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Drawn by, and after recording mail to:
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Attn: Julie C. Chiu

Filed for record
Date 9-29-98
Time 9:35 o'clock A M.
JUDY G. PRICE, Register of Deeds
Union County, Monroe North Carolina

STATE OF NORTH CAROLINA

UNION COUNTY

RECORDED AND VERIFIED M.A.M.

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE

This **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** is made as of the 18th day of July, 1997, by Rocky River of Monroe, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

060347

WITNESSETH:

WHEREAS, Declarant is the owner of that approximately 70.559 acre parcel of land located in the City of Monroe, Union County, North Carolina and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land");

WHEREAS, Declarant desires to create on the Land an exclusive residential community of single-family houses to be named "Colonial Village";

WHEREAS, Declarant desires to insure the attractiveness of the subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of all properties within the subdivision and to provide for the maintenance and upkeep of the Common Area, as hereinafter defined; and, to this end desires to subject the said real property to the covenants, conditions, restrictions, easements, charges, and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, by filing Articles of Incorporation on June 18, 1997 with the North Carolina Secretary of State, Declarant has incorporated under North Carolina law the "Homeowners Association For Colonial Village, Inc." as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions;

WHEREAS, Declarant has previously caused the Declaration of Covenants, Conditions and Restrictions for Colonial Village (the "Original Declaration") dated July 18, 1997 to be recorded July 21, 1997 in Book 991 at Page 404 of the Union County Public Registry (the "Registry"); and

WHEREAS, the Original Declaration did not include the legal description of the Land, and Declarant now wishes to make these Amended and Restated Declaration of Covenants, Conditions and Restrictions for Colonial Village to subject the property described in Article II below to the covenants, conditions, restrictions, easements, charges, and liens set forth herein.

NOW, THEREFORE, Declarant, by this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, does declare that all of the property described in Article II hereof is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Homeowners Association" shall mean and refer to the "Homeowners Association For Colonial Village, Inc.," a North Carolina nonprofit corporation, and its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot (as hereinafter defined) which is a part of the Properties, including contract sellers, but excluding Declarant and those having such interests merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the property described in Article II hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Homeowners Association.

Section 4. "Common Area" shall mean all real property owned by the Homeowners Association for the common use and enjoyment of the Owners. Common Area within the Properties shall be shown on the Plat(s) of Colonial Village recorded or to be recorded in the Registry and designated thereon as "Common Areas," but shall exclude all Lots and public streets dedicated and accepted in accordance with Article IV, Section 3.

Section 5. "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines, appearing on any recorded subdivision map of the Properties with the exception of the Common Area and public streets dedicated and accepted in accordance with Article IV, Section 3.

Section 6. "Declarant" shall mean and refer to Rocky River of Monroe, LLC, and, if and only to the extent that Rocky River of Monroe, LLC shall assign its rights as Declarant hereunder, shall also mean and refer to any person, firm, or corporation which shall hereafter become vested, at any given time, with title to two or more undeveloped Lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to Rocky River of Monroe, LLC shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and unconveyed), but no longer.

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

Section 8. "Permit" shall mean and refer to that certain Special Use Permit No. SUP-97-01 issued by the City of Monroe and recorded July 21, 1997 in Book 991 at Page 438 of the Registry.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE HOMEOWNERS ASSOCIATION

Section 1. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and shall be within the jurisdiction of the Homeowners Association is located in the City of Monroe, Union County, North Carolina, and is more particularly described and shown on (a) that plat entitled "Final Record Plat of Colonial Village Ph. 1 Sec. 1" drawn by Derick L. Miles (NCRLS #3380) dated September 7, 1997 (last revised October 16, 1997) and recorded October 23, 1997 in Plat Cabinet E, File 857 and (b) that plat entitled "Final Record Plat of Colonial Village Ph. 1 Sec. 2" drawn by Derick L. Miles (NCRLS #3380) dated March 12, 1998 (last revised April 8, 1998) and recorded April 8, 1998 in Plat Cabinet F File 58, both in the Registry (collectively, the "Map"). Such property is subject to the conditions and requirements set forth in the Permit.

Section 2. Additions to Existing Property. Additional land may be brought within the scheme of and made subject to this Declaration and the Homeowners Association in the following manner:

(a) All or part of the land either (i) located within the area described in the metes and bounds description of the Land and attached hereto as Exhibit A, owned by Declarant and incorporated herein by reference (except for the portion shown in the Map) or (ii) adjacent to the property described in that Exhibit A and subsequently acquired by Declarant may be added to the Properties by Declarant, in future stages of development, without the consent of any Owner or Owners, provided that said additions must occur within six (6) years after the date of this instrument; and provided further that so long as Class B Lots remain, annexation of additional properties shall require the determination by HUD/VA that such annexation is in accord with the general plan for Colonial Village previously approved by HUD/VA. Declarant, in its sole discretion, may remove all or part of the property from the description, attached hereto as Exhibit A, at any time prior to its addition to the Properties by filing a written declaration of removal in the Registry.

(b) The additions authorized under subsection (a) above shall be made by the recordation of Supplemental Declarations of Covenants, Conditions, and Restrictions which shall be signed by the Declarant, shall specify the land to be added to the Properties and shall evidence HUD/VA approval, if necessary. From and after the recordation of each Supplemental Declaration, the additional land specified therein shall be fully subject to (i) this Declaration and to the benefits, agreements, restrictions and obligations set forth herein and (ii) the conditions and requirements set forth in the Permit, in each case as if it had been a part of the Properties at the time this Declaration was recorded.

Section 3. Monroe Zoning Code. The provisions of The City of Monroe's zoning code and any amendments thereto and the conditions and requirements set forth in the Permit shall at all times be paramount to the restrictions set forth in this Declaration and in the event of a conflict, the former shall be controlling over the latter.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a Member of the Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Every owner of a Lot shall notify the Homeowners Association of the owner's acquisition of title to a Lot within fifteen (15) days after title is acquired.

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

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Each Class A Lot shall entitle the Owner(s) of said Lot to one vote. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any one Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as provided in (1) or (2) below. The Declarant shall be entitled to three votes for each Class B Lot owned by it. The Class B Lots shall cease to exist and shall be converted to Class A Lots on the first to occur of:

(1) When the total number of votes appurtenant to the Class A Lots is greater than or equal to the total number of votes appurtenant to the Class B Lots, or

(2) On June 15, 2004.

Section 3. Notwithstanding the provisions of Section 1 and Section 2 above, the total votes cast by any nonresident Owners, other than the Declarant, shall not exceed forty-nine percent (49%) of all votes cast on any matter for action by the Owners or the Homeowners Association.

ARTICLE IV
PROPERTY RIGHTS

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

(a) The right of the Homeowners Association to charge reasonable admission and other fees for the use of any recreation facilities situated upon the Common Area and

to limit the use of said facilities to Owners who occupy a residence on the Properties as their principal residence in the City of Monroe, Union County, North Carolina, and to their families, tenants, contract purchasers, and guests, as provided in Section 2 of this Article IV.

(b) The right of the Homeowners Association to suspend the voting rights and rights to the use of the recreational facilities of any 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 Homeowners Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that such dedication or transfer shall comply with the conditions and requirements of the Permit. No such dedication or transfer shall be effective unless (1) the Members entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and at least two-thirds (2/3) of the votes appurtenant to Class B Lots consent to such dedication or transfer and signify their consent and agreement in a signed and recorded written instrument; and (2) the dedication is approved by HUD/VA so long as Class B Lots remain. This subsection shall not preclude the Board of Directors of the Homeowners Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities, and drainage facilities upon, over, under, and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Properties or are necessary for the convenient use and enjoyment of the Properties; provided, however, that such easements shall comply with the conditions and requirements of the Permit.

(d) The right of the Homeowners Association, with the written assent of the Members entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and at least two-thirds (2/3) of the votes appurtenant to Class B Lots, and so long as any Class B Lots remain, with the written approval of HUD/VA, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owners' family who occupy the residence of the Owner within the Properties as their principal residence in the City of Monroe, Union County, North Carolina.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in the City of Monroe, Union County, North Carolina; provided that no such delegation shall relieve the Owner of his responsibilities and obligations under this Declaration and the Owner shall remain fully responsible for the acts or omissions of any tenant or contract purchaser.

(c) Guests. Recreational facilities situated upon the Properties may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Homeowners Association, as may be established by its Board of Directors, governing said use. Owners, tenants and contract purchasers shall be responsible for the conduct, acts and omissions of their guests.

Section 3. Ownership of Common Areas. Declarant shall convey the Common Areas to the Association free and clear of all liens and encumbrances. Notwithstanding the recordation of any map or any other action by Declarant or the Association, all Common Areas, including cul-de-saes and roads, if any, shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; provided, however, that the Declarant or the Association may offer such cul-de-saes and roads for dedication to the appropriate governmental authorities. For so long as Class B Lots remain, HUD/VA prior approval shall be required for any dedication of Common Area. If accepted for dedication by such government authorities, then the cul-de-saes or roads shall then be considered dedicated to the use and enjoyment of the public.

Section 4. Owners' Easements for Ingress and Egress. To the extent that cul-de-saes and roads have not been dedicated to the use and enjoyment of the public sufficient to provide access to a Lot, every Lot shall be conveyed with and each Owner is hereby granted a perpetual, nonexclusive easement over any cul-de-sac or roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot. Upon dedication and acceptance of such cul-de-saes and roadways, these easement rights shall terminate with respect thereto.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners Association: (1) annual assessments and (2) special assessments, such assessments to be established and collected as hereinafter provided. Any such assessment, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Homeowners Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Properties in connection with the use and enjoyment of the Common Area, including, but not limited to, the cost of maintenance, repair, replacement, or additions thereto, the cost of labor, equipment, materials, management, and supervision thereof, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws of the Homeowners Association, the employment of attorneys to represent the Homeowners Association, when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Sixty Dollars ($60.00) per Class A Lot and Fifteen Dollars ($15.00) per Class B Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment above established may be increased by the Board of Directors of the Homeowners Association, effective January 1 of each year, without a vote of the membership, but subject to the limitation that any such increase shall not exceed the percentage increase, if any, in the Consumer Price Index (published by the United States Department of Labor) U.S. city average, for all Cities over the immediately preceding twelve (12) month period which ended on the previous October 1. The base period for the Consumer Price Index is presently (1982 - 1984 = 100).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, said maximum annual assessments may be increased without limitation, if such increase is approved by two-thirds (2/3) of the votes of all Members present in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors of the Homeowners Association may permit the annual assessment to be paid in installments but the ratio of the assessment established for each Class A Lot to the assessment established for each Class B Lot shall always be four to one.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Homeowners Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, any operating cost deficit or other expense for which annual assessments receipts are insufficient or the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots within each class and shall be collected on a monthly basis.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting of the Homeowners Association called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called for the same purpose and subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting date.

Section 7. Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance to the Homeowners Association of the Common

Area. Notwithstanding the preceding sentence, Declarant may elect to postpone the commencement of the annual assessments as to all Lots; provided, that Declarant shall pay all annual assessments that would are due; and provided, further, that any such postponement will not extend beyond such time that at least two-thirds (2/3) of the Lots are Class A lots.

