

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR McCLELLAND TOWNHOMES

This Declaration, made the 15th day of September, 1998, by WALMARK, L.L.C. A NORTH CAROLINA LIMITED LIABILITY COMPANY, PRINCESS PLACE VENTURE, LLC, A NORTH CAROLINA LIMITED LIABILITY COMPANY, AND WOODBRIDGE PARTNERSHIP, A NORTH CAROLINA GENERAL PARTNERSHIP, hereinafter referred to as "Declarant" or "Developer" for the purposes hereinafter stated;

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WITNESSETH:

Whereas, Declarant is the owner of certain real property in Wilmington, New Hanover County, North Carolina, known as " McCLELLAND TOWNHOMES " which is shown on a plat recorded in the Office of the Register of Deeds of New Hanover County, North Carolina, in Map Book 38 Pages 112-₁₁₃ to which reference is made for a more particular description (the "Property").

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

ARTICLE I.

DEFINITIONS

SECTION 1. Additional Property shall mean and refer to any lands which are now owned or may be hereafter acquired or developed by Declarant, in addition to the above described Property, and annexed to and made a part of the Development (as hereinafter defined) pursuant to the provisions of this Declaration.

SECTION 2. Association shall mean and refer to McClelland Townhomes Homeowners' Association, Inc., a North Carolina non-profit corporation, its successors and assigns, the owners association organized for the purposes set forth herein.

SECTION 3. Assessments shall mean the Annual, Special, Insurance, Ad Valorem and Working Capital Assessments provided for in this Declaration.

RETURN TO
ROBERT H. HOCHULI, JR.
(910) 350-7911

SECTION 4. Common Area(s) shall mean and refer to all lands and easements within or appurtenant to the Development intended for the common use and enjoyment of the Owners, including, without limitation, any private roads and storm water retention ponds within the Development.

SECTION 5. Declarant shall be used interchangeably with Developer (which designations shall include singular, plural, masculine and neuter as required by the context) and shall mean and refer to Walmark, L.L.C., a North Carolina Limited Liability Company, Princess Palce Venture, LLC, a North Carolina Limited Liability Company and Woodbridge Partnership, a North Carolina General Partnership their successors and assigns, if such successors or assigns should acquire undeveloped property from the Declarant for the purpose of development.

SECTION 6. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

SECTION 7. Development shall mean the Property plus any Additional Property.

SECTION 8. Limited Common Area(s) shall mean areas and facilities within any Lot which are for the exclusive use of the Lot Owner but which the Association is obligated to maintain pursuant to the terms of this Declaration. The Limited Common Areas shall consist of (i) the exterior of all dwellings, including by way of illustration, but not limited to, roofs, exterior building surfaces, decks and porches, gutters and downspouts, (ii) yards and other improvements, including by way of illustration, but not limited to, travelways, walkways, leaves, shrubs and grass but excluding privacy fences for each dwelling and that portion of the yard located within such privacy fencing.

SECTION 9. Lot(s) shall mean and refer to any numbered lot within the Development, together with the dwelling situated thereon.

SECTION 10. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 11. Property shall mean the Property as defined in the preamble to this Declaration.

SECTION 12. Member(s) shall mean and refer to every person or entity who has a Membership in the Association.

SECTION 13. Membership shall mean and refer to the rights, privileges, benefits, duties and obligations, which shall inure to the benefit of and burden each Member of the Association.

SECTION 14. Townhouse or Townhome shall mean the dwelling located on a Lot.

ARTICLE II.

PROPERTY RIGHTS AND EASEMENTS

SECTION 1. Owners' Property Rights and Easement of Enjoyment. Every Owner shall have and is hereby granted a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The Association may make and amend reasonable rules and regulations governing use of the Common Areas by the Owners, and limiting the number of guests of Members;

(b) The Association may suspend the voting rights and privileges of an Owner for any period during which any Assessments against the Owner's lot remain unpaid and for a period not to exceed 60 days for an infraction of the published rules and regulations of the Association;

(c) The Association may mortgage or convey the Common Areas, or dedicate or transfer all or part of the Common Areas, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by at least two-thirds of the Members, excluding the Developer; provided, however, that the Association may without the consent of the Owners grant easements over the Common Area for drainage systems and public utilities servicing the Development, and provided, further, that any conveyance or encumbrance of Common Area shall be subject to any rights of ingress and egress to any Lot over private streets.

