

FOR REGISTRATION JUDITH A. GIBSON  
 REGISTER OF DEEDS  
 MECKLENBURG COUNTY, NC  
 2001 SEP 26 11 47 AM  
 BOOK: 12693 PAGE: 235-236 FEE: \$30.00  
 INSTRUMENT # 2001161860

Upon recording, please return to:  
 Jack Ogden  
 D.R. Horton - Torrey Homes  
 1100 S. Tryon Street, Suite 100  
 Charlotte, NC 28203

Cross Reference to Master Declaration: Book: 11969  
 Page: 235

## SUPPLEMENTAL DECLARATION TO THE MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TANNERS CREEK SUBDIVISION

THIS SUPPLEMENTAL DECLARATION is made this 25<sup>th</sup> day of September,  
 2001, by Niblock-Ridgeline, LLC, a North Carolina limited liability company ("Developer").

### BACKGROUND STATEMENT

WHEREAS, Developer filed that certain Master Declaration of Covenants, Conditions, and Restrictions for Tanners Creek Subdivision on November 3, 2000, recorded at Book 11969, Page 235, *et seq.* in the Office of the Register of Deeds of Mecklenburg County, North Carolina (as amended and supplemented from time to time, the "Master Declaration"); and

WHEREAS, pursuant to the terms of Section 2.4 of the Master Declaration, Developer, in its own judgment may, by Supplemental Declaration, impose additional covenants and modifications to the covenants, conditions, and restrictions contained in the Master Declaration to reflect the different character of property submitted to the Master Declaration; and

WHEREAS, the property described on Exhibit "A" of this Supplemental Declaration ("Encumbered Property") is a portion of the property described on Exhibit "A" of the Master Declaration, which was submitted to the covenants, conditions, and restrictions of the Master Declaration at the time of recording the Master Declaration; and

WHEREAS, Developer, desires to reflect the different character of the Encumbered Property by imposing additional covenants and use restrictions against the Encumbered Property and by creating an "Architectural Review Committee" to oversee architectural review of the Encumbered Property; and

WHEREAS, D.R. Horton, Inc. a Delaware corporation ("D.R. Horton") is the owner of the Encumbered Property; and

WHEREAS, D.R. Horton consents to the additional covenants set forth herein and to the establishment of an Architectural Review Committee to oversee architectural review of the Encumbered Property, as evidenced by D.R. Horton's execution of this Supplemental Declaration;

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NOW, THEREFORE, Developer, with D.R. Horton's consent, hereby subjects the real property described on Exhibit "A" attached hereto to the covenants, conditions, and restrictions set forth in this Supplemental Declaration, which shall apply in addition to the provisions of the Master Declaration. The Encumbered Property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of the Master Declaration and this Supplemental Declaration, as each may be amended from time to time, both of which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplemental Declaration, in accordance with its terms and the terms of the Master Declaration, shall be binding upon Tanners Creek Homeowners Association, Inc., a North Carolina nonprofit corporation ("Association").

## **ARTICLE I**

### **Definitions**

Except as defined in this Article or as otherwise defined in this Supplemental Declaration, the terms used in this Supplemental Declaration shall be given their natural, commonly accepted definitions or, as applicable, shall be defined as set forth in Article I of the Master Declaration, which definitions are incorporated herein by reference.

1.1 "Architectural Review Committee" shall mean the committee responsible for architectural review of improvements and modifications to Lots within the Encumbered Property.

1.2 "Builder" shall mean D.R. Horton, Inc., a Delaware corporation, as developer of the Encumbered Property.

1.3 "Occupant" shall mean any Person occupying all or any portion of a Lot located within the Encumbered Property for any period of time regardless of whether such Person is an Owner or a tenant.

1.4 "Specific Assessment" shall mean the assessment established pursuant to Section 3.1.

## **ARTICLE II**

### **Additional Architectural Standards and Use Restrictions** **Applicable to the Encumbered Property**

2.1 Architectural Review Committee.

Builder shall establish the Architectural Review Committee to oversee architectural review within the Encumbered Property, in the manner set forth below. Owners of Lots within the Encumbered Property are subject to the jurisdiction of the Architectural Review Committee and the architectural standards set forth in this Supplemental Declaration, in addition to the

jurisdiction of the Architectural Control Committee and the community-wide architectural standards established pursuant to the Master Declaration.