At least thirty (30) days before January 1 of each year, the Board of Directors of the Homeowners Association shall fix the amount of monthly assessments against each Lot for the next year and at least fifteen (15) days before January 1 shall send written notice of such fixed assessment to every Owner subject thereto. Failure of the Board of Directors or the Homeowners Association to fix the amount of annual assessment or to notify any Owners shall not relieve any Owner of the obligation to pay assessment when due. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Homeowners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessment; Remedies of the Homeowners Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the annual rate of eighteen percent (18%) or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is the lesser. 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 Homeowners Association to defray the costs of late payment. The Homeowners Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot by action or by power of sale to the extent permitted under North Carolina law, and interest, late payment fees, costs, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage, or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage or first deed of trust, pursuant to a foreclosure thereof, shall extinguish the lien of such assessments to the extent the assessments became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

No building, fence, wall, structure or other improvement shall be commenced or maintained upon the Properties, nor shall any exterior addition, change or alteration be made, including, without limitation, the erection of antennas, aerials or awnings or the placement of reflective or other material in windows until detailed plans and specifications showing the nature, kind, shape, heights, materials, colors, and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Homeowners Association, or by an architectural control committee composed of three (3) or more representatives appointed by that Board. The Board or architectural control committee shall review the plans and specifications to determine if the external design and location of the proposed improvement is in harmony with surrounding structures and topography. The Board may, but is not required, to adopt more specific guidelines for architectural review and may revoke or amend guidelines previously adopted at any time. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. No action or inaction by the Board of Directors or the architectural control committee with respect to a specific improvement, addition or alteration made or proposed shall operate as waiver or estoppel with respect to any later submission or proposal. The Homeowners Association shall have the right to charge a reasonable fee for receiving such application in an amount not to exceed fifty dollars ($50.00). Neither the Board of Directors nor the architectural control committee shall approve any alterations, decorations, or modifications which would jeopardize or impair the value or appearance of any Lot or the Common Area. Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant in accordance with its general plan of development.

ARTICLE VII
USE RESTRICTIONS

Section 1. Land Use. All Lots shall be known and described as residential lots. Lots are to be used exclusively for single-family residential purposes and are devoted exclusively to dwelling use. No structure shall be erected, altered, placed, or permitted to remain on any Lot other than a single-family dwelling, not to exceed two and one-half stories in height and a private garage for each unit for not more than three cars and other accessory structures customarily incidental to the above described use of the Lot.

Section 2. Building Lines. No building shall be located nearer to the front or side lines than the building setback lines shown on the recorded plat, if such lines are shown. In any event, no building shall be placed nearer to any front, side, or rear setback line as required by the City of Monroe's Zoning Ordinances. Unintentional violations not exceeding ten percent (10%) of the minimum building line requirements set forth shall not be considered a violation of this section. However, the previous sentence shall not be construed to permit any violations of any conditions or requirements of the Permit.

Section 3. Subdivision of Lots. No person or entity may subdivide or re-subdivide any Lot or Lots without the prior written consent of the Declarant.

Section 4. Size of Structure. No residential structure shall be erected or placed having a total finished heated area of less than one thousand three hundred heated square feet (1,300) in addition to a two-car garage of standard size. Such required garage may be used for any uses that are legal under the local laws and ordinances. Unintentional violations not exceeding ten percent (10%) of the minimum square footage requirements herein set forth shall not be considered a violation of this section. However, the previous sentence shall not be construed to permit any violations of any conditions or requirements of the Permit.

Section 5. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Homeowners Association, or its designated agent or representative. This Section shall not be applicable to temporary construction trailers, sales offices, and material storage facilities used during construction.

Section 6. Use of Common Area. The Common Area shall not be used in any manner except as shall be set forth in this Declaration or as shall be approved or specifically permitted by the Homeowners Association; provided, however, that all permitted uses shall be subject to the requirements of the Permit.

Section 7. 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 patios) within the Properties other than between the hours of 8:00 A.M. and 5:00 P.M. on Monday through Friday and 8:00 A.M. and 1:00 P.M. on Saturdays (except when any such day shall fall on a holiday) and clothes hanging devices such as lines, reels, poles, frames, etc. shall be stored out of sight other than during the times and days aforementioned.

Section 8. Regulations. Reasonable regulations governing the use of the Common Area may be made and amended from time to time by the Board of Directors of the Homeowners Association. All such regulations and amendments thereto shall be approved by a majority of the votes of Owners voting in person or by proxy at the annual meeting or a special meeting called for that purpose before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished to each Member by the Homeowners Association upon request.

Section 9. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereof which may be or become an annoyance or nuisance to the neighborhood.

Section 10. Residence. No trailer, basement, tent, shack, garage, barn, or other outbuilding erected on the Properties shall be at any time used as a dwelling or residence, temporarily or permanently, nor shall any structure of a temporary character be used as a dwelling or residence.

Section 11. Radio and Television Antennas. No free standing radio or television or electronic reception towers, antennas, dishes or disks shall be erected on any Lot. Only radio and television antennas not exceeding fifteen (15) feet in height above the roof line of the

residence and only dishes or disks not exceeding four (4) feet in diameter and not visible from any point on the street in front of the residence shall be permitted.

Section 12. Harmony of Structures. No structure shall be constructed or moved onto any Lot unless it shall conform to and be in harmony with existing structures on the Properties.

Section 13. Easements. A perpetual easement is reserved over the rear 10 feet of each Lot for utility installment and maintenance and/or as shown on recorded map. A perpetual easement is reserved over the side 5 feet and rear 10 feet of each Lot for public storm drain and/or as shown on recorded map.

Section 14. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot; one sign of not more than five square feet, advertising the property for sale or rent; or signs used by a builder to advertise the property during the construction and sales period.

Section 15. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

Section 16. Trash Disposal. All rubbish, trash, garbage, or waste of any kind shall be kept in sanitary containers and shall in no event be placed on Common Area. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 17. Fences. No chain link fence shall be erected on any Lot, and no fences shall be erected on any Lot closer to any street line than the building setback line shown on the recorded map (or in any case between the residential structure located on the Lot and the road right-of-way), nor shall any fence be erected except in accordance with the architectural control provisions of Article VI hereof. Provided, however, that notwithstanding anything contained in this Section or elsewhere to the contrary, Declarant may install decorative fencing on any Lot used by it containing a model home, and Declarant may install fences in the Common Area as Declarant deems to be necessary or appropriate.

Section 18. Sight Line Limitations. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 19. Parking of Vehicles. No truck over one ton, school bus, camper, trailer, boat or boat trailer, recreation vehicles, nor any other vehicle, craft or watercraft shall be parked in the street, in a driveway, in the front yard, in a side yard, or in the back yard of any Lot except as expressly permitted by the Board of Directors of the Homeowners Association, its architectural control committee or its designated subcommittee.

Section 20. Mailbox and Newspaper Box. No masonry mailbox supports shall be permitted. Declarant shall designate the type of mailbox and newspaper box that may be installed on the Properties, and no other type of mailbox or newspaper box may be installed on any Lot.

Section 21. Basketball Goal Support. No basketball goal supports shall be erected or placed within any street right of way.

Section 22. No Access from Rocky River Road. No driveway, accessway, curbcut or other vehicular access shall be permitted between any Lot abutting Rocky River Road and connecting directly to Rocky River Road and all such Lots shall have access to Rocky River Road only by streets within the Properties.

Section 23. Construction of Driveway. The driveway from the curb to the garage shall be constructed of concrete (in particular, no part of the driveway shall be constructed of asphalt or gravel), and shall provide for a pad for off-street parking of at least eighteen feet (18') by thirty feet (30').

Section 24. Other Requirements. In addition to any and all other applicable requirements, each house to be constructed on a Lot shall provide for the following:

A. The roof of each house shall have a minimum slope of 6/12;

B. The exterior materials shall be brick, vinyl siding, and/or stucco (including synthetic stucco-type products);

C. The foundation walls shall be a minimum of four (4) courses of standard brick above grade;

D. If the plans provide for wood-burning fireplaces with exposed chimneys, any and all such chimneys must be constructed of brick and/or stucco (including synthetic stucco-type products);

E. No concrete block or foundation of concrete shall be visible from the road right-of way;

F. With respect to all one-story houses, (1) the wall of the architectural front of each house shall not run unbroken (i.e. unarticulated) for a distance greater than twenty-four (24) lineal feet, and (2) all wall offsets shall be at least one (1) foot in depth; this requirement does not apply to traditional two-story house styles (including but not limited to Georgian, salt-box, and Connecticut river valley);

G. A minimum of twenty-five percent (25%) of the architectural front wall (excluding the foundation) of any house with vinyl siding shall have a brick or stucco finish (including synthetic stucco-type products); and

H. There shall be a planting strip of at least forty-eight inches (48") in width between the curb and the sidewalk.

ARTICLE VIII
EASEMENTS

Easements for the installation and maintenance of fences, driveways, walkways, parking areas, water lines, gas lines, telephone, cable TV, electric power lines, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat and as further described in Article VII, Section 13 of this instrument. Within any such easements above provided for, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of sewerage 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. Declarant, its successors and assigns, hereby reserves and shall have temporary easements for itself, its agent and employees over the Common Area to facilitate construction of living units and related improvements to be completed in developing the Properties.

ARTICLE IX
GENERAL PROVISIONS

Section 1. Enforcement. The Homeowners Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. In any such action, the court may award reasonable attorney's fees to the prevailing party. Failure by the Homeowners Association or any Owner to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.

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

Section 3. Effect of Restrictions and Amendment. The covenants and restrictions of this Declaration shall bind only to the land specifically herein described and shall run with and bind that land. This Declaration may be amended prior to July 17, 2001, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots and by the Declarant, so long as the Declarant still owns any Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. Any amendment must be properly recorded. For so long as Class B Lots remain, any amendment shall also require HUD/VA prior approval.

Section 4. HUD/VA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with HUD/VA insured mortgage loans, then so long as Declarant is vested with title to two or more undeveloped Lots subject to this Declaration of Covenants, Conditions and Restrictions, amendment of this Declaration of Covenants, Conditions and Restrictions will require HUD/VA prior approval.

IN WITNESS WHEREOF, the undersigned, Rocky River of Monroe, LLC, a North Carolina limited liability company, Declarant by virtue of the provisions of the preamble of the aforesaid Amended and Restated Declaration of Covenants, Conditions, and Restrictions, has caused this instrument to be duly executed under seal as of the day and year first above written.

ROCKY RIVER OF MONROE, LLC,
a North Carolina limited liability company

By: _____ (SEAL)
Jerry C. Rigsby, Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, David Bashford, a Notary Public for said County and State, do hereby certify that Jerry C. Rigsby, a manager of **ROCKY RIVER OF MONROE, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal, this the 25th day of September, 1998.

_____
Notary Public

My commission expires:

My Commission Expires August 24, 2003

[NOTARIAL SEAL]

NORTH CAROLINA - UNION COUNTY
The foregoing certificate(s) of
David A. Bashford
Notary Public
of Meck. Co., N.C. is/are certified
to be correct. Filed for record this 29 day
of Sept., 1998, at 7:35 A.M.

JUDY G. PRICE, REGISTER OF DEEDS
BY: Cindy B. Baldwin
Asst./Dept.

