

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
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DRAWN BY AND MAIL TO:
Law Offices of Robert M. Critz, P.A.
P.O. Box 745
Concord, NC 28026-0745
19729-C
FILE TO: ROD Box 175

**SUPPLEMENTAL
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
TANNERS CREEK SUBDIVISION**

This Supplemental Declaration of Covenants, Conditions and Restrictions is made this 18th day of October, 2000, by Niblock-Ridgeline, LLC, a North Carolina Limited Liability Company, referred to in this instrument as "Developer or Declarant."

STATEMENT OF PURPOSE

Developer is the owner of that certain parcel of land located in Mecklenburg County, North Carolina, known as **TANNER'S CREEK, PHASE 1, MAP 1**, recorded in Map Book 33, Page 755, Mecklenburg County Registry hereto and incorporated herein by reference (the "Existing Property"). Developer desires to create on the property shown on said recorded Map a residential community of single-family townhome residences to be named **Tanner's Creek Townhomes** (the "Townhomes").

Developer will convey the Existing Property subject to certain protective covenants, conditions, restrictions, reservations and charges, as heretofore set forth in that certain Master Declaration of Covenants, Conditions and Restrictions for Tanners Creek Subdivision ("Master Declaration") recorded in Book 11696, Page 235, Mecklenburg County Registry, and as further set forth herein, and which shall run with the lots and be binding on all parties having any right, title, or interest therein, their heirs, successors, and assigns.

Developer desires to achieve the most appropriate development and improvement as to each Lot, to protect the Lot Owners against improper use of the property, to preserve insofar as practicable the natural beauty of each lot, to guard against the erection thereon of structures designed or proportioned or consisting of materials contrary to that required hereby, and to secure and maintain proper setbacks with certain free space between structures, and in general to provide for a high quality of improvements.

Developer further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created, in order to sufficiently preserve, protect and enhance the values and amenities in the Existing Property, to ensure the residents' enjoyment of the specific rights, privileges and

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easements in the Common Area, and to provide for the maintenance and upkeep of the Common Areas and amenities. To that end, the Developer has or will cause to be incorporated under North Carolina law, **Tanners Creek Townhomes Homeowners Association, Inc.**, as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions.

In consideration of the premises and for the purposes stated, Developer hereby declares that all of the real property as described on that map entitled **TANNER'S CREEK, PHASE 1, MAP 1**, recorded in Map Book 33, Page 755, Mecklenburg County Registry, shall be held, sold, and conveyed subject to that certain Master Declaration of Covenants, Conditions and Restrictions for Tanners Creek Subdivision recorded in Book 11696, Page 235, Mecklenburg County Registry, **and** subject further to the following easements, restrictions, covenants, and conditions which shall be construed as covenants running with the land and shall be binding upon all parties having any right, title or interest in the described real property or any part thereof, and to their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I: DEFINITIONS

The following words when used in this Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(1.1) "Additional Property" shall mean additional real estate other than the Existing Property which may be subject to the terms of this Supplemental Declaration in accordance with the provisions of Section 2.2 of this Supplemental Declaration.

(1.2) "Alleys" shall mean a type of Common Area in the nature of access and service rights of way running along the rear of certain Lots as designated on a duly recorded Map, which alleys shall be primarily (but not necessarily limited to) for access to the adjoining Lots served thereby; such alleys shall be maintained in the same manner as any Common Area. All alleys shall be open for general usage by the public, but shall not be accepted by the public for maintenance. Maintenance of alleys shall be the responsibility of the Townhomes Association.

(1.3) "Alley Assessments" shall mean the assessments established pursuant to paragraph 5.6 of this Supplemental Declaration.

(1.4) "Association" shall mean **Tanners Creek Homeowners Association, Inc.**, a nonprofit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.

(1.5) "Board of Directors" shall mean and refer to the Board of Directors of the Townhomes Association, which shall be elected and serve pursuant to the Bylaws.

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(1.6) "Builder(s)" shall mean and refer to any person or firm in the business of building and selling homes to individuals and selected by Developer to buy Lots and construct homes for sale in the Development, including, but not limited to NVR, Inc. d/b/a Ryan Homes, Inc., and Westminster Homes, Inc.

(1.7) "Bylaws" shall mean the Bylaws for the Townhomes Association.

~~(1.8)~~ "Common Area" shall mean all real property owned by the Townhomes Association in **TANNER'S CREEK, PHASE 1, MAP 1**, recorded in Map Book 33, Page 755, Mecklenburg County Registry, for the common use and enjoyment of members of the Townhomes Association lying within the boundaries of the Properties. Common Areas, with respect to the Properties subject to this Supplemental Declaration, shall be shown on the plats of *Tanners Creek* recorded in the Mecklenburg County Registry and designated thereon as "Common Area", "Common Open Space", or "Urban Open Space".

~~(1.9)~~ "Declarant" shall mean and refer to Niblock-Ridgeline, LLC and its successors and assigns.

(1.10) "Developer" shall mean and refer to Niblock-Ridgeline LLC and its successors and assigns.

(1.11) "Development" shall mean and refer to Tanners Creek Townhomes , a residential subdivision proposed to be developed on the Existing Property by Developer.

(1.12) "Existing Property" shall mean and refer to all that real property as described in that map entitled **TANNER'S CREEK, PHASE 1, MAP 1**, recorded in Map Book 33, Page 755, Mecklenburg County Registry.

(1.13) "FHA and VA" shall mean and refer to the Federal Housing Administration, U.S. Department of Housing and Urban Development, and the Veteran's Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to FHA or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

(1.14) "Limited Common Area" shall mean those lands owned by the Townhomes Association that serve only a limited number of Lots and which may include, but specifically are not limited to, driveways and walkways serving townhome sites, parking spaces, alleys, buildings other areas serving only specified Lots, and other such similar areas as may be designated by the Developer.

(1.15) "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines, to be used for residential purposes shown upon any recorded subdivision plat of the Properties subject to this Supplemental Declaration.

(1.16) "Map" shall mean and refer to the map or maps of the Existing Property which are to be recorded in the Mecklenburg County Public Registry, and the map(s) of any additions to the Existing Property which may be recorded hereafter by the Developer in the Mecklenburg County Public Registry.

(1.17) "Master Declaration" shall mean and refer to the Master Declaration of Covenants, Conditions, and Restrictions of **Tanners Creek**, as recorded in Book 14696, Page 235, as the same may be amended from time to time as herein provided.

(1.18) "Monthly Assessments" shall mean the assessments established pursuant to paragraphs 5.2 and 5.5 of this Supplemental Declaration.

(1.19) "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 Developer, which is a part of **Tanners Creek Townhomes**, but excluding those having such interest merely as security for the performance of an obligation.