SECTION 2. Easements in Favor of Declarant and the Association. The following easements are reserved to Declarant and the Association, their successors and assigns:

(a) easements as necessary in the lands constituting the Common Area and that portion of each Lot not occupied by a structure for the installation and maintenance of utilities and drainage facilities; including the right of Declarant and the Association to go upon the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone lines, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in

or over each Lot and such other areas as are shown on the plat of the Property or any Additional Property recorded or to be recorded in the office of the Register of Deeds of New Hanover County; the right to cut drain ways, swales and ditches for surface water whenever such action may appear to the Developer or the Association to be necessary in order to maintain reasonable standards of health, safety and appearance; the right to cut any trees, bushes or shrubbery; the right to make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance; and the right to locate wells, pumping stations, and tanks within residential areas, or upon any Lot with the permission of the owner of such Lot. No structures or plantings or other material shall be placed or permitted or remain upon such easement areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. These easement areas (whether or not shown on the recorded plats for the Development) and improvements within such areas shall be maintained by the respective Owner except those for which a public authority or utility company is responsible;

(b) easements over all private streets, if any, access easements, and Common Areas within the Development as necessary to provide access, ingress and egress, to any Additional Property;

(c) an easement of unobstructed access over, on, upon, through and across each Lot and the Limited Common Area located thereon, if any, at all reasonable times to perform any maintenance and repair to the Limited Common Areas required by this Declaration. This easement shall also run in favor of the Association and the Association's agents, employees, successors and assigns.

SECTION 3. Other Easements. The following easements are granted by Declarant to others:

(a) an easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services, to enter upon all Lots and Common Area in the performance of their duties;

(b) in case of any emergency originating in or threatening any Lot or Common Areas, regardless of whether any Lot Owner is present at the time of such emergency, the Association or any other person authorized by it, shall have the right to enter any Lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right of entry shall be immediate;

(c) the Association is granted an easement over each Lot for the purposes of providing Lot maintenance when an Owner fails to provide maintenance and upkeep in accordance with this Declaration.

SECTION 4. Nature of Easements. All easements and rights described herein are perpetual easements appurtenant, running with the land, and shall inure to the benefit of and be binding on the Declarant and the Association, their successors and assigns, and any Owner, purchaser, mortgagee and other person having an interest in the Property or any Additional Property, or any part or portion thereof, regardless of whether or not reference is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE III

RIGHTS OF DEVELOPER

The Declarant shall have, and there is hereby reserved to the Declarant, the following rights, powers and privileges which shall be in addition to any other rights, powers and privileges reserved to the Declarant herein:

SECTION 1. The Architectural Control Committee. All duties and responsibilities conferred upon the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the Declarant or its designee, so long as Declarant shall own any Lot within the Property or any Additional Property.

SECTION 2. Plan of Development. The right to change, alter or redesignate the allocated planned, platted, or recorded use or designation of any of the lands constituting the Development including, but not limited to, the right to change, alter or redesignate road, utility and drainage facilities and easements and to change, alter or redesignate such other present and proposed amenities or facilities as may in the sole judgment and discretion of Declarant be necessary or desirable. The Declarant hereby expressly reserves unto itself, its successors and assigns, the right to re-plat any one (1) or more Lots shown on the plat of any subdivision of the Property or Additional Property in order to create one or more modified Lots; to further subdivide tracts shown on any such subdivision plat into two or more Lots; to recombine one or more tracts or Lots or a tract and Lots to create a larger tract; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access or are needed for use as public or private roads or access areas, whether serving the Development or other property or are needed for Common Areas or amenities, and to take such steps as are reasonably necessary to make such re-platted Lots or tracts suitable and fit as a building site or access area or roadway or Common Area.