EXHIBIT A

COMPOSITE LEGAL DESCRIPTION
ROCKY RIVER ROAD / 70.559 ACRES

Being all that certain tract or parcel of land lying and being in the City of Monroe, Monroe Township, Union County, North Carolina, and being more particularly described as follows:

To find the point and place of **BEGINNING**, commence at a set nail in the centerline of Rocky River Road, said set nail being located N. 19-26-13 E. 3,222.01 feet from the intersection of the centerline of Rocky River Road and Gold Mine Road; thence, with and along the centerline of Rocky River Road N. 18-55-29 E. 35.61 feet to the point and place of **BEGINNING**; thence, from the point and place of BEGINNING, with and along the centerline of Rocky River Road, N. 18-55-29 E. 619.11 feet to a set nail in the centerline of Rocky River Road; thence, leaving the centerline of Rocky River Road, passing a found iron at 30.04 feet, with and along the southern boundary line of the property of David C. Hinson (now or formerly) as described in Deed Book 623, Page 305 in the Union County Public Registry, S. 67-57-45 E. 2,208.41 feet to a found old iron and stone, a common corner of the property of David C. Hinson, Pine Dell Subdivision as shown in Map Book 7, Page 58 in the Union County Public Registry and K.C. Long (now or formerly) as described in Deed Book 327, Page 663 in the Union County Public Registry; thence, with and along the western boundary line of the property of K.C. Long, S. 36-47-33 W. 2,353.63 feet to a found iron pipe; the northeastern corner of the property of Bessie S. Yow (now or formerly) as described in Deed Book 113, Page 373 in the Union County Public Registry; thence, with and along the northern boundary line of the property of Bessie S. Yow, N. 78-17-33 W. 407.99 feet to a found old iron in old road bed, the northwestern corner of the property of Bessie S. Yow and the northeastern corner of the property of Henry Bigham (now or formerly) as described in Deed Book 255, Page 208 in the Union County Public Registry; thence, with and along the northern boundary line of the property of Henry Bigham, N. 79-22-19 W. 256.23 feet to a large white oak, the southeastern corner of the property of Betty Lou S. Crook (now or formerly); thence, with and along the eastern boundary line of the property of Betty Lou S. Crook, N. 06-26-13 E. 731.65 feet to a found iron pipe, the northeastern corner of the property of Betty Lou S. Crook and the southeastern corner of the property of Dennis Ray Privette (now or formerly) as described in Deed Book 246, Page 387 in the Union County Public Registry; thence, with and along the eastern boundary line of the property of Dennis Ray Privette, N. 07-07-02 E. 548.78 feet to an old axle at wild cherry tree, the northeastern corner of the property of Dennis Ray Privette and the southwestern corner of the property of Bobby C. Surratt (now or formerly) as described in Deed Book 418, Page 303 in the Union

County Public Registry; thence, with and along the boundary line of the property of Bobby C. Surratt, the following two (2) courses and distances: (1) S. 80-41-59 E. 137.42 feet to a found iron; and (2) N. 06-31-23 E. 634.81 feet to a found iron, the northeastern corner of the property of Bobby C. Surratt and the southeastern corner of the property of Shirley Surratt (now or formerly) as described in Deed Book 119, Page 304 in the Union County Public Registry; thence, with and along the boundary line of the property of Shirley Surratt, the following four (4) courses and distances: (1) N. 00-59-34 E. 169.42 feet to a point; (2) N. 35-03-50 W. 104.21 feet to a point, (3) S. 85-06-16 W. 170.35 feet to a found iron; and (4) S. 14-59-24 E. 181.96 feet to a point; thence, N. 81-41-43 W. 368.91 feet to a point, the point and place of **BEGINNING** and containing 70.559 acres, more or less, all as shown on a "Boundary Survey of a 70.799 Acre Tract for Rocky River of Monroe, LLC", prepared by Derick L. Miles, N.C.R.L.S., dated October 21, 1996 and last revised June 12, 1997;

BK1473PG279 M.S.J.

Drawn by and after recording mail to:
Robinson, Bradshaw & Hinson, P.A.
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246
Attn: Julie C. Chiu

0034283

Filed for record
Date 12-8-2000
Time 4:58 o'clock P. M.
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

STATE OF NORTH CAROLINA

UNION COUNTY

SECOND SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE

THIS SECOND SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE (the "Supplemental Declaration") is made as of June 23, 1999 by Rocky River of Monroe, LLC, a North Carolina limited liability company ("Declarant").

RECITALS

A. Declarant has previously executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Colonial Village dated July 18, 1997 and recorded July 21, 1997 in Book 991 at Page 404, as amended and restated by that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions dated as of July 18, 1997 and recorded September 29, 1998 in Book 991 at Page 404, as amended by that certain First Supplemental Declaration of Covenants, Conditions and Restrictions for Colonial Village dated as of September 5, 2000 and recorded November 13, 2000 in Book 1464 at Page 719, each in the Union County Public Registry (the "Registry") (collectively, the "Original Declaration"), which imposed certain easements, conditions and restrictions on certain real property owned by Declarant.

B. Section 2 of Article II of the Original Declaration provides that additional land within the area described in a metes and bounds legal description attached as Exhibit A thereto may be brought within the scheme of and made subject to the Original Declaration by recording a Supplemental Declaration.

C. Declarant is executing this Supplemental Declaration to add all that land (the "Additional Property") located in Union County, North Carolina, and more particularly described on the map entitled "Final Record Plat of Colonial Village, Ph. II" (the "Map") dated June 1, 1999 and recorded June 23, 1999 in Plat Cabinet F at File 632 in the Registry, to the operation of the Original Declaration.

NOW, THEREFORE, in consideration of the premises and the purposes set forth therein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Declarant, for itself and its successors and assigns, hereby supplements the Original Declaration, as follows:

1. **Supplementary Declaration by Declarant**. Pursuant to the provisions of Section 2 of Article II of the Original Declaration, Declarant hereby declares that all of the Additional Property shall be held, sold and conveyed subject to the covenants, easements, conditions and restrictions contained in the Original Declaration.

2. **Additional Restrictions**. With respect to the Additional Property, the Original Declaration shall be modified as follows:

(a) The "Now, therefore" paragraph on page 2 is hereby amended and restated in full as follows: "**NOW, THEREFORE**, Declarant, by this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, does declare that the Additional Property is and shall be held, transferred, sold, conveyed, and occupied subject to the North Carolina Planned Community Act, N.C. Gen. Stat., Chapter 47E and to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof."

(b) Article V, Section 8 ("Effect of Nonpayment of Assessment: Remedies of the Homeowners Association") is hereby amended and restated in full as follows: "Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the annual rate of eighteen percent (18%) or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is the lesser. In addition to such interest charge, the delinquent Owner shall also pay such fees, charges, late charges and fines as may have been theretofore established by the Board of Directors of the Homeowners Association to defray the costs of late payment. The Homeowners Association may file a claim of lien and bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot by action or by power of sale pursuant to N.C.G.S. Section 47E-3-116 and any other applicable provisions under North Carolina law. Pursuant to N.C.G.S. Section 47E-3-116(a), any and all fees, charges, late charges, interest and fines, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such, and be enforceable as, assessment hereunder. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot."

3. **Ratification**. Except as expressly supplemented and amended by this Second Supplemental Declaration, the Original Declaration shall continue in full force and effect in accordance with its terms, and is hereby ratified by Declarant.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the undersigned has caused this Second Supplemental Declaration to be duly executed under seal as of the day and year first above written.

ROCKY RIVER OF MONROE, LLC,
a North Carolina limited liability company

By: _____ (SEAL)
Jerry C. Rigsby, Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Henry F. Wallace II, a Notary Public for said County and State, do hereby certify that Jerry C. Rigsby, a manager of **ROCKY RIVER OF MONROE, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal, this is the 30th day of November, 2000.

Henry F. Wallace II
Notary Public

My commission expires:

10/28/04

[NOTARIAL SEAL]

NORTH CAROLINA - UNION COUNTY
The foregoing certificate(s) of
Henry F. Wallace II
Notary Public
of ____ is/are certified
to be correct. Filed for record this 1st day
of Dec 2000 at 4:58 PM
JUDY G. PRICE, REGISTER OF DEEDS
BY: Deputy

RECORD and VERIFIED BCS

BK991PG420 MAIL TO: Jerry Rigsby 1220 S. Kings Dr Charlotte NC 28207

COLONIAL VILLAGE SUBDIVISION

LOT PURCHASE AND SALE AGREEMENT

Filed for record
Date 7.21.99
Time 9:00 o'clock A m
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina
By: Debra Cisco Deputy

THIS LOT PURCHASE AND SALE AGREEMENT ("Agreement") is made as of June _____, 1997 by and between **ROCKY RIVER OF MONROE, LLC**, a North Carolina limited liability company ("Seller"), and _____, a _____ ("Builder").

BACKGROUND STATEMENT

A. Seller plans to acquire that approximately seventy-one (71) acre parcel of land located on Rocky River Road in Monroe, Union County, North Carolina and more particularly described in Exhibit A attached hereto and incorporated herein (the "Land"). Upon such acquisition, Seller plans to develop on the Land a planned community to be known as "Colonial Village" (the "Development"). Seller anticipates that Phase I of the Development will be located on an approximately twenty-six (26) acre portion of the Land and will contain approximately sixty-seven (67) building lots.

B. Attached hereto as Exhibit B is an engineering plan/preliminary plat of Phase I of the Development (the "Engineering Plan"). After Seller has revised the Engineering Plan as Seller deems necessary or appropriate, the Engineering Plan will be recorded in the Union County Public Registry (the "Registry") and shall be the "Preliminary Plat," which shall be attached to this Agreement as Exhibit B to replace the current Engineering Plan. The Preliminary Plat, together with any and all amendments thereto, and any other plats of Phase I of the Development to be recorded in the Registry, are collectively referred to herein as the "Plat." Each building lot shown on the recorded Plat is referred to herein as a "Lot."

012876

C. Builder is engaged in the business of constructing residential dwellings for sale to others and desires to purchase from Seller, and Seller desires to sell to Builder, certain Lots within the Development for the purpose of constructing single-family residential dwellings for resale, all upon the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the sum of Five Thousand and No/100 Dollars ($5,000.00) (the "Deposit") paid by Builder upon execution of this Agreement to Seller in cash, the mutual covenants contained in this Agreement and other good and valuable considerations each to the other paid, the receipt and adequacy of which are acknowledged, Seller and Builder, intending to be legally bound, agree as follows:

1. Colonial Village Builder Program.

(a) Builder acknowledges that Seller has established a program by which builders are selected and become eligible to

construct homes in Phase I of the Development. That program consists of various procedures and requirements established by Seller as set forth in this Agreement (the "Builder Program"). Seller agrees to admit Builder to the Builder Program, making Builder eligible to purchase Lots in Phase I of the Development on the terms and conditions set forth below and to construct homes on such Lots for sale to others. Builder's continued eligibility for participation in the Builder Program shall be subject to Builder's full and complete compliance with the terms and conditions of this Agreement. Builder agrees that it shall hold, improve and sell all Lots in the Development purchased by Builder in full compliance with the terms and conditions of this Agreement.