## 2.2. Architectural Standards.

No exterior construction, alteration, addition, or erection of any nature shall be commenced or placed upon any part of the Encumbered Property, except as approved in accordance with this Section or as otherwise expressly permitted herein. The approval requirements under this Section shall apply to work done by or on behalf of the Builder, in addition to any Owner of any portion of the Encumbered Property. Where approval is required, no exterior construction, addition, erection, or alteration shall take place unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location have been submitted in writing to and approved by the Architectural Review Committee.

a. The Architectural Review Committee shall consist of three members. So long as the Builder owns any property for construction or sale within the Encumbered Property, the Builder shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee, and such appointees shall be selected from the Owners of Lots within the Encumbered Property.

b. The Board, at the request of the Architectural Review Committee, may employ architects, engineers, or other Persons as it deems necessary to enable the Architectural Review Committee to perform its review.

c. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.

d. The Builder may promulgate written design guidelines and procedures governing review under this Section, for which guidelines may provide for a review fee.

e. If the Architectural Review Committee fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest.

The Architectural Review Committee shall have full authority to approve or disapprove plans and specifications and may withhold approval for any reason, including purely aesthetic

considerations, and it shall be entitled to stop any construction commenced in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to verify compliance with this Supplemental Declaration. Board members, or Persons acting on behalf of the Board, shall not be deemed guilty of trespass by reason of such entry. In the event of noncompliance with this Section, the Board may take enforcement action, as provided in the Master Declaration.

g. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither Developer, the Builder, the Association, the Architectural Review Committee, the Board, nor the respective officers, directors, members, employees, and agents shall be liable in damages to Persons submitting plans and specifications for approval, or to any Persons otherwise affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications under this Section and every Owner agrees not to bring any action or suit against Developer, the Builder, the Association, the Architectural Review Committee, the Board, or their respective officers, directors, members, employees, and agents of any of them to recover any damages and hereby releases, remises, quitclaims, and covenants not to sue the above parties for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

### 2.3. Additional Use Restrictions.

Each Owner or Occupant of a Lot within the Encumbered Property is subject to the use restrictions set forth herein, in addition to the use restrictions set forth in the Master Declaration.

a. Off Road. No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles and vehicles authorized by the Board.

b. Leasing. Lots may be leased for residential purposes. All leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Master Declaration, this Supplemental Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

c. Nuisance. No noxious or offensive activity shall be carried on within the Encumbered Property, nor shall anything be done which tends to cause embarrassment,

discomfort, annoyance, or nuisance to any Person using any property within any portion of the Encumbered Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of any portion of the Encumbered Property. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier, or other sound device, except such devices as may be used exclusively for security purposes or as approved by the Architectural Review Committee, shall be located, installed, or maintained upon the exterior of any Lot unless required by law.

d. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Encumbered Property.

e. Tree Removal. No trees that are more than four (4) inches in diameter at a point and two (2) feet above the ground shall be removed without the prior written consent of the Architectural Review Committee. However, no flowering trees, including, without limitation, dogwood trees, regardless of their diameter, shall be removed without the prior written consent of the Architectural Review Committee. Notwithstanding all of the above, no consent or approval is required for the removal of any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a septic field, a sidewalk, a residence, or a driveway.

f. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Builder.

g. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

h. Garbage Cans, Woodpiles, Etc. All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Builder has the right to dump and bury rocks on property within the Encumbered Property as needed for efficient construction and to allow developers and builders within the Encumbered Property to bury rocks removed from a building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Encumbered Property except that Builder may maintain a "burn pit" during development and construction of the Encumbered Property.

i. Subdivision of Lot. In addition to the subdivision restrictions set forth in the Master Declaration, no Lot within the Encumbered Property shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Review Committee and the Builder. Builder, however, hereby expressly reserves the right to replat any Lot or Lots

owned by Builder. In any event, any subdivision, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Builder's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for the Encumbered Property as to how the streets and Common Areas within the Encumbered Property are laid out.

j. Guns. The use of firearms on any portion of the Encumbered Property is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, and small firearms of all types.

k. Fences. No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Under no circumstances shall any fence be placed, erected, allowed, or maintained upon any Lot closer to the street than the rear one-third (1/3) of the residence located on the Lot. Notwithstanding the foregoing, the Builder shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Builder as a model home. The Board shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

l. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Encumbered Property, except for temporary lines as required during construction, and lines installed by or at the request of the Builder.

m. Air Conditioning Units. No window air conditioning units may be installed.