SECTION 3. Amendment of Declaration by the Declarant. This Declaration may be amended without member approval by the Declarant, or the Board of the Association, as the case may be, as follows:

- (a) in any respect, prior to the sale of the first Lot;
- (b) to the extent this Declaration applies to Additional Property.
- (c) to correct any obvious error or inconsistency in drafting, typing or reproduction;
- (d) to qualify the Association or the Property and Additional Property, or any portion thereof, for tax-exempt status;
- (e) to include any platting change as permitted herein;
- (f) to conform this Declaration to the requirements of any law or governmental agency having legal jurisdiction over the Property or any Additional Property or to qualify the Property or any Additional Property or any Lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U. S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion. Notwithstanding anything else herein to the contrary, only the Declarant, during the Developer Control Period, shall be entitled to amend this Declaration pursuant to this Section.

SECTION 4. Annexation of Additional Property. Declarant may annex to and make a part of the Development any other real property which Declarant now owns or which Declarant may hereafter acquire or develop (the "Additional Property"). Annexation of Additional Property to the Development shall require the assent of two-thirds of the Class A Members who are voting in person or by proxy at a meeting called for this purpose; provided, however, Additional Property may be annexed to the Development without the assent of the Members so long as the Additional Property is

developed in accordance with the same general scheme as ²⁴³⁴ the other portions of the Development.

SECTION 5. Sales Model. So long as the Declarant or its designee shall retain ownership of any Lot, it may utilize any such Lot for offices, models or other purposes relating to the sale or rental of Lots and dwellings including the right to place "For Sale" or "For Rent" signs on any Lots. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose.

ARTICLE IV.

HOMEOWNERS' ASSOCIATION

SECTION 1. Formation of Association. The Association is a nonprofit corporation organized pursuant to the Nonprofit Corporation Act of the State of North Carolina for the purpose of establishing an association for the Owners of Lots to own, operate and maintain the Common Areas and any Limited Common Areas in accordance with this Declaration, its Charter and Bylaws.

SECTION 2. Membership. Every Lot Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Lot ownership.

SECTION 3. Voting Rights. The Association shall have two classes of voting Membership.

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determined, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting with respect to any Lot is hereby prohibited.

Class B. The Declarant shall be a Class B Member and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total vote outstanding in the Class A Membership equals the total vote outstanding in the Class B Membership; or

(b) on December 31, 2001; or

(c) upon the voluntary surrender of all Class B Membership by the holder thereof.

The period during which there is Class B Membership is sometimes referred to herein as the "Declarant Control Period".

SECTION 4. Government Permits. All duties, obligations, rights and privileges of the Declarant under any water, sewer, stormwater and utility agreements, easements and permits for the Development with municipal or governmental agencies or public or private utility companies are at all times the responsibility of the Association.

ARTICLE V.

INSURANCE AND BONDS

SECTION 1. Insurance. It shall be the duty of the Association to maintain in effect casualty and liability insurance as follows:

(a) Amount and Scope of Insurance. All insurance policies upon the Development (except personal property within a Townhome) shall be secured by the Board of Directors, or its designee on behalf of the Association which shall obtain such insurance against (1) loss or damage by fire or other hazards normally insured against, and (2) such other risks, including public liability insurance, as from time to time shall be customarily required by private institutional mortgage investors for projects similar in construction, location and use as the Development and the improvements thereon for at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, or maintenance or use of the Common Areas and legal liability arising out of lawsuits relating to employment contracts of the Association. In obtaining such coverage, the Board of Directors shall consider the reasonable requirements of holders of first liens on individual Lots;

(b) Insurance Provisions. The Board of Directors shall make diligent efforts to insure that said insurance policies provide for the following:

(1) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Lot Owners and their employees, agents, tenants and invitees;

(2) a waiver by the insurer of its right to repair and reconstruct instead of paying cash;

(3) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium)

without at least thirty days prior written notice to the named insured and all mortgagees;

(4) coverage will not be prejudiced by act or neglect of the Lot Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Development over which the Association has no control.