(b) Builder acknowledges that Seller's obligations under this Agreement are subject to (i) the acquisition by Seller of the Land upon terms satisfactory to Seller in its sole discretion, including but not limited to the rezoning of the Land to a classification that will permit approximately two and eight/tenths (2.8) lots per acre, (ii) the closing by Seller of an acquisition and development loan acceptable to Seller in its sole discretion, and (iii) the approval of Builder by Seller's lender of such acquisition and development loan in the sole discretion of such lender. If any of these conditions is not satisfied on or before March 31, 1998, Seller shall promptly return the Deposit to Builder, and this Agreement shall be of no further effect. Builder further acknowledges that Seller's lender may at any time and from time to time obtain copies of Builder's credit report.

(c) Builder acknowledges that the property within the Development is subject to the conditions and requirements set forth in that certain Special Use Permit No. SUP-97-01 issued by the City of Monroe (the "Permit"), and Builder agrees to comply fully with those conditions and requirements. If Builder fails to comply fully with the conditions and requirements set forth in the Permit, the Deposit shall be forfeited to Seller (if the Deposit had not yet been applied), and, in addition to any other rights and remedies Seller may have for such default, Seller shall have the unilateral right to terminate Builder's rights under this Agreement effective immediately upon Seller's written notice of such termination to Builder. Builder hereby waives any claims against Seller in connection with such termination.

2. Planned Community and Association Membership.

(a) Builder acknowledges that the Development is a planned community to be created by recordation of the Declaration of Covenants, Conditions and Restrictions for Colonial Village (the "Declaration") in the Registry. The nature and extent of Builder's rights and obligations in acquiring and owning Lots will be controlled by and subject to: (i) the Declaration; (ii) the articles of incorporation, bylaws, and the rules and regulations of Colonial Village

Homeowners Association, Inc. (the "Association"); (iii) such design guidelines (the "Design Guidelines") as may be adopted from time to time by the Association, as each of the foregoing documents may be amended from time to time; and (iv) Builder's plans for construction of each residential dwelling to be approved by Seller. Builder agrees that it and its agents, employees and subcontractors will comply fully with and be bound by all of the terms and conditions and obligations set forth in this Agreement and each of the foregoing documents. Builder shall not impose any additional protective covenants, deed restrictions or similar restrictions on all or any part of property in the Development owned or purchased by Builder without Seller's prior written approval, which approval may be granted or withheld in Seller's sole discretion. Builder agrees to provide copies of the Declaration, bylaws and articles of incorporation of the Association to each purchaser of a home in the Development from Builder at or prior to closing of such purchase.

(b) Upon conveyance of title to any Lot to Builder, Builder shall automatically become a member of the Association and shall be subject to the assessment obligations and other provisions set forth in the Declaration. Builder agrees that the annual assessments (as defined in the Declaration), levied by the Association, if any, against each Lot purchased by Builder shall be prorated between Seller and Builder as of the date of closing on the purchase of such Lot by Builder from Seller. Any installments of annual assessments due after such date shall be paid directly to the Association by Builder or by Builder's successor in title in accordance with the terms and provisions of the Declaration.

3. Design Review Approval. In order to assure that homes constructed by Builder in the Development are compatible with other residential construction in the Development and meet certain design standards established by Seller, all construction in the Development and any modifications thereof shall be subject to the approval of the board of directors of the Association (or by Seller, prior to the formation of the Association) or by an architectural control committee appointed by that board, all in accordance with the Declaration. Prior to commencing any site work or other construction within the Development, Builder shall submit to Seller for submission to and review by the Association and approval by both Seller and the Association those documents required to be submitted pursuant to the Declaration.

4. Replatting, Resubdividing or Rezoning. Seller reserves the right to change the uses, density and zoning of the property in the Development without Builder's consent; provided, however, that Builder shall have the right to approve or disapprove any such changes to any Lot owned by Builder (or any subsequent owner). Seller also reserves the right at any time and from time to time to modify or amend the Plat and/or to replat and to record any replatting with appropriate authorities, all or any part of the Development; provided, however, that Seller shall not replat any

Lot owned by Builder (or any subsequent owner) without its prior written consent, which consent shall not be unreasonably withheld.

5. Signage Restrictions. Builder agrees that it shall not erect or permit to be erected on its behalf any sign in the Development except such signs as may be permitted by the Declaration.

6. Maintenance. In order to enhance marketing of homes, whether under construction or complete, Builder agrees to perform continuing interior and exterior maintenance and landscaping with respect to all lots and homes in the Development owned by Builder so long as such property is owned by Builder.

7. Trash Removal/Job Site Conditions. Builder agrees to maintain its job sites in a neat and orderly condition throughout construction and not to allow trash and debris from its activities to be carried by wind or otherwise scattered within the Development. Builder shall not store any construction materials on property within the Development except materials to be used in construction of homes, and then only on the Lot where the home is being constructed, and further subject to such conditions, rules and regulations as may be set forth in or pursuant to the Declaration. Builder agrees to keep all roadways, rights of way, easements and other property within the Development clear of construction materials, trash and mud from its activities at all times. Builder agrees that all trash and debris shall be contained in standard size dumpsters or other appropriate trash receptacles or removed from Builder's job sites each week.

Builder shall be entitled to maintain one (1) construction trailer within the Development, of a type and size approved by Seller and at such location as is specified by Seller. Any construction trailer shall be removed within ten (10) days after substantial completion of construction on all Lots purchased or under contract to be purchased by Builder. Builder acknowledges and agrees that Seller may require Builder to relocate such trailer to other reasonable locations specified by Seller within the Development upon thirty (30) days' prior written notice, and Builder agrees to comply with such notice.

8. Grading and Landscaping.

(a) Builder shall be responsible for providing all landscaping on each Lot acquired by Builder, which landscaping shall be in accordance with the Declaration and subject to the approval of Seller and the Association. Builder shall submit to Seller and the Association, and Seller and the Association shall have the right to approve or disapprove, the landscaping plans for each Lot prior to Builder's installing any landscaping on such Lot. In addition to complying with the terms and conditions of the Declaration, Builder agrees to plant two (2) red maple trees of at least one and one-half inch (1 1/2") caliper at a minimum of twelve inches (12") above the finish grade on each Lot at a location approximately

fifteen feet (15') from the curb or at such other location determined by Seller. Builder may submit typical landscaping plans to Seller for pre-approval and, upon approval by Seller, it shall only be necessary for Builder to submit individual landscaping plans on each Lot for approval in the event that the proposed plan for such Lot substantially deviates from the pre-approved plan.

(b) All landscaping for each home in the Development shall be completed by the earlier of: (i) thirty (30) days from the date on which the exterior of the home is completed, or (ii) the date on which a certificate of occupancy is issued for such home; provided, if due to seasonal conditions, landscaping cannot practically be completed by such date, Builder shall complete all landscaping as soon as weather conditions permit.

(c) Builder acknowledges that Seller has established a drainage plan as part of the sedimentation and erosion control plan approved by the City of Monroe for the Development and that Seller has established drainage patterns for each Lot. Builder agrees to conduct its grading and construction activities on each Lot purchased by Builder so as not to disturb such drainage patterns unless otherwise approved in writing by Seller, which approval may be granted or withheld in Seller's sole discretion.

9. Insurance. Prior to or upon closing of the purchase of any Lot by Builder, Builder shall obtain and shall maintain in force throughout the term of this Agreement and until all activities of Builder in the Development are completed and terminated, comprehensive public liability insurance, including coverage for contractual liability, products/completed operations liability, and explosion, collapse and underground damage liability, with a single combined limit of not less than One Million and No/100 Dollars ($1,000,000.00), covering all losses, damages and claims arising out of Builder's occupation, use of, activities on and ownership of property within the Development, including property damage, bodily injury and death. The policy shall name Builder as the insured party and Seller as an additional insured party, and shall provide at least thirty (30) days' notice to Seller prior to the termination, cancellation or reduction in coverage of such policy.

In addition, Builder shall obtain and maintain in force throughout the term of this Agreement and until all activities of Builder in the Development are completed and terminated: workers' compensation insurance, employer's liability insurance; automobile liability insurance covering all motor vehicles owned, hired or used in connection with Builder's construction activities in the Development; and builder's risk insurance covering Builder's activities in the Development, all in such amounts as are reasonably acceptable to Seller.

A certificate evidencing such insurance shall be provided to Seller at or prior to the closing of the purchase of any Lot by Builder, and such insurance shall be maintained in effect as provided above.

10. Subcontractors. Builder shall be responsible for ensuring compliance with the terms and conditions of this Agreement by its agents, subcontractors and employees, which for purposes of this Agreement shall include Builder's marketing and sales agents. In the event of violation of any of the terms or conditions of this Agreement by any agent, subcontractor or employee of Builder which is not cured within fifteen (15) days of receipt of notice of the violation by Builder, Seller shall have the option of either: (i) removing or curing the violation and charging Builder for any cost incurred and prohibiting any violating subcontractor from performing any further services for Builder in the Development, without liability to Builder or the violating subcontractor; or (ii) declaring Builder in default under this Agreement and proceeding in accordance with Seller's rights and remedies under this Agreement. Builder shall indemnify and hold Seller harmless against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees and court costs, that may be incurred or suffered by Seller as a result of its taking any action against Builder's agent, subcontractor and/or employee pursuant to this section.

11. Modification of Declaration. Builder acknowledges that all Lots shall be subject to the Declaration, and Builder agrees to cooperate with Seller in executing any documents necessary to amend the Declaration or any exhibits to the Declaration so long as such amendments do not materially and adversely affect any Lot owned by Builder. Builder hereby acknowledges and consents to all amendments to the Declaration or the bylaws of the Association which Seller may institute prior to recordation of such instruments in the Registry or closing on the purchase of any Lot from Seller, whichever is first to occur.

12. Repairs to Subdivision Improvements. Builder agrees to use its best efforts to avoid altering or causing damage to Seller's subdivision improvements (which may include, but are not limited to, paved streets, curbing and drainage, central water lines, central sewer lines, signage, landscaping, entrance features and irrigation systems) during Builder's construction of homes in the Development, and Builder hereby assumes full responsibility for the cost of any maintenance and repair of subdivision improvements which are necessitated by Builder's activities or the activities of its employees or subcontractors in the Development.

13. Other Builders. Builder hereby acknowledges that other builders are or may be carrying on construction and marketing activities within the Development. Builder agrees not to interfere with or hinder the construction, marketing and other activities of such other builders within the Development, and further agrees to cause its agents, subcontractors and employees not to interfere

with or hinder the construction, marketing and other activities of such other builders within the Development.

14. No Reliance. Builder acknowledges that any purchase of Lots from Seller shall be made by Builder without reliance on any representation of Seller, either oral or written, other than the representations specifically set forth in this Agreement, and Builder warrants and represents that its decision to purchase Lots in the Development shall be based solely on its own inspection of the Lots and the Development and its independent investigation and evaluation of the merit of purchasing such property. Builder shall assume full responsibility for ensuring compliance with federal and state wetlands regulations of any Lots purchased by Builder and for taking precautions during construction to avoid impacting adjacent wetlands, if any.

15. Statutory Compliance. Builder acknowledges that the property within the Development is not registered under the Interstate Land Sales Full Disclosure Act. Builder agrees not to take any action which would negate the availability of any exemption from such registration and to comply with federal and state law.