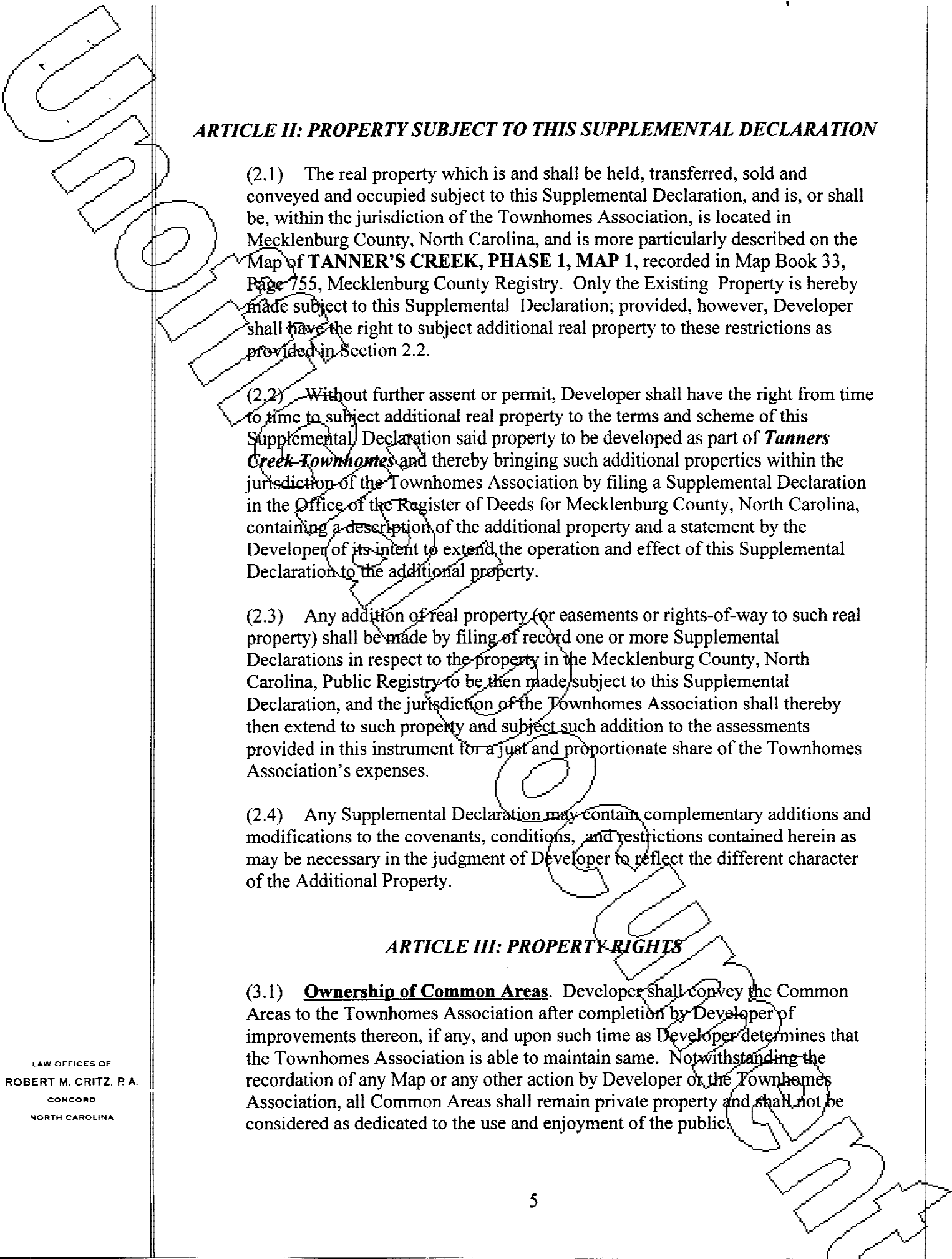
(1.20) "Person" shall mean a natural person, as well as a corporation, partnership, limited liability company, firm, association, trust or other legal entity. The use of the masculine pronoun shall include the neuter and feminine, and the use of the singular shall include the plural where the context so requires.

(1.21) "Property" or "Properties" shall mean the "Existing Property" described in Article II, Section 1 hereof, and such additions thereto as may from time to time be designated by Developer in accordance with Article II hereof, whether or not such additions are contiguous with or adjoining the boundary line of the Existing Property. "Property" or "properties" may sometimes be referred to herein as "**Tanners Creek Townhomes**".

(1.22) "Special Assessments" shall mean the assessments established pursuant to paragraph 5.7 of this Supplemental Declaration.

(1.23) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Conditions, and Restrictions which are specific to certain sections, phases, or Maps of **Tanners Creek** or **Tanners Creek Townhomes** as defined herein.

(1.24) "Townhomes Association" shall mean **Tanner's Creek Townhomes Homeowners Association, Inc.**, a nonprofit corporation organized and existing under the laws of the State of North Carolina and its successors and assigns.



ARTICLE II: PROPERTY SUBJECT TO THIS SUPPLEMENTAL DECLARATION

(2.1) The real property which is and shall be held, transferred, sold and conveyed and occupied subject to this Supplemental Declaration, and is, or shall be, within the jurisdiction of the Townhomes Association, is located in Mecklenburg County, North Carolina, and is more particularly described on the Map of **TANNER'S CREEK, PHASE 1, MAP 1**, recorded in Map Book 33, Page 755, Mecklenburg County Registry. Only the Existing Property is hereby made subject to this Supplemental Declaration; provided, however, Developer shall have the right to subject additional real property to these restrictions as provided in Section 2.2.

(2.2) Without further assent or permit, Developer shall have the right from time to time to subject additional real property to the terms and scheme of this Supplemental Declaration said property to be developed as part of **Tanners Creek Townhomes** and thereby bringing such additional properties within the jurisdiction of the Townhomes Association by filing a Supplemental Declaration in the Office of the Register of Deeds for Mecklenburg County, North Carolina, containing a description of the additional property and a statement by the Developer of its intent to extend the operation and effect of this Supplemental Declaration to the additional property.

(2.3) Any addition of real property (or easements or rights-of-way to such real property) shall be made by filing of record one or more Supplemental Declarations in respect to the property in the Mecklenburg County, North Carolina, Public Registry to be then made subject to this Supplemental Declaration, and the jurisdiction of the Townhomes Association shall thereby then extend to such property and subject such addition to the assessments provided in this instrument for a just and proportionate share of the Townhomes Association's expenses.

(2.4) Any Supplemental Declaration may contain complementary additions and modifications to the covenants, conditions, and restrictions contained herein as may be necessary in the judgment of Developer to reflect the different character of the Additional Property.

ARTICLE III: PROPERTY RIGHTS

(3.1) **Ownership of Common Areas.** Developer shall convey the Common Areas to the Townhomes Association after completion by Developer of improvements thereon, if any, and upon such time as Developer determines that the Townhomes Association is able to maintain same. Notwithstanding the recordation of any Map or any other action by Developer or the Townhomes Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public.

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(3.2) **Owner's Easements of Enjoyment.** Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the provision of this Supplemental Declaration. Each Owner's nonexclusive right and easement of enjoyment in and to the Common Area is subordinate to the right of the Townhomes Association to dedicate and convey Common Area pursuant to Sections (e) and (f) of this paragraph. Each Owner's easement of enjoyment includes, but is not limited to the following:

(a) The right of the Townhomes Association to promulgate and enforce reasonable regulations governing the use of the Common Area to insure the safety and rights of all Owners;

(b) The right of the Townhomes Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(c) The right of the Townhomes Association to limit the use of the Common Area to Owners, their families and guests;

(d) The right of the Townhomes Association to suspend the voting rights of an Owner for any period during which any assessment against his lot remains unpaid, or for any infraction of the Townhomes Association's published rules and regulations, if any;

(e) The right of the Townhomes 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 Townhomes Association members. No such dedication or transfer shall be effective after the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B membership unless the members entitled to at least two-thirds (2/3) of the vote appurtenant to Class A Lots and Class B Lots agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this paragraph shall not preclude the Board of Directors of the Townhomes Association from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership;

(f) The right of the Developer or the Townhomes Association to grant utility, drainage and other easements across the Common Areas;

(g) The Board of Directors of the Townhomes Association shall have the right to dedicate or transfer all or any part of the Common Area to third parties provided the Townhomes Association acquires in return other

property which will be thereafter held as Common Area of equal or greater value;

(h) The right of individual owners to the exclusive use of parking spaces as provided in this Article;

(i) The right of the Townhomes Association, in accordance with its Articles and Bylaws, 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 mortgagee in said Properties shall be subordinate to the rights of the Lot Owners hereunder;

(j) The right of the Townhomes Association to enter any lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Townhomes Association and the Owner of such Lot shall permit the Townhomes Association or its representative to enter for such purpose at reasonable times; and

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

(3.3) **Delegation and Use.** The right and easement of enjoyment granted to every Owner in Section 3.1 of this Article may be exercised by members of Owner's family and guests thereof. An Owner may delegate to his tenants his rights of enjoyment in and to the Common Area and such facilities thereon as may be provided, in accordance with the Townhomes Association's bylaws and rules and regulations, if any.

(3.4) **Parking Rights.** Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not more than two (2) automobile parking spaces, together with the right of ingress and egress in and upon said parking areas. The Townhomes Association may assign vehicle parking spaces for each dwelling. The two (2) automobile parking spaces for Lots having garages shall be the garage and the appurtenant driveway.

