return To: Bell, Davis & Pitt, P.A.
635 West Fourth Street
Winston-Salem, North Carolina 27101

FILED

BOOK 2068 PAGE 400-404

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RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, N.C.

STATE OF NORTH CAROLINA)
)
COUNTY OF DURHAM)

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR FALCONBRIDGE TOWNHOUSES**

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FALCONBRIDGE TOWNHOUSES (the "Amendment") is made and entered into this the 20th day of February, 1995, by and between the DOLPHIN ASSOCIATES, a North Carolina general partnership (hereinafter "Dolphin Associates"), and FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC. (hereinafter the "Association").

WITNESSETH:

WHEREAS, the lots and property described as Lots No. 1 through 171, Section 1, FALCONBRIDGE TOWNHOUSES, Lots No. 172 through 234, Section 2, FALCONBRIDGE TOWNHOUSES, and all of the open space, according to the plats and surveys thereof, as recorded in Condominium Drawer II at Page 57, Durham County Registry, and in Condominium Drawer II at Page 58, Durham County Registry, to which plats reference is hereby made for a more particular description (hereinafter referred to as the "Properties") are subject to a Declaration of Covenants, Conditions and Restrictions, as recorded in Book 1030, Page 395, Durham County Registry, and amended in Book 1056, Page 223, Book 1414, page 339, Book 1534, page 551 and Book 1835, page 784, Durham County Registry (hereinafter referred to as the "Declaration"); and

WHEREAS, at least sixty percent (60%) of the Lot Owners (as defined in the Declaration), at a meeting of the members of the Association duly convened and held in accordance with the terms and provisions of the Declaration and the Bylaws governing the Association, as evidenced by a written instrument signed by such Lot Owners, have approved the Amendment to the Declaration as more particularly set forth herein; and

WHEREAS, the Amendment does not substantially diminish or adversely affect the interest of any Lot Owner of any Lot or as a member of the Association.

NOW, THEREFORE, to that end and in accordance with Article 3, Section 3, of the Declaration, Dolphin Associates, the Lot Owners by and through the Association and the Association do hereby declare that the Declaration of Covenants, Conditions and Restrictions for

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BOOK 2068 PAGE 401

Falconbridge Townhouses recorded in Book 1030, Page 395, and amended in Book 1056, Page 223, Book 1414, page 339, Book 1534, page 551 and Book 1835, page 784 Durham County Registry, is hereby amended as follows:

1. Exhibit "A" to the Declaration is hereby amended to read as follows:

"EXHIBIT A"

Tract No. 1:

Lying and being in Triangle Township, Durham County, and being more particularly described as Lots No. 1 through 171, Section 1, FALCONBRIDGE TOWNHOUSES and all the open space, all as shown on the plat and survey thereof, prepared by The John R. McAdams Company, Inc., dated April 10, 1980, revised May 1, 1980, and as recorded in Condominium Drawer II at Page 57, Durham County Registry, as amended from time to time to which plat reference is hereby made for a more particular description of the same.

Tract No. 2:

Lying and being in Triangle Township, Durham County and being more particularly described as Lot Nos. 172 through 234, Section 2, Falconbridge Townhouses, and all of the open space in the common areas, all as shown on the plat and survey thereof prepared by the John R. McAdams Company, Inc. dated April 10, 1980 and revised May 1, 1980 and as recorded in Condominium Drawer II at Page 58, Durham County Registry, as amended from time to time, to which plat reference is made for a more particular description. SAVE AND EXCEPT that certain tract described as follows:

BEGINNING at an iron pipe located in the western right of way line of Farrington Road and in the northern right of way line of Farmington Drive; running thence from said beginning point along the northern right of way line of Farmington Drive the following five (5) courses and distances: (i) along a curve to the right South $47^{\circ} 01' 38''$ West a chord distance of 27.75 feet ($D=87^{\circ} 51' 45''$, $R=20.00'$, $L=30.67'$, $T=19.27'$) to an iron; (ii) North $89^{\circ} 02' 30''$ West 71.80 feet to an iron; (iii) thence along a curve to the left South $70^{\circ} 57' 30''$ West a chord distance of 553.45 feet ($D=40^{\circ} 00' 00''$, $R=809.09'$, $L=564.85'$, and $T=294.48'$) to an iron; (iv) South $50^{\circ} 57' 30''$ West 4.64 feet to an iron pipe; and (v) along a curve to the right North $81^{\circ} 58' 58''$ West a chord distance of 29.28 feet ($D=94^{\circ} 07' 04''$, $R=20.00'$, $L=32.85'$, $T=21.49'$) to an iron in the eastern right of way line of Falconbridge Road; thence along the eastern right of way line of Falconbridge Road along a curve to the right North $23^{\circ} 44' 12''$ West a chord distance of 277.96 feet ($D=22^{\circ} 22' 27''$,

R=716.34', L=279.73', T=141.67') to an iron; thence leaving the eastern right of way line of Falconbridge Road North 64° 30' 00" East 867.56 feet to an iron in the western right of way line of Farrington Road; thence along the western right of way line of Farrington Road South 03° 05' 45" West 431.45 feet to an iron pipe, the point and place of beginning, containing 5.58 acres, more or less and being shown as Tract 1, on survey by The John R. McAdams Company, Inc. dated January 30, 1995 and last revised January 31, 1995 entitled "Revised Section II Falconbridge Townhouses".

2. The terms and provisions of the Declaration shall have no further force or effect with respect to that certain tract or parcel of land now or formerly owned by Dolphin Associates, said tract or parcel of land being more particularly described in Exhibit A-1 attached to this Amendment and incorporated herein by reference (the "Dolphin Associates Tract"), it being the intention of the undersigned to exclude the Dolphin Associates Tract from the Falconbridge Townhouses subdivision and the undersigned do hereby further give, grant, bargain, sell, and convey unto Dolphin Associates, its successors and/or assigns, any and all rights, title and interests the undersigned may have in and to the Dolphin Associates Tract.

3. Dolphin Associates, by its execution hereof, hereby acknowledges that it has no further rights, title and interest in and to the Falconbridge Townhouses subdivision and Dolphin Associates does hereby release and convey to the Association any and all rights it has in and to any membership in the Association.

4. Except as is herein expressly amended, the remaining terms and provisions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this document, adopted the word "Seal" or "Corporate Seal" as their respective seals and intending to make this a sealed document as of the date set forth above.