16. Agreement to Sell and Purchase.

(a) Seller shall sell and Builder shall purchase two (2) Lots, together with all rights, members and appurtenances thereto and all improvements and fixtures, if any, located thereon (the "Initial Lots").

(b) Subject to the terms and conditions set forth below, Seller shall sell and Builder shall purchase additional Lots, together with all rights, members and appurtenances thereto and all improvements and fixtures, if any, located thereon (the "Additional Lots"). Builder's selection of the Initial Lots and the Additional Lots shall be in accordance with such procedure as Seller may establish for Builder and the other builders participating in the Builder Program. If the Preliminary Plat has not been recorded at the time of the selection of the Initial Lots, Builder shall select Lots based on the Engineering Plan.

17. Closings/Take Down Schedule.

(a) Initial Closings. The date that Seller notifies Builder that the Plat for approximately twenty (20) Lots (the "Initial Plat") has been recorded in the Registry shall be the "Commencement Date." The closing of the purchase and sale of the two (2) Initial Lots (the "Initial Closing") shall be held within thirty (30) calendar days of the Commencement Date. At the time of the Initial Closing, (i) the roads shown on the Initial Plat shall have been graded, (ii) the construction of the sewer, water and storm drainage systems shall have been substantially completed, and (iii) the corners of each of the Lots shown on the Initial Plat shall be marked by iron pins. For the purpose of this Section 17(a), "substantially

completed" shall mean at least eighty-five percent (85%) completed as determined by Seller's engineer.

(b) Subsequent Closings.

(i) On or before December 31, 1997, Builder shall close on the purchase of not less than two (2) Additional Lots. Thereafter, beginning March 31, 1998, and by the last business day of each subsequent calendar quarter (that is, by the last business day before each subsequent June 30, September 30, December 31 and March 31), Builder shall close on the purchase of not less than four (4) Additional Lots. Each such closing is referred to as a "Subsequent Closing."

(ii) Notwithstanding subsection (i) above, if the Commencement Date has not occurred by September 30, 1997, then the date of each Subsequent Closing shall be extended by the same number of days by which the Commencement Date occurred after September 30, 1997.

(iii) At least seven (7) business days prior to the date for each Subsequent Closing, Builder shall designate in writing to Seller the Additional Lots which it desires to purchase at such Subsequent Closing. Such designation of Lots shall, in each case, be subject to the approval of Seller.

(iv) Builder may elect to close upon Additional Lots more frequently and/or in greater numbers than required in Section 17(b)(i) above. If Builder closes the purchase of Additional Lots in excess of those required for any period described in that Section 17(b)(i), such excess shall be credited against the purchase requirement for subsequent take down periods. If, however, after credit for any such additional purchases, Builder shall not have purchased the minimum Lot requirement for any period after the acquisition of the Initial Lots, then, in addition to any other rights and remedies Seller may have for such default, Seller shall have the unilateral right to terminate Builder's rights under this Agreement effective immediately upon Seller's written notice of such termination to Builder. Builder hereby waives any claims against Seller in connection with such termination.

(v) The date of the Initial Closing or any Subsequent Closing (each, a "Closing," and collectively, "Closings") shall be extended as necessary to cure defects in title or to cure other obligations of Seller as may be required by this Agreement; provided, however, that each Closing shall occur no later than thirty (30) days following the date originally scheduled. If the date originally scheduled for any Closing is so extended, then the time periods within which each Subsequent

Closing must occur shall be extended for the same period of time but there shall be no such extension of any Closing date for any delay in any Closing arising out of any act or omission of Builder.

(vi) Seller agrees to perform or cause to be performed at Seller's sole cost and expense, all work required so that as of the date of each Closing, each Lot to be purchased at such Closing will be a "Finished Lot." For the foregoing purposes, a Lot will be deemed to be a "Finished Lot" if the Lot:

(A) is shown on a duly recorded subdivision plat;

(B) is suitable for issuance of a single-family residential building permit under local ordinances and North Carolina statutes and regulations, with water and sewer lines extended to the Lot, or the completion bonded with the appropriate governmental authorities. Builder acknowledges that electricity, natural gas and telephone service are being installed by local utility companies and such installation may not be completed at the time of Closing. Builder agrees that such conditions shall not entitle Builder to delay any Closing nor shall they constitute a default by Seller. Seller agrees to diligently pursue completion of such improvements so as not to delay Builder's ability to obtain a certificate of occupancy;

(C) fronts on a street sufficient to provide access to the Lot;

(D) is substantially free of debris created by Seller's development activities; and

(E) is otherwise in compliance with the obligations of Seller set forth in this Agreement.

It is agreed that Seller's obligation to deliver Finished Lots at the time of each Closing and to meet its other obligations under this Agreement shall be conditioned upon the absence of events or circumstances which are beyond Seller's reasonable control. If, due to acts of God, weather conditions, governmental restrictions or delays, unavailability of required materials or other events or circumstances beyond Seller's reasonable control, the completion of necessary development work cannot be accomplished prior to the closing on any affected Lot, Seller shall not be in default but shall proceed to complete the work as soon as possible and the date by which any Subsequent Closing on any affected Lot must occur shall be extended for the period of such delay, Seller shall not be liable for

damages suffered by Builder on account of such delay and this Agreement shall continue in full force and effect.

(vii) Place of Closing. Each Closing shall occur in the offices of Builder's attorneys in Union County, or at such other place as Seller and Builder may agree.

18. Purchase Price and Method of Payment.

(a) Between the date of this Agreement and September 30, 1998, the purchase price for each Lot shall be Twenty One Thousand Five Hundred and No/100 Dollars ($21,500.00). During each calendar quarter thereafter, the purchase price for each Lot shall be increased by one and one-half percent (1.5%) from the price applicable to the immediately preceding quarter.

(b) Notwithstanding subsection (a) above, if the Commencement Date has not occurred by September 30, 1997, then (i) September 30, 1998 as set forth in subsection (a) above shall be extended by the same number of days by which the Commencement Date occurred after September 30, 1997, and (ii) during each ninety-one (91) days thereafter, the purchase price for each Lot shall be increased by one and one-half percent (1.5%) from the price applicable to the immediately preceding ninety-one (91) day period.

(c) At each Closing, Builder shall pay the purchase price for each Lot in immediately available funds.

(d) The Deposit heretofore paid by Builder to Seller shall be credited against the purchase price for the fourth (4th) Lot actually purchased by Builder from Seller. If, for any reason, other than the fault or default of Seller, Builder shall not have purchased four (4) Lots within the period set forth in Section 17(a) and Section 17(b)(i) above, then the Deposit shall be forfeited to Seller, but such forfeiture shall not affect any other right or remedy of Seller under this Agreement.

19. Closing Costs and Prorations.

(a) At each Closing, (i) Seller shall pay (A) any costs incident to the release of the Lots being conveyed from any existing security instruments in respect of financing obtained by Seller, if any, (B) the cost of preparation of the deed, (C) the deed stamp excise taxes in respect of the conveyance of each Lot to Builder, and (D) all other closing costs incurred by Seller, and (ii) Builder shall pay (A) all costs and charges incident to recording the deed for the Lot(s) being conveyed to Builder, (B) any costs incident to any financing obtained by Builder, (C) all title insurance premiums and survey costs, and (D) all other closing costs incurred by Builder. Each party shall be responsible for its own attorneys' fees.

(b) Real property taxes on each Lot for the year of sale shall be prorated between Builder and Seller as of the date of Closing on such Lot (based on the valuation and tax rate for the prior year if the current year tax bill is not available). If the proration is based upon an estimate and the actual bill varies from the estimate, the parties agree to make any necessary adjustments within ten (10) days of the receipt of the actual tax bill. Builder acknowledges that as of any Closing, the Lots being conveyed at such Closing might not have been assessed as separately described parcels of real estate and that the real property taxes for the year of sale might be assessed under a tax bill in the name of Seller which covers additional property. If this is the case, Builder and Seller agree that the tax proration for such Lots shall be determined by multiplying the total tax by a fraction, the numerator of which shall be the number of Lots being purchased and the denominator of which shall be the total number of Lots covered by the applicable tax bill, and then prorating the product of such multiplication as of the date of such Closing.

(c) Annual assessments, if any, levied against each Lot by the Association in accordance with the Declaration shall be prorated between Builder and Seller as of the date of Closing on such Lot.

20. Title; Possession.

(a) At each Closing, Seller shall convey to Builder good and marketable insurable title in fee simple to the Lots being purchased by general warranty deed which shall expressly be made subject only to matters approved or waived by Builder, ad valorem property taxes and assessments not delinquent prior to Closing, general utility and right-of-way easements serving such Lots and other easements shown on the Plat and/or reserved in the Declaration, zoning ordinances, the Declaration and other matters of record affecting the Lot; provided, that no such matter shall impair marketability of title or Builder's use of such Lots for construction of single-family residential dwellings. Such Lots shall not be subject to any mortgage or deed of trust or other encumbrance or title defect that is monetary in nature, and Seller agrees to pay and satisfy of record any such matter prior to Closing at Seller's expense.

(b) If any dispute exists between the parties as to whether title to any Lot is such as is required by the terms of this Agreement, the willingness of a title insurance company to issue a title insurance commitment for an owner's policy of title insurance, subject only to the matters and things set forth above, and the usual and customary exceptions contained in an owner's policy of title insurance shall be binding and conclusive upon the parties that title to the Lot which Seller proposes to convey to Builder is such as is required by the terms of this Agreement.

(c) At each Closing, Seller shall deliver possession of the Lot(s) being purchased to Builder. **Builder acknowledges that occupancy or other possession or use of the Lot prior to the Closing will not be permitted.**

21. **Lots Purchased "As Is."** Builder acknowledges that, except for Seller's representations and warranties contained in this Agreement, Seller, by execution and delivery of this Agreement or of any document or instrument executed and delivered in connection with any Closing, makes no warranty, express or implied, as to the suitability or fitness of any Lot for any purpose, or as to the merchantability, value, quality, condition or salability of such Lot. The sale of any Lot by Seller to Builder shall be "as is" and "where is," except as specified above. Builder acknowledges that it is Builder's responsibility to inspect each Lot to ensure that it is suitable for Builder's use.

22. **Subdivision Requirements**.

(a) Seller represents that, on or prior to the Closing Date for the sale of each Lot from Seller to Builder, all subdivision improvements necessary to permit Builder to obtain a building permit for construction of a single-family residence on such Lot shall be fully permitted, and either completed or under contract and scheduled for completion. Builder acknowledges and agrees that, notwithstanding that such subdivision improvements may not be fully completed at the time of such Closing, such condition will not prevent Builder from initiating such construction. Builder acknowledges and recognizes that there may be certain inconveniences until construction is completed, and Builder waives all claims with respect thereto. Seller shall post a bond or bonds with the City of Monroe to secure the obligation of Seller to complete any incomplete subdivision improvements.

(b) Seller shall provide stub-out connections for each Lot to permit the dwelling on each Lot to be connected to water and sewer serving the Development. Builder shall tie in at the connections provided to obtain water and sewer and any other utility service for each Lot. Under no circumstances shall Builder dig up streets or curbs or create new connections without Seller's prior written approval. Builder shall be responsible for and shall pay all charges and fees (including but not limited to installation and tie-in charges such as "meter," "tap on," "hook-up," and "capacity type-impact" fees) related to connection of structures on the Lot to water and sewer services and all other utilities to serve such Lot.