(3.5) **TV Antennas and Cablevision.** The Townhomes Association may provide one or more central television antennas for the convenience of the Members and may supply cable television service and the cost of these may be included in Monthly or Special Assessments.

ARTICLE IV: MEMBERSHIP & VOTING RIGHTS

(4.1) **Membership.** Every Owner of a Lot which is subject to assessment shall be a member of the Townhomes Association. Membership shall be appurtenant

to and may not be separated from ownership of any Lot which is subject to assessment.

(4.2) **Voting and Voting Rights.** The Townhomes Association shall have two classes of voting membership:

(a) **Class A.** Class A members shall be all Owners with the exception of Developer and Builder(s) and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest (other than a leasehold or security interest) in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) **Class B.** The Class B members shall be Developer and Builder(s). The Developer and Builder(s) 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 either of the following events, whichever occurs first:

(i) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided that the Class B Lots shall be reinstated with all rights, privileges and responsibilities, if after conversion of the Class B Lots to Class A Lots hereunder, additional land containing Lots is annexed to the existing property pursuant to Section 2.2 hereof; or

(ii) Seven (7) years from the date of this Supplemental Declaration; or

(iii) Notwithstanding Sections 4.2(a) and (b) hereof, so long as there shall be any Class B Lots in the Development and unless the Developer surrender the rights set forth in this paragraph (iii) by an express amendment to the Supplemental Declaration executed and recorded by Developer, (a) the Bylaws of the Townhomes Association may not be amended without the Developer's prior written consent, and (b) the Developer shall have the right to appoint or remove any Member(s) of the Board of Directors of the Townhomes Association or any officer(s) of the Townhomes Association; or

(iv) Other provisions applicable to the rights and obligations of the Members of the Townhomes Association are set forth in the Supplemental Declaration and in the Bylaws.

(4.3) **Board of Directors.** The Townhomes Association shall be governed by a Board of Directors (the "Board") in accordance with the Bylaws.

(4.4) **Suspension of Rights.** During any period in which a member shall be in default in the payment of any Alley, Monthly, Special or other periodic assessment levied by the Townhomes Association, the voting rights of such member may be suspended by the Board of Directors until such assessment is paid. In the event of violation by a member of any rules and regulations established by the Board of Directors, such member's voting rights may be suspended by the Board after a hearing. Such hearing shall be held by the Board or a Committee thereof after giving a member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of the violation shall be made by a majority vote of the Board or the committee thereof. During any period in which a member shall be in default in the payment of any Alley, Monthly, Special or other periodic assessment levied by the Townhomes Association or in violation of any rules or regulations established by the Board of Directors, such member shall be subject to a fine imposed by the Board of Directors which shall be the personal obligation of the person who is the Owner of such Lot at the time when the fine was levied.

The provisions as set forth in the preceding paragraph of this Section 4.4 are further subject to the provisions of N.C.G.S. Section 47F-3-107 and 47F-3-107.1.

(4.5) **Management Contracts.** The Townhomes Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Townhomes Association at a compensation level to be established by the Board of Directors and to perform all of the powers and duties of the Townhomes Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Townhomes Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee.

ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS

(5.1) **Purpose of Monthly Assessments.** The Monthly Assessments levied by the Townhomes Association may be used as follows:

- (a) To maintain all roads constructed within the Development to the standard of maintenance which would be required by the Town of Huntersville, the County of Mecklenburg, and/or N.C. Department of Transportation, and/or the appropriate governmental authority, before it will accept such roads for maintenance, and until such acceptance takes place;

- (b) To maintain all alleys or alleyways constructed within the Development to the standard of maintenance which would be required by the Town of Huntersville, the County of Mecklenburg, and/or N.C. Department of Transportation, and/or the appropriate governmental authority, for general usage by the public;
- (c) To maintain all lighting of Common Areas, alleys, and streets, with the exception of lighting provided by a governmental agency or body, if any;
- (d) To maintain any and/or all pathways in the Common Areas in an easily passable condition, free from fallen trees, undergrowth, and other obstructions; and to keep all dead, diseased or decaying trees, shrubs, and bushes removed from such areas and to replace such with new trees, shrubs and bushes;
- (e) To maintain any swimming pool(s) and club house(s) and related facilities located on or in the Recreation Lot or Common Areas in accordance with the highest standards for private swimming pools and related facilities;
- (f) To keep any parks and/or picnic areas in the Common Areas clean and free from debris and to maintain all picnic tables and other amenities in a clean and orderly condition, and to maintain the landscaping therein, including any necessary removal and replacement of landscaping;
- (g) To maintain all parking areas (for automobiles or otherwise) located in the Common Areas free from debris and in good repair;
- (h) To comply with all agreements with (whether of the Developer or the Townhomes Association), or statutes, ordinances, rules or regulations of, Town of Huntersville (or any agency thereof), Mecklenburg County (or any agency thereof) or the State of North Carolina (or any agency thereof), respecting the use of any Common Areas;
- (i) To provide such security as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals;
- (j) To maintain the entrance area to the Development in a clean and orderly condition and to maintain the landscaping thereon (including irrigation system, lighting, signage, groundcover, shrubs and flowers) to the standard established at completion of the entrance area;

- (k) To maintain all other landscaping in the Common Areas to the standard established at completion of such landscaping;
- (l) To pay all ad valorem taxes levied against the Common Areas and any property owned by the Townhomes Association;
- (m) To pay the premiums on all hazard insurance carried by the Townhomes Association on the Common Areas and/or the building improvements, and all public liability insurance carried by the Townhomes Association pursuant to the Bylaws;
- (n) To pay all legal, accounting and other professional fees incurred by the Townhomes Association in carrying out its duties as set forth herein or in the Bylaws;
- (o) To maintain a contingency reserve equal to five percent (5%) of the sum of the amounts described in preceding subsections of this Section 5.1 in order to fund unanticipated expenses of the Townhomes Association;
- (p) To maintain Best Management Practice ("BMP") for stormwater discharge as designated by duly recorded Map(s) and as required by statutes, ordinances, rules or regulations of Town of Huntersville (or any agency thereof), Mecklenburg County (or any agency thereof) or the State of North Carolina (or any agency thereof);
- (q) The provision of any service which is not readily available from any governmental authority related to the use, occupancy and enjoyment of the properties and which the Townhomes Association shall decide to provide. The purposes for which assessments may be levied shall include payment for utilities necessary to accomplish the foregoing purposes; and
- (r) To maintain the exterior of the residences situated on the Properties as hereinafter provided.

(5.2) **Budgeting and Allocating Common Expenses.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated expenses for the operation of the Townhomes Association and the operation and maintenance of the Common Areas for the coming year. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Monthly Assessments, authorized in Section 5.5, Special Assessments against the Lots, as authorized in Section 5.7., and Alley Assessments, as authorized in Section 5.6.

The Townhomes Association is hereby authorized to levy Monthly Assessments equally against all Lots subject to assessments to fund the Common Expenses. In determining the Monthly Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

The Developer may, but shall not be obligated to, reduce the Monthly Assessment and the Alley Assessment for any fiscal year by payment of a subsidy (in addition to any amount paid by Developer under Section 5.3), which may, in the Developer's discretion, either be a contribution, an advance against future assessments due from the Developer, or a loan. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate the Developer to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Townhomes Association and the Developer.

Pursuant to N.C.G.S. Section 47F-3-103(c) within 30 days after adoption of any proposed budget, the Board shall provide to each Owner a copy of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board shall set a date for a meeting of the Owners to consider ratification of the budget, such meeting to be held not less than 10 days nor more than 60 days after mailing of the budget and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified, unless at said meeting a majority of all Owners in the Townhomes Association or any larger vote specified in the Supplemental Declaration rejects the budget. If the proposed budget is disapproved or the board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Monthly Assessment and the Alley Assessment from time to time, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

(5.3) Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a Deed therefor, whether or not it shall be so expressed in said Deed, is deemed to covenant and agree to pay to the Townhomes Association:

- (a) Monthly Assessments ("Monthly Assessments") as established in Section 5.2 (and as authorized in Section 5.5) for the purposes specified in Section 5.1.