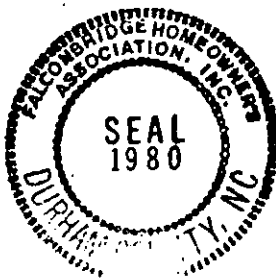
FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

ATTEST: *Clark Langworthy*
Secretary
[CORPORATE SEAL]

By: *Dolly W. Hayes*
2-20-95 President

DOLPHIN ASSOCIATES, a North Carolina
general partnership (SEAL)

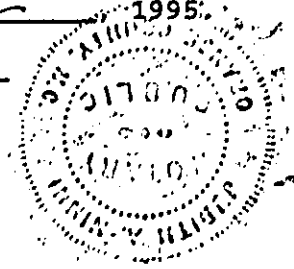
By: *Kerrel Henon* (SEAL)
General Partner



STATE OF North Carolina
COUNTY OF Orange, ss:

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Clark Langworthy personally came before me this day and acknowledged that he is Secretary of Falconbridge Homeowners Association, Inc. and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary. Witness my hand and official seal, this the 21 day of February, 1995.

Judith A. Niemi
Notary Public



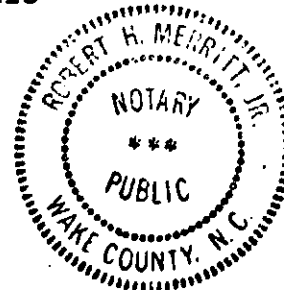
My commission expires: May 23, 1996

STATE OF North Carolina
COUNTY OF Wake, ss:

I, Robert H. Merritt, Jr., a Notary Public of the County and State aforesaid, certify that Kennedy C. O'Hara, General Partner of DOLPHIN ASSOCIATES, a North Carolina general partnership, personally came before me this day and acknowledged the due execution of the foregoing instrument, for and on behalf of said partnership. Witness my hand and official seal, this the 20th day of March, 1995.

Robert H. Merritt, Jr.
Notary Public

My commission expires: 1-16-97



State of North Carolina-Durham County
The foregoing certificate(s) of Judith A. Niemi
Nikki & Robert H. Merritt, Jr.
A Notary Public, duly qualified for the State of North Carolina
and duly sworn to before me
This the 23 day of Mar, 1995
Ruth C. Gerritt Franziska O'Brien
Register of Deeds By: Assessor, Deputy
Register of Deeds

EXHIBIT "A-1"

BEGINNING at an iron pipe located in the western right of way line of Farrington Road and in the northern right of way line of Farmington Drive; running thence from said beginning point along the northern right of way line of Farmington Drive the following five (5) courses and distances: (i) along a curve to the right South $47^{\circ} 01' 38''$ West a chord distance of 27.75 feet ($D=87^{\circ} 51' 45''$, $R=20.00'$, $L=30.67'$, $T=19.27'$) to an iron; (ii) North $89^{\circ} 02' 30''$ West 71.80 feet to an iron; (iii) thence along a curve to the left South $70^{\circ} 57' 30''$ West a chord distance of 553.45 feet ($D=40^{\circ} 00' 00''$, $R=809.09'$, $L=564.85'$, and $T=294.48'$) to an iron; (iv) South $50^{\circ} 57' 30''$ West 4.64 feet to an iron pipe; and (v) along a curve to the right North $81^{\circ} 58' 58''$ West a chord distance of 29.28 feet ($D=94^{\circ} 07' 04''$, $R=20.00'$, $L=32.85'$, $T=21.49'$) to an iron in the eastern right of way line of Falconbridge Road; thence along the eastern right of way line of Falconbridge Road along a curve to the right North $23^{\circ} 44' 12''$ West a chord distance of 277.96 feet ($D=22^{\circ} 22' 27''$, $R=716.34'$, $L=279.73'$, $T=141.67'$) to an iron; thence leaving the eastern right of way line of Falconbridge Road North $64^{\circ} 30' 00''$ East 867.56 feet to an iron in the western right of way line of Farrington Road; thence along the western right of way line of Farrington Road South $03^{\circ} 05' 45''$ West 431.45 feet to an iron pipe, the point and place of beginning, containing 5.58 acres, more or less and being shown as Tract 1, on survey by The John R. McAdams Company, Inc. dated January 30, 1995 and last revised January 31, 1995 entitled "Revised Section II Falconbridge Townhouses".

Prepared by | Joan Bartholomew

mail to James A Wilson

c/o Robert Johnson

5 Waltham Pl. Chapel Hill NC

FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

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BOOK 2467 PAGE 996

**AMENDED AND RESTATED
DECLARATIONS OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

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BOOK 2467 PAGE 996-1007

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WILLIE L. COVINGTON
REGISTER OF DEEDS
DURHAM COUNTY, N.C.

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FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

**AMENDED AND RESTATED
DECLARATIONS OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

This amended and restated Declaration of Covenants, Conditions and Restrictions is made and entered into this the 26th day of April, 1998, by the Falconbridge Homeowners' Association, Inc. (hereafter "Association") whose address is P.O. Drawer 9105, Chapel Hill, NC 27514

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Falconbridge Townhouses have heretofore been recorded in Book 1030, Page 395 and amended at Book 1056, Page 223, Book 1414, Page 338 and Book 1534, Page 551; Book 1835, Page 796; Book 2068, Page 400; Durham County Registry; and,

WHEREAS, Article XII, Section 3 of the Declaration provides that the Declaration may be further amended upon instrument signed by the Association, certifying that such amendment has been approved by the "owners of at least 60% of the lots subject to this declaration, evidenced by written instrument signed by such lot owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declaration and Bylaws;" and as of this date there are 163 owners of lots in Falconbridge Townhouses, that 60% of such number is 98 owners and that the necessary votes of at least ___ owners of such lots have been received and recorded at a duly convened meeting of the Association held for the purpose of considering this amended and restated Declaration of Covenants, Conditions and Restrictions.

NOW THEREFORE the Association does hereby amend and restate the Declaration of Covenants, Conditions and Restrictions as follows:

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to Falconbridge Homeowners Association, its successors and assigns.

Section 2. "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 part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property described on Exhibit A which is attached hereto and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property to be deeded to and owned by the Association for the common use and enjoyment of the owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map, or any recorded revised subdivision map(s) of the Properties, with the exception of the Common Area to be deeded to and owned by the Association.

Section 6. "Declarant" shall mean and refer to Goforth Properties, Inc., and its Successors and assigns.

ARTICLE II - 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 pass with the title to every Lot, subject to the following restrictions:

(a) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility 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 an instrument agreeing to such dedication or transfer has been agreed to by two-thirds (2/3) of all of the voting members in the Association.

(b) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property, and the rights of such mortgages in said properties shall be subordinate to the rights of the homeowners hereunder;

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except easements necessary for the utilities, drainage, and other common benefits, including any type of communication cable or wiring, on the date of completion of construction of all townhouse buildings on all Lots. The Declarant expressly reserves the right to alter and restructure existing Lot lines and the open space designated on the plats and surveys prepared by the John R. McAdams Company, Inc., as recorded in Condominium Drawer II, at Pages 57 and 58, Durham County Registry, provided that Declarant shall not increase or decrease the number of existing lots as shown on the aforesaid recorded plats, and provided that Declarant shall record a revised subdivision map or maps depicting said alterations.