(5) the master policy on the Development cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Lot Owners;

(6) the master policy on the Development cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(c) Premiums. All premiums on such insurance policies and any deductibles payable by the Association upon loss shall be a common expense;

(d) Proceeds. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board of Directors;

(e) Policies. All insurance policies purchased by the Board of Directors shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "A" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Board of Directors and the Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors and duplicates of said policies and endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the Owners at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued by the Association to each mortgagee, if any upon request of such mortgagee;

(f) Individual Policies. If the Association shall determine that it would be more economically feasible in lieu of the Association maintaining a master policy for the entire Development, for the Lot Owners to purchase insurance policies covering each Lot and Lot Owner individually, then upon the assent of two-thirds of the Members

(which votes may be cast in person or by proxy) who are eligible to vote at a meeting duly called for such purpose, the insurance coverage for the entire Development, may be turned over to the Members to purchase individual policies under such terms and conditions as the Association may prescribe. If the responsibility for maintaining the insurance coverage on the Development is turned over to the individual Lot Owners under the provisions of this paragraph, then the Association shall be named as additional insured on each policy, each Lot shall be insured for its full replacement value and the provisions of this Section shall be modified accordingly;

(g) Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

(1) all reasonable expenses of the insurance trustee shall be first paid or provision may therefor;

(2) the remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

SECTION 2. Fidelity Bond. The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association, as follows (provided, however, that if the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bonds shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association):

(a) The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds;

(b) Fidelity bonds required herein must meet the following requirements:

(1) fidelity bonds shall name the Association as an obligee;

(2) the bonds shall contain waivers by the issuers of the bonds of all defenses upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions;

(3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense;

(4) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association, to any insurance trustee and each institutional holder of a first lien on any Lot.

ARTICLE VI.

COVENANTS FOR ASSESSMENTS

SECTION 1. Creation of the Lien and Personal Obligation of Assessments.

Each Owner of any Lot, by acceptance of a deed for the Owner's Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association the following assessments (collectively the "Assessments"):

- (a) Annual Assessments;
- (b) Special Assessments for Capital Improvements;
- (c) Insurance Assessments;
- (d) Ad Valorem Tax Assessments; and
- (e) Working Capital Assessments.

The 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 respective Lot against which the Assessments are made. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

SECTION 2. Purpose of Annual Assessments. The Annual Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and residents of the Property and Additional Property and for the improvement and maintenance of the Common Areas and any Limited Common Areas. The funds arising from said assessments or charges, may be used for any or all of the following purposes: Operations, maintenance and improvement of the Common Areas, and any Limited Common Areas, including payment of utilities; enforcing this Declaration; paying taxes, insurance premiums, legal and accounting fees and governmental charges; establishing working capital; and in addition, doing any other things necessary or desirable in the opinion of the Association to keep the Common Areas and Limited Common Areas in good operating order and repair.

SECTION 3. Annual Assessments. Annual Assessments shall be in an amount to be fixed from year to year by the Board of Directors which may establish different rates from year to year as it may deem necessary. The amount of the Annual Assessment against each Lot for any given year shall be fixed at least 30 days in advance of the Annual Assessment period; provided, however, that the first Annual Assessment shall be set prior to the conveyance of the first Lot to an Owner and written notice to the Owners to be subjected thereto shall be delivered to the Owners at or prior to the closing of their Lots. Written notice of each Annual Assessment thereafter shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in periodic installments. The Association shall, upon demand, and for a reasonable charge furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Annual Assessment may be increased each year not more than five percent (5%) above the Annual Assessment for the previous year without the affirmative vote of two-thirds (2/3rds) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose; provided, however, the Board of Directors may increase the amount of the Annual Assessment to \$1,080.00 per Lot without member approval.

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 the 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 Areas and any Limited Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the Members of each class who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 5. Insurance Assessments. All premiums on insurance policies purchased by the Board of Directors or its designee and any deductibles payable by

the Association upon loss shall be a common expense, and the Association may in any assessment year levy against the Owners equally an "Insurance Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay the annual cost of all such deductibles and insurance premiums not included as a component of the Annual Assessment. Such assessment shall not be subject to the 5% limitation provided for Annual Assessments.