(b) Special Assessments ("Special Assessments") as may be established in Section 5.7 for the purposes specified in Section 5.1 as may be approved by the members, to be established, and collected as provided herein.

(c) Alley Assessments ("Alley Assessments") as may be established in Section 5.6 for the purposes specified in Section 5.6.

In order to secure payment of the Monthly, Special and Alley Assessments, any such assessment or charge remaining unpaid for a period of thirty (30) days or longer, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each such assessment or charge is made when a claim of lien is filed of record in the manner as described in N.C.G.S. Section 47F-3-116(a) and N.C.G.S. Section 47F-3-116 is otherwise incorporated fully herein by reference with regard to liens for assessments and as to the type of charges enforceable as assessments. Each such assessment or charge, together with interest, fines, late charges, costs of collection and reasonable attorneys' fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless expressly assumed by them. Such assumption shall not relieve an Owner of his obligations.

(5.4) **Exempt Property.** The assessments, charges and liens created under this Article shall not apply to the Common Area, nor shall they apply to any lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquired title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such property by such first mortgagee or such governmental agency the assessment shall again accrue on such lot. Any lot which Developer may hereinafter designate for common use as part of the Common Areas shall also be exempt by a local public authority, and all land granted to or used by a utility company shall be exempt from the assessments created herein.

(5.5) **Maximum Monthly Assessments.** For the calendar year beginning January 1, 2001 the maximum Monthly Assessment shall be \$75.00 for each Class A Lot in the Development and \$25.00 for each Class B Lot in the Development. Monthly Assessments may only be increased in accordance with the following:

(a) From and after January 1, 2001 the maximum Monthly Assessment for Class A and Class B Lots may be increased each year not more than ten percent (10%) above the maximum Monthly Assessment for the previous year without a vote of the membership.

(b) From and after January 1, 2001 the maximum Monthly Assessment for Class A and Class B Lots may be increased above ten percent (10%), and without limitation, if such increase is approved by Members entitled to no less than two-thirds (2/3) of all of the votes of Class A and Class B members combined. Such voting may be represented in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the Monthly Assessment at an amount not in excess of the maximum herein provided.

The Monthly Assessments shall be paid as provided in Section 5.9.

(5.6) Alley Assessments. Pursuant to N.C.G.S. Section 47F-3-115 which provides that "any common expense or portion thereof benefitting fewer than all of the lots shall be assessed exclusively against the lots benefitted", all Owners of Lots which are served by alleys or alleyways are required to pay an Alley Assessment in addition to the appropriate Monthly Assessment authorized above. The purpose of said Assessment is to provide for the maintenance, repair, or improvement of the Alleys depicted on the recorded Map(s). All lots shown on that map entitled **TANNER'S CREEK, PHASE 1, MAP 1**, recorded in Map Book 33, Page 755, Mecklenburg County Registry, adjoin an Alley and are obligated to pay the Alley Assessment. The Alley Assessment as provided herein this Section 5.6 is in lieu of, and not in addition to, that Alley Assessment as provided in Section 5.6 of the Master Declaration. For the calendar year beginning January 1, 2001 the maximum annual Alley Assessment shall be \$50.00 for each Class A Lot adjoining an Alley and \$16.50 for each Class B Lot adjoining an Alley. From and after January 1, 2001 the maximum Alley Assessment may be increased each year not more than ten percent (10%) above the maximum Alley Assessment for the previous year without a vote of the membership. The Alley Assessment shall be paid as provided in Section 5.9. The Alley Assessment shall be held in a reserve fund to be held in an interest bearing account to pay for any repairs, maintenance or improvement of the Alleys.

(5.7) Special Assessments. In addition to the Monthly Assessments authorized above, the Townhomes 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, and the roadways serving the Properties, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Class A and Class B members combined.

(5.8) Notice and Quorum for Any Action Authorized Under Sections 5.5, 5.6 and 5.7. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.5, 5.6 or 5.7 shall be sent to all Members not less

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NORTH CAROLINA

than thirty (30) days nor more than sixty (60) days in advance of the meeting. There shall be no requirement that a quorum be present at the meeting.

(5.9) Date of Commencement of Monthly Assessments and Alley Assessments; Due Dates; Certificate of Payment.

(a) Monthly Assessments. The Monthly Assessments shall commence as to all Lots on the first day of the month following the date such property is submitted to the provisions of this Supplemental Declaration. From the date on which the Monthly Assessments commence on a Lot until the date on which the Lot is sold by the Developer or Builder to the purchaser of a home, the Developer or Builder shall be liable for Monthly Assessments at a rate which is one-third (1/3) of the rate otherwise payable. The first Monthly Assessment shall be adjusted according to the number of days remaining in the calendar year when filed. The Monthly Assessment shall be payable Monthly on the first day of each month or on such other payment date as shall be established by the Board of Directors. The Board of Directors shall fix the amount of the Monthly Assessment against each Lot as provided in Section 5.2 and Section 5.5. Written notice of the Monthly Assessment shall be sent to every Owner.

(b) Alley Assessment. The Alley Assessment shall commence as to all Lots on the first day of the month following the date such property is submitted to the provisions of this Supplemental Declaration. From the date on which the Alley Assessment commences on a Lot until the date on which the Lot is sold by the Developer or Builder to the purchaser of a home, the Developer or Builder shall be liable for Alley Assessments at a rate which is one-third (1/3) of the rate otherwise payable. The first Alley Assessment shall be adjusted according to the number of days remaining in the calendar year when filed. The Alley Assessment shall be payable annually on the first day of each March or on such other payment date(s) as shall be established by the Board of Directors. The Board of Directors shall fix the amount of the Alley Assessment against applicable Lots as provided in Section 5.6. Written notice of the Alley Assessment shall be sent to every Owner.

(c) Certificate of Payment. The Townhomes Association shall, upon demand for a reasonable charge, furnish a certificate signed by an officer of the Townhomes Association setting forth whether the assessments on a specified Lot have been paid to date. A properly executed certificate of the Townhomes Association as to the status

of assessments on a Lot is binding upon the Townhomes Association as of the date of its issuance.

(5.10) Effect of Non-Payment of Assessment; Remedies of the Townhomes Association. Notwithstanding Section 5.9 hereof, the Developer may, at its election, postpone in whole or in part the date on which the assessment shall commence provided that the Developer maintains the Common Area and Alleys for which no assessment is being collected during the period of such postponement. Any assessment not paid within fifteen (15) days after the due date shall be assessed a late charge as determined by the Board of Directors and bear interest from the due date at an annual rate of twelve percent (12%) but in no event above the then maximum legal rate, and to the extent allowed by law. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors of the Townhomes Association to defray the costs arising because of late payment. The Townhomes Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorneys' fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area, abandonment of his Lot or for any other reason.

The provisions as set forth in the preceding paragraph of this Section Five are further subject to the provisions of N.C.G.S. Sections 47F-3-107 and 47F-3-107.1.