Section 4. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The parking of boats, trailers, motor homes, commercial vehicles of any type except delivery vehicles while making a delivery and other such items in the common areas or streets within the properties is prohibited. Only cars, vans and light trucks (1/2 to 3/4 ton rating), with current license plates and inspection stickers may be parked overnight within the properties.

Section 5. TV Antennas. A homeowner may install (have installed) a satellite dish antenna up to one (1) meter in diameter on his structure as required to provide satisfactory reception, taking into account *Guidelines* published by the Association for the safety and general welfare of all residents. It is the intention of the Board to comply with subsequent regulations published by the Federal Communications Commission and interpreted by the courts, without further change to these covenants.

The Homeowner (or successor) shall be responsible for any damage or deterioration to the structure during installation, use, maintenance or removal of the antenna. The Association shall be held harmless for any personal injury occurring during installation, use, maintenance or removal of the antenna.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Owners of Lots upon which improvements have been constructed and for which certificates of occupancy have been issued by the proper governmental authority shall be entitled to one vote upon all matters brought before the Association or the members, for each such Lot. Owners of Lots for which no certificates of occupancy have been issued, whether improved or not, shall not be entitled to any votes upon general matters brought before the Association or the members, for each such Lot; provided however, that owners of such Lots shall be entitled to one vote for each such Lot for which no certificate of occupancy has been issued, upon any further proposed amendments to the Declaration or Bylaws brought before the Association or the members. Upon issuance of a certificate of occupancy for any Lot, the Owner thereof shall thereafter be entitled to one vote therefore effective the 1st day of the next following calendar month.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause, pursuant to its rules and regulations.

Section 3. Whenever a printed ballot is required for revisions or amendments to the Declarations, changes in assessments, or any other matter for which printed ballots may be deemed necessary by the Board of Directors, failure to return a signed ballot within the time stipulated in the notice of a meeting mailed to the members, shall be taken as a vote in the affirmative when a "yes" or "no" vote is called for. In the case of elections of Directors, failure to return the signed ballot within the time stipulated in the notice shall be taken as a vote in favor of the Nominating Committee's nominations as listed on the ballot.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Obligation of Assessments. 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 agrees to pay to the Association: (1) annual assessments or charges, and (2) 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 attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property with interest, costs, and reasonable attorney's fees, and shall be the obligation of the person who is the Owner of such property. This obligation for delinquent assessments shall pass to the successor in title to any lot. Annual and special assessments shall be levied on each Lot in direct proportion to the number of votes allowed to the Owner thereof upon general matters brought before the Association or the members. Owners of Lots for which a certificate of occupancy has been issued shall be subject to a uniform assessment per Lot. Owners of Lots for which no certificate of occupancy has been issued shall not be subject to any assessment per Lot for such Lots. Upon issuance of a certificate of occupancy for any Lot, the assessment therefore shall be adjusted in accordance with this section effective the first day of the next following calendar month.

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 in the Properties, and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be THREE HUNDRED AND NO/100 DOLLARS (\$300.00) per Lot.

(a) The maximum annual assessment may be increased effective January 1 of each year, without a vote of the membership, an amount equal to the rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding 12 month period October through September.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above or decreased below that established by the Consumer Price Index (or such Index as may succeed the Consumer Price Index) formula by a vote of the members, provided that any such change shall have received the consent of 60% of all of the members in the Association. Consent to any such action may be evidenced by written ballots signed by the members; by the record of the members voting in favor thereof at any meeting of members duly called and held in accordance with the provisions in this section 3(b); or by a combination of written ballot and such record of a meeting of members. Written notice of any meeting of members at which an increase in assessment under either Sections 3(b) or 4 is to be proposed shall be sent to all members not less than 21 days nor more than 60 days in advance of the meeting, and such notice shall set forth the purpose of the meeting.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount agreed upon by the members under Sections 3(b) or 4.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above; the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have received the consent of 60% of all of the members in the Association, evidenced in the manner set forth in Section 3(b) hereof.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than 21 days in advance of the meeting. Ten percent (10%) of the homeowners shall constitute a quorum. Approval of an increase in assessment allowed in Article IV shall be evidenced by an affirmative, signed ballot, either at the meeting or by mail proxy of 60% of the homeowners. Failure to return a signed ballot or proxy before the date of the meeting, or at the meeting, shall constitute an affirmative vote and will be counted toward the required percentage.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for each class of Lots, and may be collected on a monthly basis. Lots for which a certificate of occupancy has been issued shall be assessed at a uniform rate. Lots for which no certificate of occupancy has been issued shall not be subject to any assessment.

Section 7. Date of Commencement of Annual Assessment; Due Dates. The annual assessments provided for herein shall commence as to each Townhome on the first day of the month following the issuance of a Certificate of Occupancy by the City of Durham. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Townhome at least thirty (30) days in advance of each annual

assessment period. Written notice of any change in the annual assessment shall be sent promptly to every Owner subject thereto. The due date shall be 30 days from date of invoice. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating that the assessment upon any Townhome shall commence upon the issuance of a certificate of occupancy therefore, effective the first day of the next following calendar month.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. For any dues not paid by the end of the quarter billed, a penalty of 5% on the unpaid balance will be assessed at that time. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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/her Townhome.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Townhome shall not affect the assessment lien. However, the sale or transfer of any Townhome pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Townhome from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and adopted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V - ARCHITECTURAL CONTROL

No building or rebuilding, fence, wall, or other structure shall be commenced, erected, or maintained upon the properties; nor shall any exterior addition to or change or alteration, including repairs and reconstruction due to fire or other casualty, therein be made until detailed scale drawings and full specifications showing the quality, nature, kind, shape, dimensions, materials and location of the same shall have been submitted to and approved in writing by the Board of Directors as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design criteria set out below. The Board may appoint, and seek advice and recommendations from, an Architectural Committee composed of three (3) or more owner representatives. In the event said Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

Specific concerns and requirements for new buildings are noted below:

Section 1. Streets, street access, and parking areas. After consultation with officials of the Department of Engineering, City of Durham, NC, the following specifications and construction requirements for all streets and contiguous parking areas to be installed after April 15, 1993, in the townhome section of Falconbridge are hereby made a part of the Declarations of Covenants, Conditions, and Restrictions of Falconbridge Homeowners Association, Inc.