SECTION 6. Ad Valorem Tax Assessments. All ad valorem taxes levied against the Common Areas, if any, shall be a common expense, and the Association may in any assessment year levy against the Owners equally an "Ad Valorem Tax Assessment", in addition to the Annual Assessments, which shall be in an amount sufficient to pay such ad valorem taxes in such year not included as a component of the Annual Assessment. Such assessment shall not be subject to the 5% limitation provided for Annual Assessments.

SECTION 7. Working Capital Assessments. At the time title to a Lot is conveyed to an Owner by Declarant, the Owner shall pay the sum of \$180.00 to the Association as working capital to be used for operating and capital expenses of the Association. Amounts paid into the working capital fund are not to be considered as advance payment of the Annual or any other assessments.

SECTION 8. Notice and Quorum For Meetings Regarding Annual and Special Assessments. Written notice of any meeting of Owners called for the purpose of approving Special Assessments or increases in the Annual Assessment over the five percent limitation shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all votes of each class of Membership shall constitute a quorum. The required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 9. Uniform Rate of Assessment. The Assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 10. Commencement of Assessments. Assessments for each Lot shall commence upon the date of acceptance by an Owner of a deed from Declarant.

SECTION 11. Effect Of Nonpayment of Assessments And Remedies Of The Association. Any Assessment or installment thereof not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowable by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Owner's Lot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot. All unpaid installment

payments of Assessments shall become immediately due and payable if an Owner fails to pay any installment within the time permitted.

SECTION 12. Subordination Of The Lien To Mortgage. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

ARTICLE VII.

USE RESTRICTIONS, ARCHITECTURAL CONTROL AND MAINTENANCE

SECTION 1. Approval of Plans for Building and Site Improvements. No dwelling, wall or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change in or alteration therein (including painting or repainting of exterior surfaces) be made until the plans and specifications showing the nature, kind, shape, heights, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, or its designee, or, after the sale of all Lots by Declarant, by the Board of Directors of the Association, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event the Declarant, or its designee, or, if applicable, the Board, or the Architectural Control Committee, 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. Refusal or approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the Declarant, the Board, or Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the Declarant, the Board, or Architectural Control Committee, as the case may be, for its records. Neither the Declarant, the Board, nor the Architectural Control Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

SECTION 2. Minimum Standards for Site Improvements.

(a) Since the establishment of inflexible building setback lines for location of houses on lots tends to force construction of houses directly to the side of other homes with detrimental effects on privacy, view, preservation of important trees and other vegetation, ecological and related considerations, no specific setback lines shall

be established by this Declaration. In order to assure, however, that the foregoing considerations are given maximum effect, the site and location of any house or dwelling or other structure upon any lot shall be controlled by and must be approved absolutely by the Declarant, the Board, or the Architectural Control Committee, as the case may be; provided, however, that no structure shall be constructed closer to an adjoining property line than is permitted by applicable governmental regulations.

(b) The exterior of all dwellings and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder, due to strikes, fires, national emergency or natural calamities.

(c) All service utilities, fuel tanks, and wood piles are to be enclosed within a wall or plant screen of a type and size approved by the Declarant, the Board or the Architectural Control Committee, so as to preclude the same from causing an unsightly view from any highway, street or way within the subdivision, or from any other residence within the subdivision. All mail and newspaper boxes shall be uniform in design. Design for mail and newspaper boxes shall be furnished by Declarant. Fences shall be permitted on any Lot; provided, however, that the design, placement, and materials of any fence are approved by the Declarant, the Board, or the Architectural Control Committee, as the case may be. Clothes lines are not permitted on any Lot.

(d) Off street parking for not less than two (2) passenger automobiles must be provided on each Lot prior to the occupancy of any dwelling constructed on said Lot which parking areas and the driveways thereto shall be constructed of concrete, brick, asphalt, or turf stone, or any other material approved by Declarant, the Board or Architectural Control Committee.