n. Lighting. Except as may be permitted by the Architectural Review Committee, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one (1) decorative post light, (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; or (e) front house illumination of model homes.

o. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee.

p. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.

q. Swimming Pools and Hot Tubs. No swimming pool shall be constructed, erected, or maintained upon any Lot. Hot tubs and portable spas shall not be permitted without the prior written consent of the Architectural Review Committee and then only if enclosed by an approved fence.

r. Gardens and Play Equipment. No vegetable garden or play equipment (including, without limitation, basketball goals) shall be erected on any Lot without the prior written consent of the Architectural Review Committee, and any such items must be located between the rear dwelling line and the rear lot line. Without limiting the foregoing, basketball goals may be installed providing they are constructed of black poles, permanently mounted, not visible from the street, and the Architectural Review Committee approves the location, height, and type of goal and post.

s. Mailboxes. All mailboxes located on Lots shall be of a similar style approved by the Architectural Review Committee. Replacement mailboxes may be installed after the type has been approved in writing by the Architectural Review Committee.

t. Exteriors. Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee.

u. Exterior Security Devices. No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs less than 6" by 6" placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

v. Entry Features. Owners shall not alter, remove, or add improvements to any entry features constructed by the Builder on any Lot, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee.

w. Storage Sheds and Garages. Construction, installation, or placement of a storage shed, tree house, play house, detached garage, or a building separate from the main house on the Lot is not permitted without the prior written consent of the Architectural Review Committee, in its sole discretion. All plans (which must include the length, width, height, materials, colors, and location) must be submitted to the Architectural Review Committee for written approval prior to obtaining building permits or starting construction. The structure must be constructed, installed, or placed in a location inconspicuous as much as possible from public view. No two story structures of this nature are permitted on any Lot within the Encumbered Property. All materials used in the construction of such buildings must match the main dwelling located on the Lot.

x. Miscellaneous. Notwithstanding anything contained in the Master Declaration to the contrary, there shall be no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls, or any other structure or thing shall be permitted which, in the sole discretion of the Board or its designee, tend to detract from the appearance of the Encumbered Property.

ARTICLE III  
Miscellaneous Covenants

3.1. Property Subject to this Supplemental Declaration.

The provisions of Article II of the Master Declaration relating to the addition of real property shall apply to this Supplemental Declaration. Only the Encumbered Property is hereby made subject to this Supplemental Declaration; provided, however, Developer shall have the right to subject additional real property to the covenants set forth herein, as provided in Article II of the Master Declaration. The written consent of the owner of such additional property shall be required, if other than Developer.

3.2. Specific Assessment.

The Board shall have the power to specifically assess pursuant to this Section as it shall deem appropriate, in its sole discretion. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future. The Board may also specifically assess Owners of Lots within the Encumbered Property for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association):

- a. Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and
- b. Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

3.3. Alley Assessments

Pursuant to Section 3.6 of the Master Declaration, all Owners of Lots which are served by Alleys or alleyways are required to pay an Alley Assessment. The purpose of said Assessment is to provide for the maintenance, repair, or improvement of the Alleys depicted on the recorded Map(s). Those lots which adjoin an Alley, as shown on that map of Tanners Creek, Phase 3, Map 1, recorded in Map Book 34, page 611, Mecklenburg County Registry, and are obligated to pay the Alley Assessment.

3.4. Amendment.

The provisions of Section 8.3 of the Master Declaration relating to amendments to Supplemental Declarations shall apply to this Supplemental Declaration and are specifically incorporated by this reference, except that to the extent that the Master Declaration requires approval of a specified percentage of Owners to amend that instrument, such provision shall be read to require only the approval of the specified percentage of Owners of Lots within the



Encumbered Property to amend this Supplemental Declaration. In addition to the amendment procedures set forth in Section 8.3 of the Master Declaration, amendments to this Supplemental Declaration must be consented to by the Builder in writing, so long as the Builder owns any Lots within the Encumbered Property for construction or sale.

3.5. Enforcement.

Section 6.21 and Section 8.5 of the Master Declaration relating to the compliance and enforcement of the provisions of the Master Declaration shall apply to this Supplemental Declaration and are specifically incorporated by this reference.

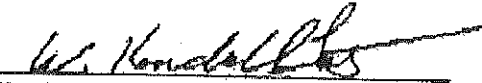
3.6. North Carolina Planned Community Act.