The concrete used shall be rated at a minimum of 3000 p.s.i., and meet the North Carolina DOT Specifications, Section 924. The paving material shall be six inches thick upon completion and poured upon

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a prepared sub-grade with a 95% compaction rating. Expansion joints, one-half inch minimum to five-eighths inch maximum, shall be provided every 50 feet and filled with pre-formed, non-extruded, resilient bituminous-type material, conforming to NC DOT Specifications, Section 928.

Forms for the pavement shall be set true to line and grade and held rigidly in position. They shall be of metal or wood, straight and without warp, constructed so as to be free of kinks or irregularities, especially around curves.

The concrete shall be placed in the forms in a manner to prevent segregation, and tamped or vibrated sufficiently to bring the mortar to the surface and prevent honeycombs. The concrete shall be finished smooth and even, by means of rollers and/or floats, or as otherwise approved by the Falconbridge Homeowners Association.

Borings may be taken by the Association if it deems this is necessary, and any cost of reconstruction required to meet specifications will be borne by the developer. The new homes may not be occupied until the work is reinspected and found to be satisfactory by a licensed engineer or inspector, approved by the Association.

Section 2. Buildings. All buildings to be erected on unimproved lots must conform in all primary aspects to the buildings in the townhome area nearest to the new development and must include the following features common to Falconbridge Townhomes, i.e.,

- (a) Masonry courtyard walls, at least 66" high measured from baseline of building, and minimum 100 square feet interior size, with wrought iron gate(s) for access; two-coat stucco over concrete block.
- (b) Masonry and wood side entrances, forming a covered shelter. Walls and support(s) are to be concrete block with two-coat stucco applied, after construction.
- (c) Vertical cedar siding, of same dimensions and surface, two-coat stain to match existing homes, with sufficient time allowed for thorough drying between coats. Stain to be Cabots #547 solid-pigment stain or equivalent as specified by Association. Decks, rails, and stairs (if any) to be of treated lumber (20 year minimum rating, for decay or insects), stained same as siding. Trim is to be covered with two coats of #100 paint by Sherwin-Williams, or as specified by Association. (Note (c) above, regarding time between coats which also applies to stucco applications.)
- (d) Windows are to be flush -- no bay windows.
- (e) All walkways are to be poured concrete; a 4-inch minimum depth over compacted soil and/or gravel.
- (f) Garages, if any, are to be enclosed.
- (g) Power meters will be provided for street lights, which are an expense borne by the Association. Developers will install street lights and meters so as to provide the maximum number of lights possible per meter, and minimum number of sensors.
- (h) All skylights, if any are provided, will be self-flashing design.

Section 3. Drainage.

(a) Drains from roof gutters are to be extended underground from downspout to nearest woods at lower level, or to storm drains, or to lakefront, as topography may dictate.

(b) Streets must be sloped, or exit drains installed, to prevent water runoff from collecting at sidewalks or in street areas.

Section 4. Trees, Shrubs, etc. All trees outside the footprint of the building(s) must be saved, insofar as possible. Prior discussion with, and approval by, the Association must be undertaken and secured, before removal. Any resulting hardwood tree trunks, or limbs, 4" and up in diameter, must be cut in approximately 20" lengths and stacked nearby. Shrubbery for perimeter of building(s) should be low and slow growing varieties, and none are to be planted closer than 30" from siding or masonry walls, at any point.

ARTICLE VI - EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon such Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, skylights, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, ventilation equipment, heat pumps, chimneys, screenings, or foundations.

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.

Maintenance and repairs under this Article VI rise from normal usage and weathering, and do not include maintenance and repairs made necessary by fire or other casualty damage, which is controlled by Article XI of these Declarations.

ARTICLE VII - EASEMENTS

All of the Properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration. The Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas when conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

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

ARTICLE VIII - PARTY WALLS, ROOFS, FOUNDATIONS, AND FOUNDATION WALLS

Section 1. General Rules of Law to Apply. Each wall, roof, foundation, and foundation wall which is built as a part of the original construction of the homes upon the Properties, and placed on or traverse to

the dividing line between the Lots and, all reconstruction or extensions of such structures shall constitute party walls, roofs, foundations, and foundation walls, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Destruction by Fire or Other Casualty. If a party wall, roof, foundation, or foundation wall is destroyed or damaged by fire or other casualty, any Owner who has used the structure may restore it, and if the other Owners thereafter make use of the structure, 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 or law regarding liability for negligent or willful acts or omissions.

Section 3. The Owner of any Lot may construct, reconstruct, or extend a party wall, roof, foundation, or foundation wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall, roof, foundation, or foundation wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. 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 6. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to insure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VIII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided however that where the adjoining property owner claims a right of contribution, the certification shall contain a recital for the amount claimed.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE IX - INSURANCE

Section 1. Insurance coverage on the property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies upon the properties shall be purchased by the Homeowners Association for the benefit of all the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of townhouse owners. Townhouse 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.

(b) Coverage. All buildings and improvements upon the land and all personal property included in the common areas and facilities shall be insured in an amount equal to 90% insurable replacement value as determined annually by the Homeowners 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 covered by a standard extended coverage endorsement, and

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

(iii) Such policies shall contain clauses providing for waiver or subrogation. Public liability insurance shall be secured by the Homeowners Association in such amount and with such coverage as shall be deemed necessary by the Homeowners Association, including, but not limited to, an endorsement to cover liability of the townhouse owners as a group to a single townhouse owner. There shall also be obtained such other insurance coverage as the Homeowners Association shall determine from time to time to be desirable and necessary.

(c) Premiums. Premiums upon insurance policies purchased by the Homeowners Association shall be paid by the Homeowners Association and charged ratably to the townhouse owners as an assessment according to the provisions of Article IV above.

(d) Proceeds. All insurance policies purchased by the Homeowners Association shall be for the benefit of the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Homeowners Association as insurance trustees under this Declaration. The sole duty of the Homeowners Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the by-laws and for the benefit of the townhouse owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to common areas and facilities held for the Homeowners Association.

(ii) Proceeds on account of damage to townhouse shall be held in undivided shares for the owners of damaged townhouses in proportion to the cost of repairing the damage suffered by each townhouse owner, which cost shall be determined by the Homeowners Association.

(iii) In the event a mortgagee endorsement has been issued to a townhouse, the share of the townhouse owner shall be held in trust for the mortgagee and the townhouse owner as their interest may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Homeowners Association as insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

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

(b) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost as provided by Repair or Reconstruction Article hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.

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 front yard space of each Lot and the Common Areas.

Section 2. Use of Properties. No portion of the Properties shall be used except for residential purposes and for purposes incidental or necessary thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. All pets shall be under owner's control at all times and shall not be allowed to roam free on the properties.