23. **Seller's Representations and Warranties**. As of the date of each Closing, Seller represents and warrants to Builder that Seller owns fee simple title to each Lot being conveyed and that Seller's execution and delivery and performance of this Agreement is not prohibited by and will not constitute a default under any other agreement binding on Seller. Seller further represents and

warrants to Builder that, as of the date of each Closing, to the knowledge of Seller, there will be no toxic or hazardous wastes (as such terms are now defined by current law and regulations) present on any Lot conveyed to Builder in such quantities as would require remediation. Builder acknowledges that Seller has previously furnished to Builder a soils report in respect of the Lots within the Development. Builder shall not be required to purchase and Seller shall not be required to sell any Lot (a) which requires construction of the foundation of a house over a "stump hole" or (b) on which the building pad for a single-family residence is not located outside of the one hundred (100) year flood plain. Seller represents and warrants that as of the date of each Closing, each Lot to be conveyed by Seller to Builder at such Closing shall be served by public water and sewer, underground electricity and natural gas, and such Lots shall have recorded access to a publicly maintained and paved road. It is acknowledged, however, that the subdivision streets within the Development may not be paved and accepted for public maintenance at the time of such Closing, but Seller represents that paving sufficient for such dedication and for such public maintenance shall be appropriately bonded on or before such Closing by Seller at its expense and for the benefit of the appropriate governmental authority. If Builder elects to purchase any Lot for which the soils condition is such that the necessary footing will exceed three (3) feet in depth, Seller agrees to reimburse Builder for one-half (1/2) of the reasonable cost of constructing such footing in excess of three (3) feet in depth after Seller's receipt of satisfactory evidence that such construction has been completed.

24. Use of Lots.

(a) Builder warrants and represents to Seller that it is and shall, during the term of this Agreement, continuously be authorized to do business in North Carolina. Builder further warrants and represents to Seller that Builder is purchasing Lots for the sole purpose of constructing single-family residential dwellings thereon for resale in the ordinary course of Builder's business.

(b) In addition to the requirements set forth above for submission and approval of building and landscape plans by Seller and by the Association pursuant to the Declaration, Builder acknowledges and agrees that prior to the Initial Closing, it will submit (I) to Seller, for Seller's approval, and (II) to the City of Monroe Planning and Development Department, plans and specifications for all houses to be constructed by Builder in the Development. Those plans shall show the dimensions of heated floor space and outside dimensions for each type of house proposed to be constructed by Builder, and shall provide for the following:

(i) Each house shall have a minimum of one thousand three hundred (1,300) square feet of heated floor space and a two (2) car garage, and there will not be any outbuildings other than the two (2) car garage;

(ii) The roof of each house shall have a minimum slope of 6/12;

(iii) The exterior materials shall be brick, vinyl siding, and/or stucco (including synthetic stucco-type products);

(iv) The foundation walls shall be a minimum of four (4) courses of standard brick above grade;

(v) Builder shall install on each Lot the type of mailbox and newspaper box that has been designated by Seller;

(vi) If the plans provide for wood-burning fireplaces with exposed chimneys, any and all such chimneys must be constructed of brick and/or stucco (including synthetic stucco-type products);

(vii) No concrete block or foundation of concrete shall be visible from the road right-of way;

(viii) The driveway from the curb to the garage shall be constructed of concrete (in particular, no part of the driveway shall be constructed of asphalt or gravel), and shall provide for a pad for off-street parking of at least eighteen feet (18') by thirty feet (30');

(ix) No chain link fences shall be erected on any Lot, and no fences shall be erected on any Lot closer to any street line than the building setback line shown on the recorded map (or in any case between the residential structure located on the Lot and the road right-of-way), nor shall any fence be erected except in accordance with the architectural control provisions of the Declarations; provided, however, that notwithstanding anything contained in this Section or elsewhere to the contrary, Declarant may install decorative fencing on any Lot used by it containing a model home, and Declarant may install fences in the Common Area as Declarant deems to be necessary or appropriate;

(x) With respect to all one-story houses, (A) the wall of the architectural front of each house shall not run unbroken (i.e. unarticulated) for a distance greater than twenty-four (24) lineal feet, and (B) all wall offsets shall be at least one (1) foot in depth; this requirement does not apply to traditional two-story house styles (including but not limited to Georgian, salt-box, and Connecticut river valley);

(xi) A minimum of twenty-five percent (25%) of the architectural front wall (excluding the foundation) of any house with vinyl siding shall have a brick or stucco finish (including synthetic stucco-type products); and

(xii) There shall be a planting strip of at least forty-eight inches (48") in width between the curb and the sidewalk.

(c) Notwithstanding any other provision of this Agreement, Seller shall have no obligation to sell any Lot to Builder unless and until Builder shall have obtained a construction loan for construction of a single-family residence on such Lot and unless Builder shall, contemporaneously with the closing of the sale of such Lot, actually close such construction loan and execute, deliver and record all documents required therefor. Moreover, Builder agrees that, not less than thirty (30) days after the date it shall acquire any Lot pursuant to this Agreement, it shall commence construction of a single-family residence on such Lot and shall thereafter diligently pursue such construction to completion.

(d) Builder agrees that immediately after the closing of the two (2) Initial Lots, Builder will commence and diligently pursue to completion construction on one of those Lots a model home for viewing by the public. At all times during the term of this Agreement, Builder agrees that it shall furnish and maintain at least one (1) model home for viewing by the public and shall cause such model home to be staffed for a minimum of forty (40) hours per week with competent and capable sales personnel. Prior to commencing any site work or other construction within the Development, Builder shall submit to Seller for approval, which approval shall not be unreasonably withheld, Builder's marketing plans for the Development, the resumes of the proposed staff for the model home, and such other information as Seller may reasonably request.

(e) To satisfy the requirement set forth in subsection (d) above, Builder may, together with the other builders admitted by Seller to the Builder's Program for Phase I of the Development, construct, furnish, and maintain one (1) model home; provided, however, that the participating builders shall have first entered into a joint marketing agreement satisfactory to Seller.

(f) Builder agrees that it will at all times (after its purchase of the first four (4) Lots) maintain in the Development for sale to the general public at least four (4) completed houses or houses under construction in addition to the model home.

25. Brokers. Each of Seller and Builder represents and warrants to the other that it has not dealt with a real estate agent or broker in connection with the purchase and sale of Lots contemplated by this Agreement. Each of Seller and Builder covenants and agrees to indemnify the other against any loss, liability, cost, claim, demand or action arising out of or in any manner related to any alleged employment or engagement of any real

estate broker or agent by it in connection with the purchase and sale contemplated by this Agreement.

26. **Indemnification**. Builder acknowledges and agrees that Seller is not a joint venturer or partner of Builder in Builder's development of or construction upon or resale of Lots in the Development and that Seller shall have no liability arising out of resulting from Builder's ownership and activities in the Development. Builder agrees to defend and hold Seller harmless from any and all claims, losses, damages and actions arising out of, or directly or indirectly related to, Builder's activities and the activities of its employees, agents and subcontractors in the Development, including, without limitation, claims or liens by mechanics and materialmen, claims by the Association for assessments or violations of the Declaration and claims by any third parties arising out of any contract with Builder excluding, however, all matters which arise from the negligence or misconduct of Seller. This indemnity shall include reasonable attorneys' fees and investigation costs and all other costs, expenses and liabilities incurred by Seller, and shall survive the expiration or earlier termination of this Agreement.

27. **Default and Remedies**. In the event of Builder's default in the performance of any obligation or covenant under this Agreement (including but not limited to any failure of Builder's agents, subcontractors or employees to comply fully with the terms of this Agreement), Seller may terminate Builder's rights under this Agreement by written notice to Builder, in which event Seller shall have no further obligation with respect to any Lots which have not then been conveyed to Builder, but all obligations of the parties relating to Lots which have previously been conveyed to Builder shall remain in full force and effect. In addition, Seller shall be entitled to cure any such default by Builder and to charge Builder the reasonable cost of correcting such default, and Seller shall be entitled to pursue any and all other remedies available to it in law or in equity.

28. **Notices**. Any notice or demand required or permitted to be given under this Agreement shall be given in writing and shall be delivered either by personally delivering it or by depositing it with the United States mail, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party at its address set forth below. Each such notice shall be deemed delivered at the time of personal delivery or, if mailed, three (3) days after it is deposited as provided above. The address of the parties to which notice is to be sent may be changed by notice given as provided above.

To Seller: Rocky River of Monroe, LLC
1220 South Kings Drive
Charlotte, North Carolina 28207
Attn: Jerry C. Rigsby

to Builder: _____

_____

_____

_____

29. No Assignment, Successors. This Agreement shall be binding upon and inure to the benefit of Builder and Seller and their permitted successors and assigns. Builder shall not assign this Agreement or any interest under this Agreement, in whole or in part, without the prior written consent of Seller, which may be withheld for any reason or for no reason. Any attempted assignment by Builder which is not approved in writing by Seller shall be null and void, and shall constitute a default under this Agreement.

30. Entire Agreement. This Agreement embodies the entire agreement between Builder and Seller concerning the subject matter hereof and cannot be modified or amended except by written instrument executed by Builder and Seller. Builder has not relied upon and has not been induced by any information, representation, warranty, or statement, oral or written, express or implied, made by Seller or any other person representing or purporting to represent Seller which is not expressly set forth in this Agreement.

31. Applicable Law. This Agreement shall be construed in accordance with and interpreted under the laws of the State of North Carolina.

32. Survival. All provisions of this Agreement shall survive the Closing of any sale contemplated by this Agreement.

33. No Waiver. Failure of either party to insist upon compliance with any provision of this Agreement shall not constitute a waiver of the rights of such party to subsequently insist upon compliance with that provision or any other provision of this Agreement.

34. Severability. The provisions of this Agreement are intended to be independent and, in the event any provision of this Agreement should be declared invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of this Agreement.

35. Construction of Agreement. Builder and Seller acknowledge that they have read and have had the opportunity to be advised by counsel as to the provisions of this Agreement and each party agrees that any court interpreting this Agreement shall not apply any presumption that the terms hereof shall be more strictly construed against one party because that party was responsible for preparation of this Agreement.

36. Time of Essence. Time is of the essence of this Agreement and of the performance of each obligation to be performed by each of the parties to this Agreement.

Annexed & Restated 1144-348

See Amend. to Restrictions
BK 1771 Pg 243

See: Amend. to Restrictions
BK 1464 PG 219 = Ph III

RECORDED AND VERIFIED
BCS

See Supp Rest.
BK 1473 PG 279 - Ph II

See Amend to Restrictions BK 1771 Pg 246

Mail to Jerry Rigsby
1226 S. Kings Dr.
Charlotte, NC 28207

BK991PG404

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 18th day of July, 1997, by Rocky River of Monroe, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of the real property which is described in Article II hereof, and desires to create thereon an exclusive residential community of single-family houses to be named "Colonial Village"; and

WHEREAS, Declarant desires to insure the attractiveness of the subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of all properties within the subdivision and to provide for the maintenance and upkeep of the Common Area, as hereinafter defined; and, to this end desires to subject the said real property to the covenants, conditions, restrictions, easements, charges, and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has incorporated or will incorporate under North Carolina law the Homeowners Association For Colonial Village, Inc. as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions, and Restrictions, does declare that all of the property described in Article II hereof is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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ARTICLE I
DEFINITIONS

Section 1. "Homeowners Association" shall mean and refer to the Homeowners Association For Colonial Village, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot (as hereinafter defined) which is a part of the Properties, including contract sellers, but excluding Declarant and those having such interests merely as security for the performance of an obligation.