This Supplemental Declaration shall be construed in a manner that is consistent with and not contrary to the "North Carolina Planned Community Act," Chapter 47F of the North Carolina General Statutes, which shall take precedence and be controlling over the content of this Supplemental Declaration.

IN WITNESS WHEREOF, the Developer and D.R. Horton, Inc., have executed this Supplemental Declaration on the date and year first written above.

**DEVELOPER: NIBLOCK-RIDGELINE, LLC,**  
a North Carolina limited liability corporation

By: Ridgeline Development Corp.,  
a North Carolina Corporation  
Member-Manager

By:   
W. Kendall Foster, President

By: Niblock Development Corp.,  
a North Carolina Corporation  
Member-Manager

By:   
William T. Niblock, Vice Pres.

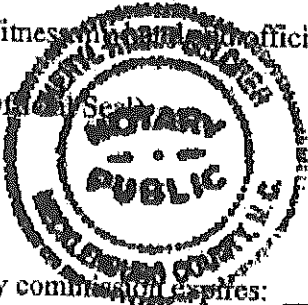
STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Cheryl Robin Belcher notary public of the County and State aforesaid, certify that W. Kendall Foster personally came before me this day and acknowledged that he is President of Ridgeline Development Corporation, a North Carolina Corporation, Member-Manager of Niblock-Ridgeline LLC, a North Carolina Limited Liability Company, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this 25th day of September, 2001.

(Official Seal)



Cheryl Robin Belcher  
Notary Public

My commission expires: 09/17/04

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

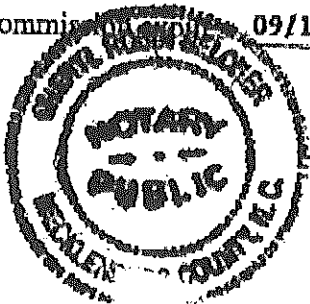
I, Cheryl Robin Belcher a notary public of the County and State aforesaid, certify that William T. Niblock personally came before me this day and acknowledged that ~~(s)he~~ is Vice President of Niblock Development Corporation, a North Carolina Corporation, Member-Manager of Niblock-Ridgeline LLC, a North Carolina Limited Liability Company, and that ~~(s)he~~, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this 25th day of September, 2001.

(Official Seal)

Cheryl Robin Belcher  
Notary Public

My commission expires: 09/17/04



OWNER:

D.R. HORTON - TORREY, INC.,  
a Delaware corporation

By:

*Jack Ogden*  
\_\_\_\_\_  
Jack Ogden, Division President  
Vice

Signed, sealed, and delivered  
this 25 day of Sept,  
2001, in the presence of:

*Shelen B Jordan*  
\_\_\_\_\_  
Witness  
*[Signature]*  
\_\_\_\_\_  
Witness

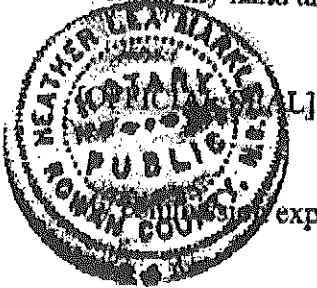


STATE OF NORTH CAROLINA

COUNTY OF Rowan

This 25<sup>th</sup> day of Sept, 2001, personally came before me, Heather Lea Markel  
Notary Public for the County and State, Jack Ogden, who being by me duly sworn, says that he is  
Vice Division President of D.R. Horton, Inc.-Torrey, a Delaware corporation, and that the seal affixed  
to the foregoing instrument in writing is the seal of said corporation, and that said writing was  
signed and sealed by him in behalf of said corporation by its authority duly given. And the said  
Jack Ogden acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official seal, this the 25<sup>th</sup> day of Sept, 2001.



Notary Public

*Heather Lea Markel*  
\_\_\_\_\_

My commission expires 10.13.2003.

6002/SuppDecl-Tanners

Creek-090601-wls

**EXHIBIT "A"**

**Encumbered Property**

ALL THAT TRACT OR PARCEL OF LAND, lying and being in the Town of Huntersville, Mecklenburg County, North Carolina on that certain Final Plat of Tanner's Creek - Phase 3, Map 1, prepared by ESP Associates, P.A., dated June 26, 2000, under the seal of David A Weirich, P.L.S. No. L-3846, and recorded January 23, 2001, in Map Book 34 at Page 611 in the Office of the Register of Deeds of Mecklenburg County, North Carolina.

Such plat has the metes and bounds set forth therein.