ARTICLE XI - DAMAGE AND DESTRUCTION

Damage and Destruction. Except as hereinafter provided, damage to or destruction of a building shall be promptly repaired and restored by the Homeowner Association using the proceeds of insurance on the building for that purpose and owners of damaged townhouses shall be liable for assessment of any deficiency; provided, however, if a building be so damaged or destroyed by fire or other casualty that the same is untenantable, the building shall be reconstructed.

Any reconstruction or repair shall be in accordance with the plans and specification of the original building, and subject to the provisions of Article V above.

ARTICLE XII - GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declarations and Bylaws may be amended by an instrument signed by the Association, certifying that such amendment has been approved by the Owners of at least 60% of the Lots subject to this Declaration, evidenced by written ballot signed by

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such Lot Owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declarations and Bylaws; provided however, that no amendment may be made which substantially diminishes or adversely affects the interest of the owner of a townhouse or Lot or, as a member of the Association. Any amendment must be recorded.

In witness whereof, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 3rd day of April, 1980.

Amended: April 26, 1998



Jean Bartholomew
Jean Bartholomew, Secretary

James R. Wilson
James R. Wilson, President

STATE OF NORTH CAROLINA
County of Orange

I, a Notary Public of the County and State aforesaid, certify that Jean Bartholomew personally came before me this day and acknowledged that he is Secretary of FALCONBRIDGE HOMEOWNERS' ASSOCIATION, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary.

Witness my hand and official stamp or seal, this the 20 day of May 1998.

Lisa H. Elliott
Notary Public



My commission expires: 4-11-99

State of North Carolina - Durham County
The foregoing or annexed certificate(s) of Lisa H. Elliott
A Notary(Notaries) Public for the Designated Governmental
units is(are) certified to be correct.

This the 22 day of May A.D. 1998
WILLIE L. COVINGTON Monica Miller
Register of Deeds By: Assistant / Deputy
Register of Deeds

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FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC. BOOK ~~2099~~ FILED PAGE ~~580~~ -

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AMENDED AND RESTATED
DECLARATIONS OF COVENANTS,
CONDITIONS, AND RESTRICTIONS

WILLIE L. COVINGTON
REGISTER OF DEEDS
DURHAM COUNTY, N.C.

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Prepared by
Jean Bartholomew

mail to
Robert Johnson
5 Waltham Pl
Chapel Hill NC 27514

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FALCONBRIDGE HOMEOWNERS ASSOCIATION, INC.

**AMENDED AND RESTATED
DECLARATIONS OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

This amended and restated Declaration of Covenants, Conditions and Restrictions is made and entered into this the 12th day of December 1998, by the Falconbridge Homeowners' Association, Inc. (hereafter "Association") whose address is P.O. Drawer 9105, Chapel Hill, NC 27514

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Falconbridge Townhouses have heretofore been recorded in Book 1030, Page 395 and amended at Book 1056, Page 223, Book 1414, Page 338 and Book 1534, Page 551; Book 1835, Page 796; Book 2068, Page 400; Durham County Registry; and Book 2467, Page 996, and

WHEREAS, Article XII, Section 3 of the Declaration provides that the Declaration may be further amended upon instrument signed by the Association, certifying that such amendment has been approved by the "owners of at least 60% of the lots subject to this declaration, evidenced by written instrument signed by such lot owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Declaration and Bylaws;" and as of this date there are 163 owners of lots in Falconbridge Townhouses, that 60% of such number is 98 owners and that the necessary votes of at least ___ owners of such lots have been received and recorded at a duly convened meeting of the Association held for the purpose of considering this amended and restated Declaration of Covenants, Conditions and Restrictions.

NOW THEREFORE the Association does hereby amend and restate the Declaration of Covenants, Conditions and Restrictions as follows:

ARTICLE I - DEFINITIONS

Section 1. "Association" shall mean and refer to Falconbridge Homeowners Association, its successors and assigns.

Section 2. "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 part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property described on Exhibit A which is attached hereto and incorporated herein by reference and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property to be deeded to and owned by the Association for the common use and enjoyment of the owners.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map, or any recorded revised subdivision map(s) of the Properties, with the exception of the Common Area to be deeded to and owned by the Association.

Section 6. "Declarant" shall mean and refer to Goforth Properties, Inc., and its Successors and assigns.

ARTICLE II - 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 pass with the title to every Lot, subject to the following restrictions:

(a) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility 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 an instrument agreeing to such dedication or transfer has been agreed to by two-thirds (2/3) of all of the voting members in the Association.

(b) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property, and the rights of such mortgages in said properties shall be subordinate to the rights of the homeowners hereunder;

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except easements necessary for the utilities, drainage, and other common benefits, including any type of communication cable or wiring, on the date of completion of construction of all townhouse buildings on all Lots. The Declarant expressly reserves the right to alter and restructure existing Lot lines and the open space designated on the plats and surveys prepared by the John R. McAdams Company, Inc., as recorded in Condominium Drawer II, at Pages 57 and 58, Durham County Registry, provided that Declarant shall not increase or decrease the number of existing lots as shown on the aforesaid recorded plats, and provided that Declarant shall record a revised subdivision map or maps depicting said alterations.

Section 4. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The parking of boats, trailers, motor homes, commercial vehicles of any type except delivery vehicles while making a delivery and other such items in the common areas or streets within the properties is prohibited. Only cars, vans and light trucks (1/2 to 3/4 ton rating), with current license plates and inspection stickers may be parked overnight within the properties.

Section 5. TV Antennas. A homeowner may install (have installed) a satellite dish antenna up to one (1) meter in diameter on his structure as required to provide satisfactory reception, taking into account *Guidelines* published by the Association for the safety and general welfare of all residents. It is the intention of the Board to comply with subsequent regulations published by the Federal Communications Commission and interpreted by the courts, without further change to these covenants.

The Homeowner (or successor) shall be responsible for any damage or deterioration to the structure during installation, use, maintenance or removal of the antenna. The Association shall be held harmless for any personal injury occurring during installation, use, maintenance or removal of the antenna.

ARTICLE III - MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Owners of Lots upon which improvements have been constructed and for which certificates of occupancy have been issued by the proper governmental authority shall be entitled to one vote upon all matters brought before the Association or the members, for each such Lot. Owners of Lots for which no certificates of occupancy have been issued, whether improved or not, shall not be entitled to any votes upon general matters brought before the Association or the members, for each such Lot; provided however, that owners of such Lots shall be entitled to one vote for each such Lot for which no certificate of occupancy has been issued, upon any further proposed amendments to the Declaration or Bylaws brought before the Association or the members. Upon issuance of a certificate of occupancy for any Lot, the Owner thereof shall thereafter be entitled to one vote therefore effective the 1st day of the next following calendar month.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause, pursuant to its rules and regulations.