C-38698 (10947.01020)

Filed for record
Date 7.21.97
Time 9:00 o'clock A. m
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

Section 3. "Properties" shall mean and refer to the property described in Article II hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Homeowners Association.

Section 4. "Common Area" shall mean all real property owned by the Homeowners Association for the common use and enjoyment of the Owners. Common Area within the Properties shall be shown on the Plat(s) of Colonial Village recorded or to be recorded in the Union County Public Registry and designated thereon as "Common Areas," but shall exclude all Lots and public streets dedicated and accepted in accordance with Article IV, Section 3.

Section 5. "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines, appearing on any recorded subdivision map of the Properties with the exception of the Common Area and public streets dedicated and accepted in accordance with Article IV, Section 3.

Section 6. "Declarant" shall mean and refer to Rocky River of Monroe, LLC, and, if and only to the extent that Rocky River of Monroe, LLC shall assign its rights as Declarant hereunder, shall also mean and refer to any person, firm, or corporation which shall hereafter become vested, at any given time, with title to two or more undeveloped Lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to Rocky River of Monroe, LLC shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and unconveyed), but no longer.

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

Section 8. "Permit" shall mean and refer to that certain Special Use Permit No. SUP-97-01 issued by the City of Monroe.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE HOMEOWNERS ASSOCIATION

Section 1. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and shall be within the jurisdiction of the Homeowners Association is located in the City of Monroe, Union County, North Carolina, and is more particularly described on that plat entitled "Colonial Village Preliminary Plan" drawn by Robert D. Davis Consulting Engineers, Revision No. 4, dated July 18, 1997, and recorded July 18, 1997, in Map Book _____ at Page _____ of the Union County Public Registry (the "Map"). Such property is subject to the conditions and requirements set forth in the Permit.

Section 2. Additions to Existing Property. Additional land may be brought within the scheme of and made subject to this Declaration and the Homeowners Association in the following manner:

(a) All or part of the land either (i) located within the area described in the metes and bounds description attached hereto as Exhibit A, owned by Declarant and incorporated herein by reference (except for the portion shown in the Map) or (ii) adjacent to the property described in that Exhibit A and subsequently acquired by Declarant may be added to the Properties by Declarant, in future stages of development, without the consent of any Owner or Owners, provided that said additions must occur within six (6) years after the date of this instrument; and provided further that so long as Class B Lots remain, annexation of additional properties shall require the determination by HUD/VA that such annexation is in accord with the general plan for Colonial Village previously approved by HUD/VA. Declarant, in its sole discretion, may remove all or part of the property from the description, attached hereto as Exhibit A, at any time prior to its addition to the Properties by filing a written declaration of removal in the Union County Public Registry.

(b) The additions authorized under subsection (a) above shall be made by the recordation of Supplemental Declarations of Covenants, Conditions, and Restrictions which shall be signed by the Declarant, shall specify the land to be added to the Properties and shall evidence HUD/VA approval, if necessary. From and after the recordation of each Supplemental Declaration, the additional land specified therein shall be fully subject to (i) this Declaration and to the benefits, agreements, restrictions and obligations set forth herein and (ii) the conditions and requirements set forth in the Permit, in each case as if it had been a part of the Properties at the time this Declaration was recorded.

Section 3. Monroe Zoning Code. The provisions of The City of Monroe's zoning code and any amendments thereto and the conditions and requirements set forth in the Permit shall at all times be paramount to the restrictions set forth in this Declaration and in the event of a conflict, the former shall be controlling over the latter.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a Member of the Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Every owner of a Lot shall notify the Homeowners Association of the owner's acquisition of title to a Lot within fifteen (15) days after title is acquired.

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

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Each Class A Lot shall entitle the Owner(s) of said Lot to one vote. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any one Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as provided in (1) or (2) below. The Declarant shall be entitled to three votes for each Class B Lot owned by it. The Class B Lots shall cease to exist and shall be converted to Class A Lots on the first to occur of:

(1) When the total number of votes appurtenant to the Class A Lots is greater than or equal to the total number of votes appurtenant to the Class B Lots, or

(2) On June 15, 2004.

Section 3. Notwithstanding the provisions of Section 1 and Section 2 above, the total votes cast by any nonresident Owners, other than the Declarant, shall not exceed forty-nine percent (49%) of all votes cast on any matter for action by the Owners or the Homeowners Association.

ARTICLE IV
PROPERTY RIGHTS

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

(a) The right of the Homeowners Association to charge reasonable admission and other fees for the use of any recreation facilities situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on the Properties as their principal residence in the City of Monroe, Union County, North Carolina, and to their families, tenants, contract purchasers, and guests, as provided in Section 2 of this Article IV.

(b) The right of the Homeowners Association to suspend the voting rights and rights to the use of the recreational facilities of any 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 Homeowners Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that such dedication or transfer shall comply with the conditions and requirements of the Permit. No such dedication or transfer shall be effective unless (1) the Members entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and at least two-thirds (2/3) of the votes appurtenant to Class B Lots consent to such dedication or transfer and signify their consent and agreement in a signed and recorded written instrument; and (2) the dedication is approved by HUD/VA so long as Class B Lots remain. This subsection shall not preclude the Board of Directors of the Homeowners Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities, and drainage facilities upon, over, under, and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Properties or are necessary for the convenient use and enjoyment of the Properties; provided, however, that such easements shall comply with the conditions and requirements of the Permit.

(d) The right of the Homeowners Association, with the written assent of the Members entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and at least two-thirds (2/3) of the votes appurtenant to Class B Lots, and so long as any Class B Lots remain, with the written approval of HUD/VA, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owners' family who occupy the residence of the Owner within the Properties as their principal residence in the City of Monroe, Union County, North Carolina.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their

principal residence in the City of Monroe, Union County, North Carolina; provided that no such delegation shall relieve the Owner of his responsibilities and obligations under this Declaration and the Owner shall remain fully responsible for the acts or omissions of any tenant or contract purchaser.

(c) Guests. Recreational facilities situated upon the Properties may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Homeowners Association, as may be established by its Board of Directors, governing said use. Owners, tenants and contract purchasers shall be responsible for the conduct, acts and omissions of their guests.

Section 3. Ownership of Common Areas. Declarant shall convey the Common Areas to the Association free and clear of all liens and encumbrances. Notwithstanding the recordation of any map or any other action by Declarant or the Association, all Common Areas, including cul-de-sacs and roads, if any, shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; provided, however, that the Declarant or the Association may offer such cul-de-sacs and roads for dedication to the appropriate governmental authorities. Fo so long as Class B Lots remain, HUD/VA prior approval shall be required for any dedication of Common Area. If accepted for dedication by such government authorities, then the cul-de-sacs or roads shall then be considered dedicated to the use and enjoyment of the public.

Section 4. Owners' Easements for Ingress and Egress. To the extent that cul-de-sacs and roads have not been dedicated to the use and enjoyment of the public sufficient to provide access to a Lot, every Lot shall be conveyed with and each Owner is hereby granted a perpetual, nonexclusive easement over any cul-de-sac or roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot. Upon dedication and acceptance of such cul-de-sacs and roadways, these easement rights shall terminate with respect thereto.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners Association: (1) annual assessments and (2) special assessments, such assessments to be established and collected as hereinafter provided. Any such assessment, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each

such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Homeowners Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Properties in connection with the use and enjoyment of the Common Area, including, but not limited to, the cost of maintenance, repair, replacement, or additions thereto, the cost of labor, equipment, materials, management, and supervision thereof, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws of the Homeowners Association, the employment of attorneys to represent the Homeowners Association, when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Sixty Dollars ($60.00) per Class A Lot and Fifteen Dollars ($15.00) per Class B Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment above established may be increased by the Board of Directors of the Homeowners Association, effective January 1 of each year, without a vote of the membership, but subject to the limitation that any such increase shall not exceed the percentage increase, if any, in the Consumer Price Index (published by the United States Department of Labor) U.S. city average, for all Cities over the immediately preceding twelve (12) month period which ended on the previous October 1. The base period for the Consumer Price Index is presently (1982 - 1984 = 100).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, said maximum annual assessments may be increased without limitation, if such increase is approved by two-thirds (2/3) of the votes of all Members present in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors of the Homeowners Association may permit the annual assessment to be paid in installments but the ratio of the assessment established for each Class A Lot to the assessment established for each Class B Lot shall always be four to one.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Homeowners Association may levy,

in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, any operating cost deficit or other expense for which annual assessments receipts are insufficient or the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots within each class and shall be collected on a monthly basis.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting of the Homeowners Association called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called for the same purpose and subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting date.

Section 7. Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance to the Homeowners Association of the Common Area. Notwitstanding the preceding sentence, Declarant may elect to postpone the commencement of the annual assessments as to all Lots; provided, that Declarant shall pay all annual assessments that would are due; and provided, further, that any such postponement will not extend beyond such time that at least two-thirds (2/3) of the Lots are Class A lots.

At least thirty (30) days before January 1 of each year, the Board of Directors of the Homeowners Association shall fix the amount of monthly assessments against each Lot for the next year and at least fifteen (15) days before January 1 shall send written notice of such fixed assessment to every Owner subject thereto. Failure of the Board of Directors or the Homeowners Association to fix the amount of annual assessment or to notify any Owners shall not relieve any Owner of the obligation to pay assessment when due. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Homeowners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessment; Remedies of the Homeowners Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the annual rate of eighteen percent (18%) or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is the lesser. 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 Homeowners Association to defray the costs of late payment. The Homeowners Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot by action or by power of sale to the extent permitted under North Carolina law, and interest, late payment fees, costs, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage, or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage or first deed of trust, pursuant to a foreclosure thereof, shall extinguish the lien of such assessments to the extent the assessments became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

No building, fence, wall, structure or other improvement shall be commenced or maintained upon the Properties, nor shall any exterior addition, change or alteration be made, including, without limitation, the erection of antennas, aerials or awnings or the placement of reflective or other material in windows until detailed plans and specifications showing the nature, kind, shape, heights, materials, colors, and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Homeowners Association, or by an architectural control committee composed of three (3) or more representatives appointed by that Board. The Board or architectural control committee shall review the plans and specifications to determine if the external

design and location of the proposed improvement is in harmony with surrounding structures and topography. The Board may, but is not required, to adopt more specific guidelines for architectural review and may revoke or amend guidelines previously adopted at any time. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. No action or inaction by the Board of Directors or the architectural control committee with respect to a specific improvement, addition or alteration made or proposed shall operate as waiver or estoppel with respect to any later submission or proposal. The Homeowners Association shall have the right to charge a reasonable fee for receiving such application in an amount not to exceed fifty dollars ($50.00). Neither the Board of Directors nor the architectural control committee shall approve any alterations, decorations, or modifications which would jeopardize or impair the value or appearance of any Lot or the Common Area. Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant in accordance with its general plan of development.