(5.11) Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot or any mortgage or deed of trust to the Developer. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or under a power of sale or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer; provided, however, that the Board of Directors may, in its sole discretion, determine such unpaid assessments to be and Alley, Monthly or Special Assessments, as applicable, collectable pro rata from all Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners notwithstanding the fact that such pro rata portions may cause the Monthly Assessment to be in excess of the maximum permitted in Section 5.5 of this Article and the Alley Assessment to be in excess of the maximum permitted in Section 5.6 of this Article. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

(5.12) Payment of Assessments Due to Tanners Creek Homeowners Association, Inc. Pursuant to Section 5.12 of the Master Declaration, any Annual Assessment, Special Assessment, Alley Assessment and/or any other applicable assessment due to the *Tanners Creek Homeowners Association, Inc.*, established pursuant to the Master Declaration and/or a Supplemental Declaration(s) thereto, may be remitted to the *Tanners Creek Townhomes Homeowners Association, Inc.*, if the Board of Directors of the *Tanners Creek Homeowners Association, Inc.* authorizes said collection of assessments by the *Tanners Creek Townhomes Homeowners Association, Inc.*

ARTICLE VI: EXTERIOR MAINTENANCE AND PARTY WALLS

(6.1) Exterior Maintenance. In addition to maintenance of the Common Area, the Townhomes Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: provide periodic pest control; termite control treatments; paint and/or stain the exterior of the townhouses; repair, replace and care for roofs, gutters, exterior building surfaces, trees and shrubs (excluding those planted by an Owner), grass, walks and driveways within the Lots, mailboxes, fences installed by Developer or the Townhomes Association, exterior post lights (excluding electricity therefor), and other exterior improvements. Such exterior maintenance shall not include the replacement or repair of window glass, hardware, exterior lighting on the Lots, maintenance or upkeep of rear yards within enclosed fenced areas maintained by the applicable Owner, nor the cleaning of patios, walkways, or stoops on the Lots. The Townhomes Association shall further not be required to carry out any maintenance which is specifically designated as the responsibility of the applicable Townhome Lot Owner pursuant to another provision of the Supplemental Declaration. In order to carry out the Townhomes Association's duties set forth herein, it is reserved to the Townhomes Association the right to unobstructed access on an upon each Lot and each Lot Owner at all reasonable times to perform maintenance as provided in this Article.

Further, the Owner of any Lot may, at his election, plant flowers in front and rear beds established by Developer in developing the Lot. Provided that such maintenance by the Owner does not hinder the Townhomes Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a Lot Owner shall reduce the assessment payable by him to the Townhomes Association. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Townhomes Association.

(As a matter of information to future Members of the Townhomes Association, the developers wish to make it known that due to differing amounts of exposure to the elements and other factors, some dwellings may require more maintenance than others and that it is in the best interest of the entire Townhomes Association that all units be properly maintained and that the Townhomes

Association shall be required to provide such maintenance provided for herein and make a uniform charge without regard to the actual cost of maintenance of each dwelling.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The determination of the need quality, extent and cost of maintenance and repair shall be made by the Board of Directors of the Townhomes Association, which determination shall be reasonable and made upon consistent nonarbitrary principles adopted by the Board of Directors. The Townhomes Association may, in the Board of Directors' discretion, delay commencement of the maintenance and repairs required by casualty, or willful or negligent acts, until the cost thereof is paid by the applicable Lot Owner(s) to the Townhomes Association.

The Townhomes Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Townhomes Association's hereunder.

(6.2) **Party Walls**

(a) **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence of willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces.

(b) **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.

(c) **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the 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 laws regarding liability for negligent or willful acts or omissions.

(d) **Weatherproofing.** Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall

to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) 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. If any Townhome Lot Owner desires to sell his Townhome, he may, in order to assure a prospective purchaser that no adjoining Townhome Lot Owner has a right of contribution as provided above, request that the adjoining Townhome Lot Owner provide a certification that no right of contribution exists. It shall be the duty of each adjoining Townhome Lot Owner to make such certification immediately upon request and without charge, provided, however, that where the adjoining Townhome Lot Owner claims a right of contribution, the certification may contain a recital of the amount claimed. In the event an adjoining Townhome Lot Owner refuses or neglects to provide such certification, it shall be deemed a waiver to proceed against such Townhome Lot Owner or his successor to contributions which may have accrued to that date.

ARTICLE VII: INSURANCE

(7.1) General Requirements. 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 Townhomes Association for the benefit of the Townhomes Association and all of the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of Owners. Owners may, at their Option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expenses and such other coverage as they may desire.

(b) Coverage. All buildings and improvements upon the land and all personal property of the Townhomes Association included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Townhomes 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;

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

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

(c) Liability. The Townhomes Association shall be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use to the development, covering each member of the Board of Directors, the Managing Agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance or repair of the Common Areas; provided, however, that in no event shall the amounts of such public liability insurance ever be less than a million dollars (\$1,000,000.00) per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the property or any portion thereof. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Owners as a single group to a single owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners, such public liability insurance shall be in amounts of not less than one million dollars per occurrence for claims for bodily injury and property damage. The Townhomes Association shall be required to obtain and maintain to the extent obtainable hazard insurance on the Common Areas.

The provisions as set forth in the preceding paragraph of this Section 7.1 are further subject to the provisions of N.C.G.S. Section 47F-3-113.

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

(e) Proceeds. All insurance policies purchased by the Townhomes Association shall be for the benefit of the Townhomes Association and the Owners and their mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Townhomes Association as insurance trustees under

this Declaration. The sole duty of the Townhomes Association as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

- (i) Proceeds on account of damage to Common Areas and facilities held for the Townhomes Association.
- (ii) Proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Townhomes Association.
- (iii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(7.2) **Distribution of Insurance Proceeds**. Proceeds of insurance received by the Townhomes 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 trustees shall be first paid or provisions made therefor.
- (b) **Reconstruction or Repair**. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

(7.3) **Fidelity Insurance or Bond**. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Townhomes Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Townhomes Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

ARTICLE VIII: ARCHITECTURAL CONTROL

(8.1) **Architectural Control Committee**. For purposes of this Article VIII, the Architectural Control Committee (the "Committee") is established pursuant to the provisions of Article 4.7 of the Master Declaration.

(8.2) **Definitions.** For purposes of this Supplemental Declaration, the following terms shall have the following meanings unless the context clearly requires a different meaning:

- (a) "accessory building" means every detached garage, carport, tool shed, storage or utility building, wellhouse, guest quarters, cabana or other similar building constructed on a Lot which is not a dwelling;
- (b) "buildings" mean accessory buildings and dwellings;
- (c) "dwelling" means a building constructed for single-family residential use but not excluding guest quarters or other similar quarters; and
- (d) "improvements" or "structures" mean buildings and all walls, fences, decks, patios, planters, terraces, swimming pools, tennis courts or anything else constructed or placed on a Lot.

(8.3) **General Guidelines.** Listed hereinafter are guidelines which are not intended to be absolute and complete guidelines, but address certain critical areas which will be carefully considered by the Committee in the approval or disapproval of an Owner's plans and specifications:

- (a) No structures (except fences or walls approved by the Committee) may be erected above grade except within those setbacks as more particularly reflected on the recorded Maps. For purposes of this covenant, eaves and stoops shall not be considered as a part of a building provided, however, this shall not be construed to be deemed to permit the encroachment of any improvement onto another Lot.
- (b) Any dwelling constructed on a Lot subject to the Restrictions shall contain not less than 1,000 square feet of heated floor area exclusive of porches, decks, patios, terraces, attached garages, and accessory buildings.
- (c) The Committee has the right to decide in its sole and absolute discretion the precise site and location of any structure placed upon any Lot; provided,

however, that the Owner shall be given the opportunity to recommend a specific site for such structure.

(d) Home design shall be traditional, or moderate transitional, with particular emphasis on adherence to the historic design detail of a particular style home.

(e) All structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot.

(f) All driveways, and turning, and parking, areas shall be asphalt or concrete surfaced, or shall be surfaced with such other materials as may be approved by the Committee; such surfacing must be completed prior to the occupancy of any dwelling on a Lot.

(g) The following types of fencing are permitted:

(i) brick walls with a cap that matches the exterior of the residential structure, and stuccoed block walls;

(ii) wooden fences with all pickets facing the outside boundary line(s) of the Lot (in other words, no framing or posts are to be visible from the perspective of any perimeter boundary line of the Lot);

(iii) wooden privacy fences employing one inch by six inch (1" x 6") pickets with "dog-eared" tops having an identical appearance from each side of said fence (in other words, pickets on both sides of the rails are to be installed in an alternating fashion);

(iv) vinyl fences;

(v) wrought iron fences; and

(vi) three (3) rail (diamond-cut rail, or split-rail) fences, with four inch by four inch (4" x 4") rails, which may also utilize two inch by two inch (2" x 2") galvanized, heavy gauge, welded wire fabric

screen secured to the inside of the rails to contain pets.