Section 3. Whenever a printed ballot is required for revisions or amendments to the Declarations, changes in assessments, or any other matter for which printed ballots may be deemed necessary by the Board of Directors, failure to return a signed ballot within the time stipulated in the notice of a meeting mailed to the members, shall be taken as a vote in the affirmative when a "yes" or "no" vote is called for. In the case of elections of Directors, failure to return the signed ballot within the time stipulated in the notice shall be taken as a vote in favor of the Nominating Committee's nominations as listed on the ballot.

ARTICLE IV - COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Obligation of Assessments. 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 agrees to pay to the Association: (1) annual assessments or charges, and (2) 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 attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the property with interest, costs, and reasonable attorney's fees, and shall be the obligation of the person who is the Owner of such property. This obligation for delinquent assessments shall pass to the successor in title to any lot. Annual and special assessments shall be levied on each Lot in direct proportion to the number of votes allowed to the Owner thereof upon general matters brought before the Association or the members. Owners of Lots for which a certificate of occupancy has been issued shall be subject to a uniform assessment per Lot. Owners of Lots for which no certificate of occupancy has been issued shall not be subject to any assessment per Lot for such Lots. Upon issuance of a certificate of occupancy for any Lot, the assessment therefore shall be adjusted in accordance with this section effective the first day of the next following calendar month.

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 in the Properties, and for the improvement and maintenance of the Common Area, and of the homes situated upon the Properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be THREE HUNDRED AND NO/100 DOLLARS (\$300.00) per Lot.

(a) The maximum annual assessment may be increased effective January 1 of each year, without a vote of the membership, an amount equal to the rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding 12 month period October through September.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above or decreased below that established by the Consumer Price Index (or such Index as may succeed the Consumer Price Index) formula by a vote of the members, provided that any such change shall have received the consent of 60% of all of the members in the Association. Consent to any such action may be evidenced by written ballots signed by the members; by the record of the members voting in favor thereof at any meeting of members duly called and held in accordance with the provisions in this section 3(b); or by a combination of written ballot and such record of a meeting of members. Written notice of any meeting of members at which an increase in assessment under either Sections 3(b) or 4 is to be proposed shall be sent to all members not less than 21 days nor more than 60 days in advance of the meeting, and such notice shall set forth the purpose of the meeting.

(c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount agreed upon by the members under Sections 3(b) or 4.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have received the consent of 60% of all of the members in the Association, evidenced in the manner set forth in Section 3(b) hereof.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than 21 days in advance of the meeting. Ten percent (10%) of the homeowners shall constitute a quorum. Approval of an increase in assessment allowed in Article IV shall be evidenced by an affirmative, signed ballot, either at the meeting or by mail proxy of 60% of the homeowners. Failure to return a signed ballot or proxy before the date of the meeting, or at the meeting, shall constitute an affirmative vote and will be counted toward the required percentage.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for each class of Lots, and may be collected on a monthly basis. Lots for which a certificate of occupancy has been issued shall be assessed at a uniform rate. Lots for which no certificate of occupancy has been issued shall not be subject to any assessment.

Section 7. Date of Commencement of Annual Assessment; Due Dates. The annual assessments provided for herein shall commence as to each Townhome on the first day of the month following the issuance of a Certificate of Occupancy by the City of Durham. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Townhome at least thirty (30) days in advance of each annual

assessment period. Written notice of any change in the annual assessment shall be sent promptly to every Owner subject thereto. The due date shall be 30 days from date of invoice. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating that the assessment upon any Townhome shall commence upon the issuance of a certificate of occupancy therefore, effective the first day of the next following calendar month.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. The due date for monthly dues is the 15th of each month. Payments postmarked after the 15th day will be assessed a delinquent charge of \$15.00. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. 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/her Townhome.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Townhome shall not affect the assessment lien. However, the sale or transfer of any Townhome pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Townhome from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and adopted by a local public authority; (b) the Common Area; and (c) all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V - ARCHITECTURAL CONTROL

No building or rebuilding, fence, wall, or other structure shall be commenced, erected, or maintained upon the properties; nor shall any exterior addition to or change or alteration, including repairs and reconstruction due to fire or other casualty, therein be made until detailed scale drawings and full specifications showing the quality, nature, kind, shape, dimensions, materials and location of the same shall have been submitted to and approved in writing by the Board of Directors as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design criteria set out below. The Board may appoint, and seek advice and recommendations from, an Architectural Committee composed of three (3) or more owner representatives. In the event said Board fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

Specific concerns and requirements for new buildings are noted below:

Section 1. Streets, street access, and parking areas. After consultation with officials of the Department of Engineering, City of Durham, NC, the following specifications and construction requirements for all streets and contiguous parking areas to be installed after April 15, 1993, in the townhome section of Falconbridge are hereby made a part of the Declarations of Covenants, Conditions, and Restrictions of Falconbridge Homeowners Association, Inc.

The concrete used shall be rated at a minimum of 3000 p.s.i., and meet the North Carolina DOT

Specifications, Section 924. The paving material shall be six inches thick upon completion and poured upon a prepared sub-grade with a 95% compaction rating. Expansion joints, one-half inch minimum to five-eighths inch maximum, shall be provided every 50 feet and filled with pre-formed, non-extruded, resilient bituminous-type material, conforming to NC DOT Specifications, Section 928.

Forms for the pavement shall be set true to line and grade and held rigidly in position. They shall be of metal or wood, straight and without warp, constructed so as to be free of kinks or irregularities, especially around curves.

The concrete shall be placed in the forms in a manner to prevent segregation, and tamped or vibrated sufficiently to bring the mortar to the surface and prevent honeycombs. The concrete shall be finished smooth and even, by means of rollers and/or floats, or as otherwise approved by the Falconbridge Homeowners Association.

Borings may be taken by the Association if it deems this is necessary, and any cost of reconstruction required to meet specifications will be borne by the developer. The new homes may not be occupied until the work is reinspected and found to be satisfactory by a licensed engineer or inspector, approved by the Association.