(e) All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot for the purpose of illumination shall be clear, white or non-frost lights or bulbs.

SECTION 3. Use Restrictions.

(a) Land Use And Building Type. No Lot shall be used for any purpose except for residential purposes. All numbered Lots are restricted for construction of one single family townhome dwelling.

(b) Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, nor device or thing of any sort whose normal activities or existence are in any way noxious, dangerous, unsightly, unpleasant or other nature as may diminish or destroy the enjoyment of other Lots by the Owners thereof. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly or unkept

condition of buildings or grounds on the Owner's Lot which would tend to decrease the beauty of the neighborhood as a whole or the specific area.

(c) Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence either temporarily or permanently without the written consent of the Association or its designee; provided, however, that this shall not prevent the Declarant, its designees or assigns from maintaining a construction trailer or office on any part of the Development until the construction of dwellings on all Lots and Common Area improvements are completed.

(d) Vehicles/Boats. No boat, motor boat, camper, trailer, motor or mobile homes, tractor/trailer, or similar type vehicle, shall be permitted to remain on any Lot or on any street at any time, without the written consent of the Association or its designee. No inoperable vehicle or vehicle without current registration and insurance, will be permitted on any Lot, street or Common Area. The Association shall have the right to have all such vehicles towed away at the owner's expense. No repairs to any vehicle may be made on streets or in driveways but only in garages or other areas and not visible from the street.

(e) Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free, are at all times kept properly leashed or under the control of their owner and do not become a nuisance to the neighborhood.

(f) Statuary, TV Satellite Dishes and Outside Antennas. No yard statuary or TV satellite signal receiving dishes are permitted on any Lot and no outside radio or television antennas shall be erected on any Lot or dwelling unit unless and until permission for the same has been granted by the Board of Directors of the Association or its Architectural Control Committee; provided, however, satellite dishes not over 18" in diameter which cannot be seen from the street are permitted.

(g) Construction in Common Area. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Areas except at the direction or with the express written consent of the Association.

(h) Signs. No signs shall be permitted on any Lot or in the Common Areas without permission of the Board of Directors.

(i) Subdividing. Subject to any rights reserved to the Declarant herein, no Lot shall be subdivided, or its boundary lines changed except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board of Directors of the Association.

SECTION 3. Maintenance. Each Lot Owner shall keep his Lot free from weeds, underbrush or refuse piles, or unsightly growth or objects. In the event the Owner fails to do so, then, after thirty days notice from the Architectural Control Committee, the Association or its designee may enter upon the Lot and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass, and in such event a lien shall arise and be created in favor of the Association for the full amount of the cost thereof chargeable to such Lot, including collection costs and such amounts shall be due and payable within thirty (30) days after the Owner is billed therefor. Such lien shall be enforceable by Court proceedings as provided by law for enforcement of liens. In the event that any maintenance activities are necessitated to any Common or Limited Common Area by the willful act or active or passive negligence of any Owner, his family, guests, invitees or tenants, and the cost of such maintenance, repair or other activity is not fully covered by insurance, then, at the sole discretion of the Board of Directors of the Association, the cost of the same shall be the personal obligation of the Owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said Owner's Lot.

ARTICLE VIII

PARTY WALLS

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

SECTION 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

SECTION 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

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

SECTION 5. Right to Contribute Runs with Land. The right of any Owner to contribute 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. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators.

ARTICLE IX

GENERAL PROVISIONS

SECTION 1. Enforcement Of Storm Water Runoff Regulations. No Lot nor that portion of the street right of way between the edge of the pavement and the front Lot line, shall be covered by impervious structures, including asphalt, gravel, concrete, brick, stone, slate or similar material (but excluding wood decking and the water surface of swimming pools), in excess of the following square footages:

Roadside or lot line swales may not be filled, piped or altered except as necessary to provide a minimum driveway crossing. These covenants are intended to insure continued compliance with the stormwater permit for the Property issued by the State of North Carolina and, therefore, may not be changed or deleted without the consent of the State.