All wooden fencing must employ four inch by four inch (4" x 4") wooden posts which shall extend above the pickets and shall have a decorative, beveled saw-cut top. No chain link, concrete block, or exposed wire fences of any nature shall be allowed within the Development. No "dog runs", chain link animal enclosures, or animal enclosures of any nature shall be allowed within the Development. Other materials not specifically listed herein may be allowed with the approval of the Committee. Any fencing installed along a side street Lot line shall have a minimum of twelve feet (12') of landscaped area between such fencing and the street right-of-way. Fences shall not exceed a height of 60 inches, but must, in any event, be approved by the Committee. All Fences must be located to the rear of the front line of the residence located on a particular Lot. However, front yard and side yard accent fencing or walls not to exceed 36 inches in height may be allowed with the approval of the Committee. Fencing must be located 5 feet (5') from the rear property line for all lots which adjoin an Alley, as indicated herein Section 5.6 of this Supplemental Declaration.

- (h) Minimum landscaping for each structure shall include seeding of all lawn areas and/or maintained natural areas and appropriate foundation plantings.

(8.4) **Landscaping.** Each Owner shall have completed lawn seeding and foundation plantings in and around the structure within two (2) months of issuance of the Certificate of Occupancy by the applicable governmental authority; provided, however, the Committee may waive this requirement if delays have been caused by strikes, war, fire, acts of God, material shortages or other events which render the completion of the landscaping within such time impossible.

(8.5) **Approval of Changes in Structure.** After completion of approved construction and issuance of a Certificate of Occupancy by the applicable governmental authority, no material change shall be made to any structure on a Lot without the approval of the Committee. Prior to making any material changes to any structure on a Lot [such changes to include without limitation any addition to the existing structure, any construction or addition of an accessory building or

any change (including changes in color) in the exterior wall covering], the Owner shall submit to the Committee all plans and specifications covering such proposed change. The Committee shall have the absolute and exclusive right to refuse to approve the proposed plans and shall notify the Owner of its approval or disapproval within thirty (30) days of receipt of the plans from the Owner.

ARTICLE IX: USE RESTRICTIONS

(9.1) Use of Common Areas. No planting or gardening by individual Owners shall be done upon any Common Area. Except for the right of easement of enjoyment in and to the Common Areas herein given to each Owner, Owners are hereby prohibited and restricted from using any of the Common Area except as may be allowed and prescribed by the Townhomes Association's Board of Directors or as expressly provided for herein. It is Developer's intent that this paragraph inure to the mutual benefit of all owners within the properties, and each Owner shall have a nonexclusive easement right to use and enjoy the Common Areas which shall be appurtenant to and shall pass with the title to his Lot, subject to the following:

- (a) The right of the Townhomes Association to promulgate and enforce reasonable regulations governing the use of the Common Areas to ensure the availability of the right to use the Common Areas to the Owners and the safety of all Owners on the Common Areas;
- (b) The right of the Townhomes Association to suspend the voting rights of an Owner in the Townhomes Association and the right of the Townhomes Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- (c) The right of the Developer or the Townhomes Association to grant utility, drainage or other easements across the Common Areas; and
- (d) The right of the Developer or the Townhomes Association to permit use of any recreational facility situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Developer or the Townhomes Association.

(9.2) Land Use. All Lots shall be used for residential purposes only, and common recreational purposes auxiliary thereto, and for no other purpose. Only one family may occupy a Lot as a principal residence at any one time. Developer may maintain a sales office, models and a construction office on any Lot until all Lots have been sold.

(9.3) **Nuisance.** No noxious or offensive activity shall be carried on upon any Lot or the Common Area, nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Development, or unreasonably interferes with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his Lot which would result in the cancellation of insurance on any other residence or any part of the Common Area or which would be in violation of any law.

(9.4) **Pets.** No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets shall not exceed three (3) in number, except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance. **Animals specifically prohibited include livestock and bees.** If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Properties. The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Supplemental Declaration, including rules requiring that all animals be kept on a leash when in the Common Area and that animals be restricted to designated areas within the Common Area and that Owners are responsible for cleaning up any mess that a pet creates within the Common Area. The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Supplemental Declaration, except that such rule shall not apply to animals residing on the Properties at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in 9.3 above.

(9.5) **Temporary Structures.** Except as may be otherwise provided in this Supplemental Declaration, no building of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shack, tent, barn, detached garage, or any other building of a similar nature shall be used as a dwelling on any Lot, either temporarily or permanently.

(9.6) **Above Ground Pools.** No above ground pools shall be erected or installed on a Lot.

(9.7) **Access to Lots.** The Townhomes Association, its agents or employees, shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Area, or facilities situated upon such Lot which serve another Owner's Lot. The Townhomes Association or its agent shall

also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area or another Lot.

(9.8) **Clothes Drying.** No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot or in any other unenclosed area (including porches and patios) within the Properties.

(9.9) **Signs.** One sign of not more than five (5) square feet, advertising a Lot for sale or rent, may be placed by the Owner on his Lot in such manner that it will be visible from outside the Lot. The prohibitions herein shall not apply to Developer or Builder(s), or their agents, who may erect such signs as they deem desirable to promote the sale of Lots.

(9.10) **Plumbing; Central Water and Sewer.** All plumbing, dishwashers, toilets and sewage disposal systems shall be connected to a sewage system approved by the appropriate governmental authority. The applicable governmental authority must certify that such system may be used prior to the use and occupancy of any dwelling on the Lot.

(9.11) **Fuel Tanks and Garbage Containers.** No fuel storage tanks shall be allowed on any lot. All outdoor receptacles for ashes, trash, rubbish or garbage shall either be screened or placed in the rear yard so as not to be visible from any street.

(9.12) **Maintenance.** Except as may be maintained by the Townhomes Association pursuant to Article VI hereof, each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other causality. No clothesline may be erected or maintained on any Lot. Each Owner shall further maintain the yard and landscaping on his Lot in a clean and neat condition and shall keep his yard mowed and landscaping trimmed so as not to be unsightly. All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, undergrowth, dead, diseased or decaying trees, weeds, trash, rubbish and debris and shall keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean, neat, and orderly condition and in a good state of maintenance and repair.

(9.13) **Vehicles and Parking.** Each Owner shall provide space for parking (2) automobiles on his Lot prior to occupancy of any dwelling constructed on such Lot in accordance with Section 3.4 of this Supplemental Declaration and with reasonable standards established by the Architectural Control Committee. No commercial vehicles over one (1) ton capacity, boat, motor home, bus (including school bus), travel trailer or other recreational vehicle may be stored overnight on any Lot unless the same be within an enclosed garage or area not visible from the streets or from adjoining dwellings. This restriction shall not apply to sales trailers,

construction trailers, or other vehicles which may be used by Developer, and its agents and contractors, in the conduct of its business prior to completion of sales. No unlicensed vehicles may be kept, or stored, on a Lot.

(9.14) **Antennas.** No radio or television aerial or antenna, or T.V. satellite dish [except those which do not exceed 24 inches in diameter and are not located on the front or street facing elevation(s) of any dwelling], or any other external electronic equipment or devices, may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size and design has been approved by the Architectural Control Committee.

(9.15) **Exercise and Recreational Equipment.** All swing sets, treehouses, play houses, basketball goals and similar equipment must be located within building setback lines, and must otherwise meet with the approval of the Architectural Control Committee as to design, construction, materials, etc. Skateboard ramps are specifically not permitted.

(9.16) **Reconstruction.** Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building, with reasonable promptness; provided, however, that any such reconstruction must be commenced within six (6) months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within six (6) months of such destruction.

(9.17) **Subdivision.** No Lot shall be subdivided or its boundary lines changed without the written consent of the Developer, provided, however, that the Developer hereby expressly reserves to itself, its successors and assigns, the right to replat any two (2) or more Lots shown on the Maps of the Properties, and to otherwise change boundary lines as it may deem necessary.

(9.18) **Interval Ownership.** No Owner may deed, sell, convey, or otherwise transfer his Lot under any time-sharing or interval ownership arrangement.