Section 2. Buildings. All buildings to be erected on unimproved lots must conform in all primary aspects to the buildings in the townhome area nearest to the new development and must include the following features common to Falconbridge Townhomes, i.e.,

- (a) Masonry courtyard walls, at least 66" high measured from baseline of building, and minimum 100 square feet interior size, with wrought iron gate(s) for access; two-coat stucco over concrete block.
- (b) Masonry and wood side entrances, forming a covered shelter. Walls and support(s) are to be concrete block with two-coat stucco applied, after construction.
- (c) Vertical cedar siding, of same dimensions and surface, two-coat stain to match existing homes, with sufficient time allowed for thorough drying between coats. Stain to be Cabots #547 solid-pigment stain or equivalent as specified by Association. Decks, rails, and stairs (if any) to be of treated lumber (20 year minimum rating, for decay or insects), stained same as siding. Trim is to be covered with two coats of #100 paint by Sherwin-Williams, or as specified by Association. (Note (c) above, regarding time between coats which also applies to stucco applications.)
- (d) Windows are to be flush -- no bay windows.
- (e) All walkways are to be poured concrete; a 4-inch minimum depth over compacted soil and/or gravel.
- (f) Garages, if any, are to be enclosed.
- (g) Power meters will be provided for street lights, which are an expense borne by the Association. Developers will install street lights and meters so as to provide the maximum number of lights possible per meter, and minimum number of sensors.
- (h) All skylights, if any are provided, will be self-flashing design.

Section 3. Drainage.

(a) Drains from roof gutters are to be extended underground from downspout to nearest woods at lower level, or to storm drains, or to lakefront, as topography may dictate.

(b) Streets must be sloped, or exit drains installed, to prevent water runoff from collecting at sidewalks or in street areas.

Section 4. Trees, Shrubs, etc. All trees outside the footprint of the building(s) must be saved, insofar as possible. Prior discussion with, and approval by, the Association must be undertaken and secured, before removal. Any resulting hardwood tree trunks, or limbs, 4" and up in diameter, must be cut in approximately 20" lengths and stacked nearby. Shrubbery for perimeter of building(s) should be low and slow growing varieties, and none are to be planted closer than 30" from siding or masonry walls, at any point.

ARTICLE VI - EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon such Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, skylights, and other exterior improvements. Such exterior maintenance shall not include glass surfaces, ventilation equipment, heat pumps, chimneys, screenings, or foundations.

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.

Maintenance and repairs under this Article VI rise from normal usage and weathering, and do not include maintenance and repairs made necessary by fire or other casualty damage, which is controlled by Article XI of these Declarations.

ARTICLE VII - EASEMENTS

All of the Properties, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration. The Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas when conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

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

ARTICLE VIII - PARTY WALLS, ROOFS, FOUNDATIONS, AND FOUNDATION WALLS

Section 1. General Rules of Law to Apply. Each wall, roof, foundation, and foundation wall which is built as a part of the original construction of the homes upon the Properties, and placed on or traverse to

the dividing line between the Lots and, all reconstruction or extensions of such structures shall constitute party walls, roofs, foundations, and foundation walls, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Destruction by Fire or Other Casualty. If a party wall, roof, foundation, or foundation wall is destroyed or damaged by fire or other casualty, any Owner who has used the structure may restore it, and if the other Owners thereafter make use of the structure, 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 or law regarding liability for negligent or willful acts or omissions.

Section 3. The Owner of any Lot may construct, reconstruct, or extend a party wall, roof, foundation, or foundation wall in any direction (subject to and within the limitations of architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall, roof, foundation, or foundation wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. 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 6. Certification by Adjoining Property Owner That No Contribution is Due. If any Owner desires to sell his property, he may, in order to insure a prospective purchaser that no adjoining property owner has a right of contribution as provided in this Article VIII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided however that where the adjoining property owner claims a right of contribution, the certification shall contain a recital for the amount claimed.

Section 7. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the laws of North Carolina, relating to arbitration as then existing.

ARTICLE IX - INSURANCE

Section 1. Insurance coverage on the property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies upon the properties shall be purchased by the Homeowners Association for the benefit of all the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of townhouse owners. Townhouse 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.

(b) Coverage. All buildings and improvements upon the land and all personal property included in the common areas and facilities shall be insured in an amount equal to 90% insurable replacement value as determined annually by the Homeowners 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 covered by a standard extended coverage endorsement, and

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

(iii) Such policies shall contain clauses providing for waiver or subrogation. Public liability insurance shall be secured by the Homeowners Association in such amount and with such coverage as shall be deemed necessary by the Homeowners Association, including, but not limited to, an endorsement to cover liability of the townhouse owners as a group to a single townhouse owner. There shall also be obtained such other insurance coverage as the Homeowners Association shall determine from time to time to be desirable and necessary.

(c) Premiums. Premiums upon insurance policies purchased by the Homeowners Association shall be paid by the Homeowners Association and charged ratably to the townhouse owners as an assessment according to the provisions of Article IV above.

(d) Proceeds. All insurance policies purchased by the Homeowners Association shall be for the benefit of the Homeowners Association and the townhouse owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Homeowners Association as insurance trustees under this Declaration. The sole duty of the Homeowners Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the by-laws and for the benefit of the townhouse owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to common areas and facilities held for the Homeowners Association.

(ii) Proceeds on account of damage to townhouse shall be held in undivided shares for the owners of damaged townhouses in proportion to the cost of repairing the damage suffered by each townhouse owner, which cost shall be determined by the Homeowners Association.

(iii) In the event a mortgagee endorsement has been issued to a townhouse, the share of the townhouse owner shall be held in trust for the mortgagee and the townhouse owner as their interest may appear.

Section 2. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Homeowners Association as insurance trustee shall be distributed to or for the benefit of the beneficial owners in the following manner:

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

made therefor.

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(b) **Reconstruction or Repair.** The remaining proceeds shall be paid to defray the cost as provided by Repair or Reconstruction Article hereof. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners.

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 front yard space of each Lot and the Common Areas.

Section 2. Use of Properties. No portion of the Properties shall be used except for residential purposes and for purposes incidental or necessary thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. All pets shall be under owner's control at all times and shall not be allowed to roam free on the properties.

ARTICLE XI - DAMAGE AND DESTRUCTION

Damage and Destruction. Except as hereinafter provided, damage to or destruction of a building shall be promptly repaired and restored by the Homeowner Association using the proceeds of insurance on the building for that purpose and owners of damaged townhouses shall be liable for assessment of any deficiency; provided, however, if a building be so damaged or destroyed by fire or other casualty that the same is untenable, the building shall be reconstructed.

Any reconstruction or repair shall be in accordance with the plans and specification of the original building, and subject to the provisions of Article V above.

ARTICLE XII - GENERAL PROVISIONS

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

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

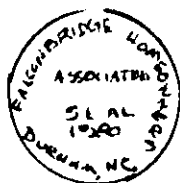
Section 3. Amendment. The covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. The Declarations and Bylaws may be amended by an instrument signed by the Association, certifying that such amendment has been approved by the Owners of at least 60% of the Lots subject to this Declaration, evidenced by written ballot signed by such Lot Owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held

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in accordance with the provisions of the Declarations and Bylaws; provided however, that no amendment may be made which substantially diminishes or adversely affects the interest of the owner of a townhouse or Lot or, as a member of the Association. Any amendment must be recorded.