For curb and gutter projects, no one may pipe, fill in, or alter any Lot line swale used to meet North Carolina Stormwater Management Permit requirements.

SECTION 2. Rights of Institutional Note Holders. Any institutional holder of a first lien on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Development or the Property securing its loan, (e) receive written notice of any sixty-day (60) delinquency in the payment of assessments or charges owed by any Owner of any property which is security for the loan, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the content of a specified percentage of mortgage holders, and (h) be furnished with a copy of any master insurance policy.

SECTION 3. Utility Service. Declarant reserves the right to subject the Property to contracts for the installation of utilities, cable TV and street lighting, which may require an initial payment and/or a continuing monthly payment by the Owner of each

Lot. Each Lot Owner will be required to pay for any water connections, sewer connections, impact fees or any other charges imposed by any entity furnishing water, sewer or other utility service to the Lots. In the alternative, the Developer may collect such connection, impact and other fees, charges directly from the Lot Owners. All Lot Owners shall be required, for household purposes, to use water and sewer supplied by the companies/governmental units servicing the Development. Separate water systems for outside irrigation and other outdoor uses shall not be permitted without the consent of the Declarant or the Association.

SECTION 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 5. Lots Subject to Declaration/Enforcement. All present and future Owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such Owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable (by proceedings at law or in equity) by the Association, or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns, and shall run with and bind the land and shall bind any person having at any time any interest or estate in any Lot, as though such provisions were made a part of each and every deed of conveyance or lease, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless terminated by the Lot Owners. Failure by the Association or by an 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 6. Amendment of Declaration. Declarant may amend this Declaration at Declarant's sole discretion for a period of two (2) years from the date of recording of this Declaration. Thereafter, except as provided elsewhere herein, the covenants and restrictions of this Declaration may be amended only by an instrument duly recorded in the Office of the Register of Deeds of the county where the Development is located, executed by the duly authorized officers of the Association upon the vote of not less than two-thirds (2/3) of the Lot Owners; provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. In no event may the Declaration be amended so as to deprive the Declarant of any rights herein granted or reserved unto Declarant.

SECTION 7. FHAVA Approval. So long as there is Class B membership, annexation of Additional Properties, dedication of Common Area and amendments to this Declaration must be approved by the Federal Housing Administration and/or the

Veterans Administration, as the case may be, if either of those agencies has approved the making, insuring or guaranteeing of mortgage loans within the Development.

IN WITNESS WHEREOF, the parties hereto, have caused this Declaration to be executed in their corporate name and the corporate seal affixed by its duly authorized officers as of the day and year first above written.

WALMARK, L.L.C., Borrower

By: Walter O. Winter (SEAL)
Walter O. Winter, Member/Manager

BY: Mark L. Maynard (SEAL)
Mark L. Maynard, Member/Manager

PRINCESS PLACE VENTURE, LLC

BY: Walter O. Winter (SEAL)
Walter O. Winter, Manager/Member

WOODBRIIDGE PARTNERSHIP

BY: Walter O. Winter (SEAL)
Walter O. Winter, General Partner

BY: Mark L. Maynard (SEAL)
Mark L. Maynard, General Partner

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

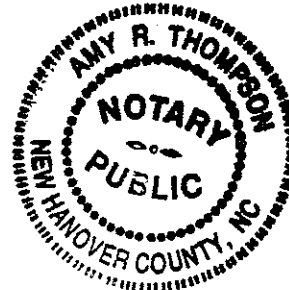
I, Amy R. Thompson a Notary Public of the County and State aforesaid, certify that WALTER O. WINTER, and MARK L. MAYNARD personally appeared before me this day and acknowledged that they are Members/Managers of WALMARK, L.L.C. a North Carolina Limited Liability Company, and they further acknowledge that they signed this instrument in their capacity as Member/Manager of WALMARK, L.L.C. and that they are duly authorized to so act for and on behalf of said Company.

Witness my hand and official stamp or seal, this 15th day of September 1998.