(9.19) **Hazardous Activities.** Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance of the Common Area or any other Lot without the prior written consent of the Board of Directors of the Townhomes Association. No Owner shall permit anything to be done or kept in his Lot or in the Common Area which would result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law.

(9.20) **Regulations.** Reasonable regulations governing the use of the Common Area and external appearance of all structures erected on the Lots may be made and amended from time to time by the Board of Directors of the Townhomes Association; provided, however, that all such regulations and amendments thereto

shall be approved by a majority vote of the Members before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished to each Member by the Townhomes Association upon request.

(9.21) **Compliance.** In the event that the Owner of any Lot fails to comply with any of the restrictions set forth in this Article or such rules and regulations as may be subsequently promulgated by the Board of Directors, the Townhomes Association, or Developer, shall have the right (among other remedies which may be available), but not the obligation, to enter any Lot and undertake any necessary action in order to cure such Owner's default. All expense and cost incurred by the Developer or Townhomes Association in curing such default shall be charged to the defaulting Owner, shall be payable by such Owner to the Developer or Townhomes Association immediately upon demand and shall constitute a lien on the applicable Lot until paid.

(9.22) **Alleys.** All alleys designated on any recorded Map(s) as "Alley" shall be used primarily for access to the lots served thereby and for the installation and maintenance of certain dry utilities. All such alleys shall function as and be maintained in the same manner as Limited Common Area, whether or not such designation shall appear on the recorded Map(s). All alleys shall be open for general usage by the public, but shall not be accepted by the public for maintenance. Maintenance of alleys shall be the responsibility of the Townhomes Association. Developer and/or the Townhomes Association shall have the continuing right and easement to designate any such alley or alleys as having "one way" vehicular traffic.

ARTICLE X: EASEMENTS

(10.1) **General.** Developer reserves easements for the installation and maintenance of driveways, walkways, parking areas, water lines, telephone and electric power lines, gas lines, cable television lines, sanitary sewer and storm drainage facilities, pumping and lift stations, sill fences, drainage ditches and for other utility installations over the Properties as provided in Article III, Section 3.2(f) of this Supplemental Declaration. Each Owner, by his acceptance of a deed to a Lot, and the Townhomes Association by its acceptance of a deed to the Common Areas, acknowledges such reservation and the right to Developer to transfer such easements to the Townhomes Association or to such utility companies as Developer may choose. The easements reserved by Developer include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary to provide economical utility installation and to maintain the overall appearance of the Development.

Certain of the easements referred to herein and reserved by Developer may, but need not, be shown on the Maps. Developer further reserves the right to locate wells, pumping stations, lift stations and tanks within any Common Areas or any

residential Lot designated for such use on any Map or upon any Lot adjacent to such designated Lot with the permission of the Owner of such adjacent Lot.

Within any such easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition, Developer, and/or the Townhomes Association, shall have the continuing right and easement to maintain all water lines located on the Lots, including the right to go into dwellings and disturb the structure and floors thereof in order to maintain those lines located within or under said dwelling.

Each Lot now or hereafter subjected to this Supplemental Declaration shall be subject to all easements shown or set forth on the recorded plat or plats of survey upon which such Lot is shown. No structure of any type shall be erected or placed upon any part of a Lot or the Common Area which shall interfere with rights and use of any and all easements shown on said recorded plat.

(10.2) **Control of Signs.** Developer shall have the right to place permanent and temporary directional and advertising signs for **Tanners Creek** on the Common Area and unsold Lots and within street rights-of-way until one hundred percent (100%) of the Lots have been sold.

(10.3) **Emergency.** There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, policemen and security guards employed by Developer and all similar persons to enter upon the Properties or any portion thereof, in the performance of their respective duties.

(10.4) **Municipal Easement.** A general easement of access is granted to all utility providers, into, over and through each Lot for the purpose of maintaining, repairing and servicing the utility lines located on said Lot and for providing municipal services to which said Lot is entitled.

(10.5) **Alley Easements.** The Developer hereby grants and conveys to all Lot owners and the Townhomes Association, its successors and assigns, a permanent nonexclusive easement and right-of-way over the alleys which are located along the rear of certain Lots as designated on a duly recorded Map(s). Said alleys shall be primarily (but not necessarily limited to) for access to the adjoining Lots served thereby; such alleys shall be maintained in the same manner as any Common Area. All alleys shall be open for general usage by the public, but shall not be accepted by the public for maintenance. Maintenance of alleys shall be the responsibility of the Townhomes Association. Developer and/or the Townhomes Association shall have the continuing right and easement to designate any such alley or alleys as having "one way" vehicular access.

(10.6) **Encroachments.** Each Owner of a Lot with an exterior wall, roof or eave, including overhangs, a fence, concrete walk or concrete patio which encroaches on the Common Area owned by the Townhomes Association and/or the unimproved portion of a Lot of another Lot Owner shall have an easement over that part of the Common Area or adjacent Lot affected by the encroaching wall, roof, eave, fence, walk or patio for the purpose of using said portion of the Common Area adjacent Lot for his own benefit and for the purpose of maintaining the encroaching structure in good condition and repair. In the event of a wall, roof, eave and/or fence encroachment, it shall be the responsibility of the Owner thereof to maintain the encroaching wall, roof, eave and/or fence in good condition and repair unless said responsibility is that of the Townhomes Association provided in this Supplemental Declaration. Notwithstanding anything above to the contrary this provision does not authorize any encroachments except those which exist by virtue of original construction by the Developer or with the Developer's express written approval.

ARTICLE XI: GENERAL PROVISIONS

(11.1) **Covenants Running with the Land.** All provisions of this Supplemental Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein, and every Owner or any other person or legal entity claiming an interest in any lot, and his heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of this Supplemental Declaration.

(11.2) **Duration.** The covenants, conditions and restrictions of this Supplemental Declaration shall be binding for a term of twenty (20) years from the date this Supplemental Declaration is recorded, after which time they shall be automatically extended for successive and additional periods of ten (10) years each.

(11.3) **Amendment.** This Supplemental Declaration and any subsequent Supplemental Declaration may be amended or terminated during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Owners, and thereafter may be amended or terminated by an instrument signed by not less than seventy-five percent (75%) of the Owners subject to the following conditions:

- (a) All additions or amendments must be consented to by Developer in writing so long as Developer is the owner of any lot in the development;
- (b) Notwithstanding anything in this Section 11.3 to the contrary, Developer may, at Developer's option, amend this Supplemental Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Supplemental

Declaration to comply with the requirements of the FHA, VA, the Federal National Mortgage Association or other similar agency;

(c) No Amendment shall become effective until the instrument evidencing such change has been filed of record in the Mecklenburg County Public Registry.

(11.4) **FHA/VA Approval.** In the event the Developer, its successors or assigns, has arranged for and provided purchaser of Lots with FHA insured or VA mortgage loans, then as long as any Class B lot exists, as provided in Article I hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties (other than as provided in Article II of this Supplemental Declaration of Covenants, Conditions and Restrictions), deeding, mortgaging or dedication of Common Area to persons other than the Townhomes Association or amendment of this Supplemental Declaration.

(11.5) **Enforcement.** If any Owner shall violate or attempt to violate any of these restrictions, failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Townhomes Association, or, in proper case, by an aggrieved owner. Any failure by Townhomes Association or any other Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. Invalidity of any covenant, condition or restriction or other provision of this Supplemental Declaration shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

(11.6) **Headings.** Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

(11.7) **Unintentional Violation of Restrictions.** In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, the Developer or its successors reserves the right (by and with the mutual written consent of the then Owner or Owners of such Lot) to change, amend or release any of the foregoing restrictions as the same may apply to that particular Lot.

(11.8) **Severability.** The provisions of this Supplemental Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder hereof.

(11.9) **Joinder of Development Lender.** Southland Associates, Inc., Trustee, and Central Carolina Bank and Trust Company, owner and holder, join in the execution of these Restrictive Covenants solely for the purpose of subordinating

the lien of the following recorded deed of trust to these Restrictive Covenants: Deed of Trust from Niblock-Ridgeline, LLC, a North Carolina limited liability company to Southland Associates, Inc., Trustee for Central Carolina Bank and Trust Company dated July 28, 1999 and recorded in Book 10649 at Page 214, in the Mecklenburg Public Registry in the original principal amount of \$6,200,000.