In witness whereof, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 3rd day of April, 1980.

Amended: December 10, 1998



Jean Bartholomew
Jean Bartholomew, Secretary

Edward Ludacer
Ed Ludacer, President

STATE OF NORTH CAROLINA
County of Orange

I, a Notary Public of the County and State aforesaid, certify that Jean Bartholomew personally came before me this day and acknowledged that she is Secretary of FALCONBRIDGE HOMEOWNERS' ASSOCIATION, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary.

Witness my hand and official stamp or seal, this the 30 day of December

Lisa H Elliott
Notary Public



My commission expires: 4-11-99

State of North Carolina - Durham County

The foregoing or annexed certificate(s) of Lisa H Elliott

A Notary (Notaries) Public for the Designated Governmental units is(are) certified to be correct.

This the 12 day of July A.D. 1999
WILLIE L. COVINGTON Beverly G. Weston
Register of Deeds By: Deputy Register of Deeds



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
2005 AUG 11 04:33:04 PM
BK. 4911 PG: 107-110 FEE: \$20.00

INSTRUMENT # 2005037099

Prepared by and Return to: Gunter + Flowers, PLLC, 123 Glenwood Ave., Raleigh, NC 27603
Gunter + Flowers 123 Glenwood Ave
Raleigh NC 27603

NORTH CAROLINA
COUNTY OF DURHAM

AMENDMENT TO THE AMENDED AND
RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR FALCONBRIDGE
HOMEOWNER ASSOCIATION,
RECORDED AT BOOK 2467, PAGE 996,
DURHAM COUNTY REGISTRY

THIS AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR FALCONBRIDGE
HOMEOWNER ASSOCIATION, made this 13th day of July, 2005 by the
Falconbridge Homeowner Association, Inc, a not-for-profit corporation (hereinafter called "the
Association").

WITNESSETH

WHEREAS, the Falconbridge Homeowner Association, Inc. (hereinafter, "the
Association") was created by a Declaration of Covenants, Conditions and Restrictions for
Falconbridge Townhomes, recorded at Book 1030, Page 395, Durham County Registry, recorded
on November 10, 1989 (hereinafter, "the Declaration").

WHEREAS, the Declaration was restated and amended by an Amended and Restated
Declaration of Covenants, Conditions and Restrictions for Falconbridge Homeowner
Association, recorded at Book 2467, Page 996, Durham County Registry, recorded on May 22,
1998 (hereinafter, "the Amended and Restated Declaration").

WHEREAS, Article XII, Section 3 of the Amended and Restated Declaration provides
that the Amended and Restated Declaration may be amended by an instrument signed by the
Association, certifying that such amendment has been approved by the Owners of at least sixty
percent (60%) of the Lots subject to the Amended and Restated Declaration, evidenced by
written ballots signed by such Lot Owners and/or cast (or deemed cast) in favor thereof at a
meeting of members duly called and held in accordance with the provisions of the Amended and

Restated Declaration and Bylaws.

WHEREAS, as of this date there are 163 owners of lots subject to the Amended and Restated Declaration and Bylaws and that sixty percent (60%) of such number equates to 98 owners.

WHEREAS, on April 17, 2005, at a duly convened meeting of the Association held for the purpose of considering this Amendment to the Amended and Restated Declaration and Bylaws, that the necessary votes of at least 99 owners of such lots have been received and recorded pursuant to the provisions of Article XII, Section 3 of the Amended and Restated Declaration.

NOW THEREFORE, the Association does hereby amend the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Falconbridge Homeowners Association, Inc. as follows:

Article V, Section 1 of the Amended and Restated Declaration, captioned Streets, street access, and parking areas shall be deleted in its entirety and the following language shall be substituted in its place and shall hereinafter constitute Article V, Section 1 of the Amended and Restated Declaration:

“Streets, street access and parking areas may be paved or re-paved using any material that is suitable for paving or re-paving, including but not limited to concrete or asphalt, and in any ^{no} matter consistent with sound building and construction practices and in compliance with all applicable state and local building codes and ordinances, if any.”

CERTIFICATE OF VALIDITY OF AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
FALCONBRIDGE HOMEOWNER ASSOCIATION

By authority of its Board of Directors, Falconbridge Homeowners Association, Inc. hereby certifies that the foregoing instrument has been duly approved by the owners of at least sixty percent (60%) of the Lots subject to the Amended and Restated Declaration, as evidenced by written ballots signed by such Lot Owners and/or cast (or deemed cast) in favor thereof at a meeting of members duly called and held in accordance with the provisions of the Amended and Restated Declaration and Bylaws, and that the undersigned personally witnessed and attests to the signed written ballots or those ballots cast or deemed cast, and as such is thereby a valid amendment to the existing Amended and Restated Declaration of Covenants, Conditions and Restrictions for Falconbridge Homeowner Association.

This the 13th day of July, 2005



Falconbridge Homeowner Association, Inc.

Samuel H. Magill
President

North Carolina
Durham County

This the 13th day of July, 2005, personally came before me, K. Gayle Stone, Notary Public for Durham County, North Carolina, Samuel H. Magill, who, being by me duly sworn, says that he is President of the Falconbridge Homeowner Association, Inc., a corporation, and that the seal affixed to the foregoing instrument in writing is the corporate seal of said company, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly give. And that said Samuel H. Magill acknowledge the said writing to be the act and deed for said corporation.

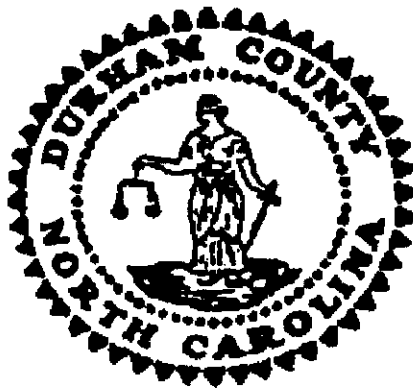
Witness my hand and official seal, this the 13th day of July, 2005

K. GAYLE STONE
NOTARY PUBLIC OF NORTH CAROLINA
DURHAM COUNTY NC
MY COMMISSION EXPIRES FEB. 22. 2007
(Official Seal)

K. Gayle Stone
Notary Public

My Commission Expires:

2/22/07



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: 08/11/2005 04:33:04 PM
Book: RE 4911 Page: 107-110
Document No.: 2005037099
AMD 4 PGS \$20.00
Recorder: SHARON M CEARNEL

State of North Carolina, County of Durham

The foregoing certificate of K. GAYLE STONE Notary is certified to be correct. This 11TH of August 2005

WILLIE L. COVINGTON , REGISTER OF DEEDS

By: Sharon M Cearnel
Deputy/~~Assistant~~ Register of Deeds



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