Amy R. Thompson
Notary Public

My commission expires: 1-15-2003

(SEAL)



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

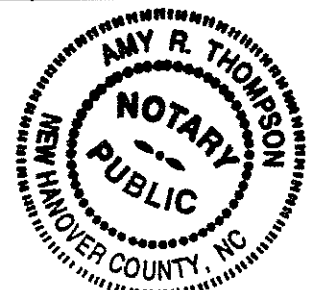
I, Amy R. Thompson a Notary Public of the County and State aforesaid, certify that WALTER O. WINTER, personally appeared before me this day and acknowledged that he is Manager/Member of PRINCESS PLACE VENTURE, LLC, a North Carolina Limited Liability Company, and he further acknowledges that he signed this instrument in his capacity as Manager/Member of PRINCESS PLACE VENTURE, LLC, and that he is duly authorized to so act for and on behalf of said Company.

Witness my hand and official stamp or seal, this 15th day of September 1998.

Amy R. Thompson
Notary Public

My commission expires: 1-15-2003

(SEAL)



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

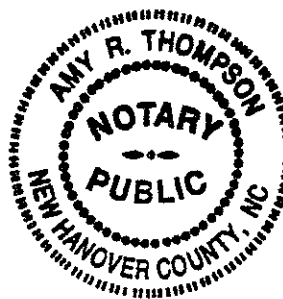
I, Amy R. Thompson a Notary Public of the County and State aforesaid, do hereby certify that WALTER O. WINTER and MARK L. MAYNARD, are Partners of Woodbridge Partnership, a North Carolina General Partnership personally appeared before me this day and acknowledged the execution of this instrument for and in behalf of said partnership.

Witness my hand and official stamp or seal, this 15th day of September, 1998.

Amy R. Thompson
Notary Public

My Commission Expires 1-15-2003

(SEAL)



STATE OF NORTH CAROLINA
New Hanover County
The Foregoing / Annexed Certificate(s) of

Amy R. Thompson

Notary (Notaries) Public is/ are certified to be correct.

This the 16 day of Sept 1998

Mary Sue Oots, Register of Deeds
by Mavis Ann Storey
Deputy / Assistant

'98 SEP 16 PM 1 16

RECORDED & VERIFIED
MARY SUE OOTS
REGISTER OF DEEDS
NEW HANOVER CO. NC

**CONSENT TO
ACTION WITHOUT MEETING BY THE BOARD OF DIRECTORS OF
McCLELLAND TOWNHOMES HOMEOWNERS' ASSOCIATION, INC.**

We, the undersigned, being all of the Directors of McClelland Townhomes Homeowners' Association, Inc., do hereby adopt the following resolutions for the purpose of completing the organization of the Corporation by signing our written consent, hereto:

ADOPTION OF BYLAWS

Resolved, that the Bylaws attached hereto as Exhibit A are hereby adopted as the Bylaws of the Corporation.

ELECTION OF OFFICERS

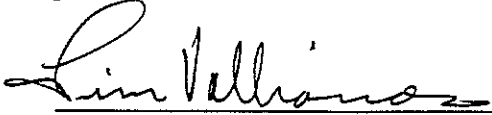
Resolved, that the following persons be, and they hereby are, elected as the officers of the Corporation to serve as such until their successors have been duly elected and qualified:

Robert J. Hollis	- President
Mark L. Maynard	- Vice President, Asst. Secretary
Lim Vallianos	- Secretary, Treasurer

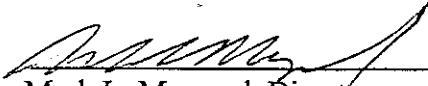
The officers of the Corporation are authorized to take charge of the business of the Association. The officers are further authorized to accept deeds to the Common Areas from the Developer and to incur the expenses to maintain said Common Areas for the benefit of the Association and its Members.

Resolved further, that these resolutions shall remain in effect until rescinded or modified by resolution of the Board of Directors of the Corporation.

This action is effective, this the 5th day of September, 1998.



Lim Vallianos, Director



Mark L. Maynard, Director



Walter O. Winter, Director