(11.10) **Joinder of Westminster Homes, Inc.** Westminster Homes, Inc., as owner of that tract of property recorded in Book 11621, Page 28, Mecklenburg County Registry, joins in the execution of these Restrictive Covenants for the purpose of consenting hereto and submitting to the provisions, regulations, and general content hereof.

(11.11) **North Carolina Planned Community Act.** The provisions contained hereinbefore this Supplemental Declaration notwithstanding, nothing herein contained shall be construed so as to be in conflict with, or contrary to, those provisions of Chapter 47F of the North Carolina General Statutes, entitled the "North Carolina Planned Community Act", which are to take precedence, or be controlling, over the content of a Supplemental Declaration (as defined therein).

IN WITNESS WHEREOF the undersigned has caused this Supplemental Declaration to be executed effective the day and year first above written.

NIBLOCK-RIDGELINE, LLC,
a North Carolina Limited Liability Company

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

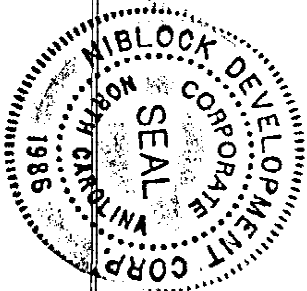
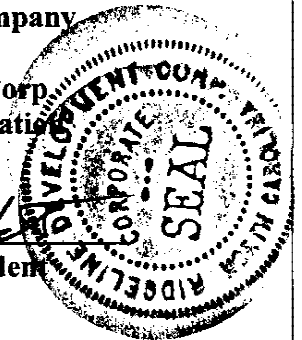
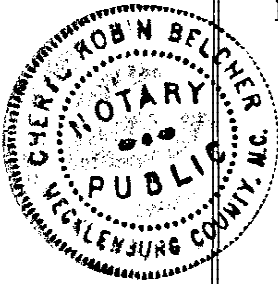
By: W. Kendall Foster
W. Kendall Foster, President

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

By: [Signature]
President

WESTMINSTER HOMES, INC.

By: Paul D. Carby
Vice President



LAW OFFICES OF
ROBERT M. CRITZ, P.A.
CONCORD
NORTH CAROLINA

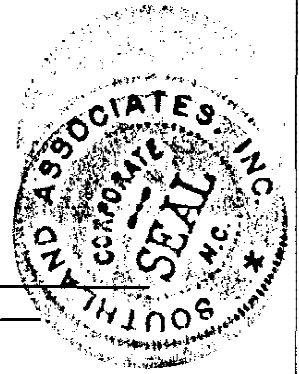
Unofficial Document

SOUTHLAND ASSOCIATES, INC.,
Trustee

By:

Chapman

Vice President

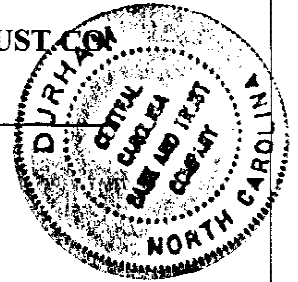


CENTRAL CAROLINA BANK and TRUST CO.

By:

[Signature]

Vice President

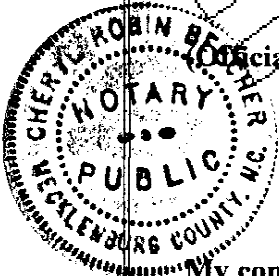


NORTH CAROLINA

MECKLENBURG COUNTY

I, Cheryl Robin Belcher, a 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 19th day of October, 2000.



Cheryl Robin Belcher
Notary Public

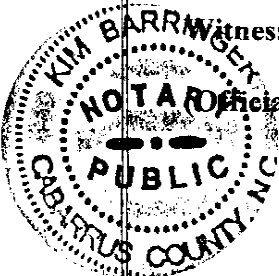
My commission expires: 09/17/04

NORTH CAROLINA

COUNTY OF Cabarrus

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

Witness my hand and official seal, this 18th day of October, 2000.



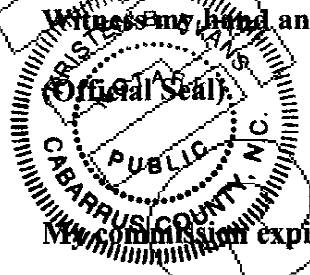
Kim Barringer
Notary Public

My commission expires: Feb. 03. 2004

LAW OFFICES OF
ROBERT M. CRITZ, P.A.
CONCORD
NORTH CAROLINA

NORTH CAROLINA
Cabarrus
MECKLENBURG COUNTY

I, *Kristen Evans*, a notary public of the County and State aforesaid, do hereby certify that *Chris D. Lewis*, personally appeared before me this day and stated that (s)he is *vice president* of Southland Associates, Inc., Trustee for Central Carolina Bank and Trust Co., and acknowledged, on behalf of Southland Associates, Inc., the due execution of the foregoing instrument. Witness my hand and official seal this the *30* day of *October*, 2000.

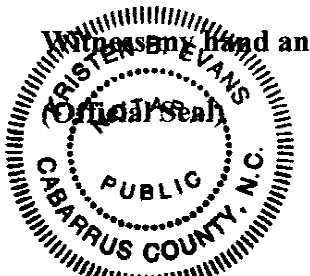


Kristen Evans
Notary Public

My commission expires: *07/31/01*

NORTH CAROLINA
COUNTY OF *Cabarrus*

I, *Kristen Evans*, a notary public of the County and State aforesaid, certify that *N.C. Edgeworth* personally came before me this day and acknowledged that (s)he is *Vice President* President of Central Carolina Bank and Trust Company, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its *Vice* President.



Witness my hand and official seal, this *30* day of *October*, 2000.

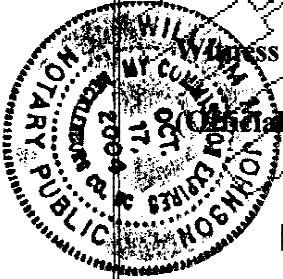
Kristen Evans
Notary Public

My commission expires: *07-31-01*

NORTH CAROLINA
COUNTY OF Mecklenburg

I, William M. Johnson, a notary public of the County and State aforesaid, certify that Paul D. Carty personally came before me this day and acknowledged that (s)he is Vice President of Westminster Homes, 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.

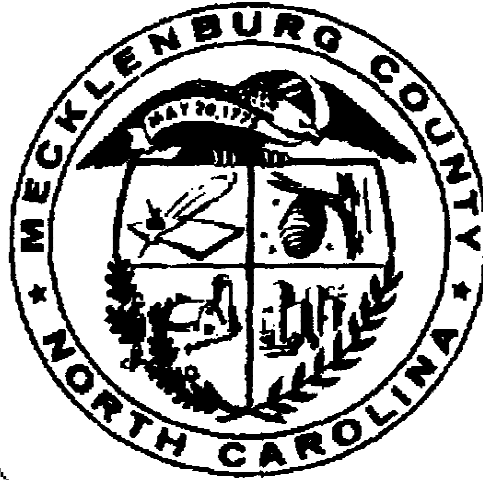
Witness my hand and official seal, this 25th day of October, 2000.



William M. Johnson
Notary Public

My commission expires: October 17, 2004

tantownhomerest.final



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG COUNTY
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE NC 28202

Filed For Registration: 11/03/2000 09:10 AM
Book: RE 11696 Page: 266-303
Document No.: 2000161665
RESTR 38 PGS \$80.00

Recorder: MAXINE HAITH

State of North Carolina, County of Mecklenburg

The foregoing certificate of CHERYL ROBIN BELCHER, KIM BARRINGER, KRISTEN B. EVANS, WILLIAM M. JOHNSON Notaries are certified to be correct. This 3 RD of November 2000

JUDITH A. GIBSON, REGISTER OF DEEDS By: _____
Deputy/Assistant Register of Deeds

Maxine A. Haith



2000161665

UNOFFICIAL COPY