ARTICLE VII
USE RESTRICTIONS

Section 1. Land Use. All Lots shall be known and described as residential lots. Lots are to be used exclusively for single-family residential purposes and are devoted exclusively to dwelling use. No structure shall be erected, altered, placed, or permitted to remain on any Lot other than a single-family dwelling, not to exceed two and one-half stories in height and a private garage for each unit for not more than three cars and other accessory structures customarily incidental to the above described use of the Lot.

Section 2. Building Lines. No building shall be located nearer to the front or side lines than the building setback lines shown on the recorded plat, if such lines are shown. In any event, no building shall be placed nearer to any front, side, or rear setback line as required by the City of Monroe's Zoning Ordinances. Unintentional violations not exceeding ten percent (10%) of the minimum building line requirements set forth shall not be considered a violation of this section. However, the previous sentence shall not be construed to permit any violations of any conditions or requirements of the Permit.

Section 3. Subdivision of Lots. No person or entity may subdivide or re-subdivide any Lot or Lots without the prior written consent of the Declarant.

Section 4. Size of Structure. No residential structure shall be erected or placed having a total finished heated area of less than one thousand three hundred heated square feet (1,300) in addition to a two-car garage of standard size. Such required

garage may be used for any uses that are legal under the local laws and ordinances. Unintentional violations not exceeding ten percent (10%) of the minimum square footage requirements herein set forth shall not be considered a violation of this section. However, the previous sentence shall not be construed to permit any violations of any conditions or requirements of the Permit.

Section 5. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Homeowners Association, or its designated agent or representative. This Section shall not be applicable to temporary construction trailers, sales offices, and material storage facilities used during construction.

Section 6. Use of Common Area. The Common Area shall not be used in any manner except as shall be set forth in this Declaration or as shall be approved or specifically permitted by the Homeowners Association; provided, however, that all permitted uses shall be subject to the requirements of the Permit.

Section 7. 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 patios) within the Properties other than between the hours of 8:00 A.M. and 5:00 P.M. on Monday through Friday and 8:00 A.M. and 1:00 P.M. on Saturdays (except when any such day shall fall on a holiday) and clothes hanging devices such as lines, reels, poles, frames, etc. shall be stored out of sight other than during the times and days aforementioned.

Section 8. Regulations. Reasonable regulations governing the use of the Common Area may be made and amended from time to time by the Board of Directors of the Homeowners Association. All such regulations and amendments thereto shall be approved by a majority of the votes of Owners voting in person or by proxy at the annual meeting or a special meeting called for that purpose before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished to each Member by the Homeowners Association upon request.

Section 9. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereof which may be or become an annoyance or nuisance to the neighborhood.

Section 10. Residence. No trailer, basement, tent, shack, garage, barn, or other outbuilding erected on the Properties shall be at any time used as a dwelling or residence, temporarily or permanently, nor shall any structure of a temporary character be used as a dwelling or residence.

Section 11. Radio and Television Antennas. No free standing radio or television or electronic reception towers, antennas, dishes or disks shall be erected on any Lot. Only radio and television antennas not exceeding fifteen (15) feet in height above

the roof line of the residence and only dishes or disks not exceeding four (4) feet in diameter and not visible from any point on the street in front of the residence shall be permitted.

Section 12. Harmony of Structures. No structure shall be constructed or moved onto any Lot unless it shall conform to and be in harmony with existing structures on the Properties.

Section 13. Easements. A perpetual easement is reserved over the rear 10 feet of each Lot for utility installment and maintenance and/or as shown on recorded map. A perpetual easement is reserved over the side 5 feet and rear 10 feet of each Lot for public storm drain and/or as shown on recorded map.

Section 14. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot; one sign of not more than five square feet, advertising the property for sale or rent; or signs used by a builder to advertise the property during the construction and sales period.

Section 15. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

Section 16. Trash Disposal. All rubbish, trash, garbage, or waste of any kind shall be kept in sanitary containers and shall in no event be placed on Common Area. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 17. Fences. No chain link fence shall be erected on any Lot, and no fences shall be erected on any Lot closer to any street line than the building setback line shown on the recorded map (or in any case between the residential structure located on the Lot and the road right-of-way), nor shall any fence be erected except in accordance with the architectural control provisions of Article VI hereof. Provided, however, that notwithstanding anything contained in this Section or elsewhere to the contrary, Declarant may install decorative fencing on any Lot used by it containing a model home, and Declarant may install fences in the Common Area as Declarant deems to be necessary or appropriate.

Section 18. Sight Line Limitations. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such

intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 19. Parking of Vehicles. No truck over one ton, school bus, camper, trailer, boat or boat trailer, recreation vehicles, nor any other vehicle, craft or watercraft shall be parked in the street, in a driveway, in the front yard, in a side yard, or in the back yard of any Lot except as expressly permitted by the Board of Directors of the Homeowners Association, its architectural control committee or its designated subcommittee.

Section 20. Mailbox and Newspaper Box. No masonry mailbox supports shall be permitted. Declarant shall designate the type of mailbox and newspaper box that may be installed on the Properties, and no other type of mailbox or newspaper box may be installed on any Lot.

Section 21. Basketball Goal Support. No basketball goal supports shall be erected or placed within any street right of way.

Section 22. No Access from Rocky River Road. No driveway, accessway, curbcut or other vehicular access shall be permitted between any Lot abutting Rocky River Road and connecting directly to Rocky River Road and all such Lots shall have access to Rocky River Road only by streets within the Properties.

Section 23. Construction of Driveway. The driveway from the curb to the garage shall be constructed of concrete (in particular, no part of the driveway shall be constructed of asphalt or gravel), and shall provide for a pad for off-street parking of at least eighteen feet (18') by thirty feet (30').

Section 24. Other Requirements. In addition to any and all other applicable requirements, each house to be constructed on a Lot shall provide for the following:

A. The roof of each house shall have a minimum slope of 6/12;

B. The exterior materials shall be brick, vinyl siding, and/or stucco (including synthetic stucco-type products);

C. The foundation walls shall be a minimum of four (4) courses of standard brick above grade;

D. If the plans provide for wood-burning fireplaces with exposed chimneys, any and all such chimneys must be constructed of brick and/or stucco (including synthetic stucco-type products);

E. No concrete block or foundation of concrete shall be visible from the road right-of way;

F. With respect to all one-story houses, (1) the wall of the architectural front of each house shall not run unbroken

(i.e. unarticulated) for a distance greater than twenty-four (24) lineal feet, and (2) all wall offsets shall be at least one (1) foot in depth; this requirement does not apply to traditional two-story house styles (including but not limited to Georgian, salt-box, and Connecticut river valley);

G. A minimum of twenty-five percent (25%) of the architectural front wall (excluding the foundation) of any house with vinyl siding shall have a brick or stucco finish (including synthetic stucco-type products); and

H. There shall be a planting strip of at least forty-eight inches (48") in width between the curb and the sidewalk.

ARTICLE VIII
EASEMENTS

Easements for the installation and maintenance of fences, driveways, walkways, parking areas, water lines, gas lines, telephone, cable TV, electric power lines, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat and as further described in Article VII, Section 13 of this instrument. Within any such easements above provided for, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of sewerage 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. Declarant, its successors and assigns, hereby reserves and shall have temporary easements for itself, its agent and employees over the Common Area to facilitate construction of living units and related improvements to be completed in developing the Properties.

ARTICLE IX
GENERAL PROVISIONS

Section 1. Enforcement. The Homeowners Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. In any such action, the court may award reasonable attorney's fees to the prevailing party. Failure by the Homeowners Association or any Owner to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.

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

Section 3. Effect of Restrictions and Amendment. The covenants and restrictions of this Declaration shall bind only to the land specifically herein described and shall run with and bind that land. This Declaration may be amended prior to July 17, 2001, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots and by the Declarant, so long as the Declarant still owns any Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. Any amendment must be properly recorded. For so long as Class B Lots remain, any amendment shall also require HUD/VA prior approval.

Section 4. HUD/VA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with HUD/VA insured mortgage loans, then so long as Declarant is vested with title to two or more undeveloped Lots subject to this Declaration of Covenants, Conditions and Restrictions, amendment of this Declaration of Covenants, Conditions and Restrictions will require HUD/VA prior approval.

IN WITNESS WHEREOF, the undersigned, Rocky River of Monroe, LLC, a North Carolina limited liability company, Declarant by virtue of the provisions of the preamble of the aforesaid Declaration of Covenants, Conditions, and Restrictions, has caused this instrument to be duly executed under seal as of the day and year first above written.

ROCKY RIVER OF MONROE, LLC,
a North Carolina limited liability company

By: _____ (SEAL)
Jerry C. Rigsby, Manager

STATE OF NORTH CAROLINA

COUNTY OF Union

I, Amy M. Tomberlin, a Notary Public for said County and State, do hereby certify that JERRY C. RIGSBY, a manager of **ROCKY RIVER OF MONROE, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal, this the 18th day of July, 1997.

Amy M. Tomberlin
Notary Public

My commission expires: 5-19-2001

[NOTARIAL SEAL]
AMY M. TOMBERLIN
NOTARY PUBLIC
UNION COUNTY, N.C.

The foregoing certificate(s) of
Amy M. Tomberlin, Notary Public
Union Co. NC
is/are certified to be correct. This instrument and certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Judy G. Price BY: Sherra Ciocca
Register of Deeds Assistant/Deputy
Union County, NC

C-386938 (10947.01020)

464
719

BK 1464 PG 719

0032224

Drawn by and after recording mail to:
Robinson, Bradshaw & Hinson, P.A.
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246
Attn: Julie C. Chiu

Filed for record
Date 11.13.2000
Time 10:55 o'clock a m.
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

STATE OF NORTH CAROLINA

UNION COUNTY

FIRST SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE

THIS FIRST SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE (the "Supplemental Declaration") is made as of September 5, 2000 by Rocky River of Monroe, LLC, a North Carolina limited liability company ("Declarant").

RECITALS

A. Declarant has previously executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Colonial Village dated July 18, 1997 and recorded July 21, 1997 in Book 991 at Page 404, as amended and restated by that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions dated as of July 18, 1997 and recorded September 29, 1998, each in the Union County Public Registry (the "Registry") (collectively, the "Original Declaration"), which imposed certain easements, conditions and restrictions on certain real property owned by Declarant.

B. Section 2 of Article II of the Original Declaration provides that additional land within the area described in a metes and bounds legal description attached as Exhibit A thereto may be brought within the scheme of and made subject to the Original Declaration by recording a Supplemental Declaration.

C. Declarant is executing this Supplemental Declaration to add all that land (the "Additional Property") located in Union County, North Carolina, and more particularly described on the map entitled "Final Record Plat of Colonial Village, Ph. III" (the "Map") dated June 8, 2000 and recorded September 5, 2000 in Plat Cabinet G at File 175 in the Registry, to the operation of the Original Declaration.

NOW, THEREFORE, in consideration of the premises and the purposes set forth therein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Declarant, for itself and its successors and assigns, hereby supplements the Original Declaration, as follows:

1. **Supplementary Declaration by Declarant**. Pursuant to the provisions of Section 2 of Article II of the Original Declaration, Declarant hereby declares that all of the Additional Property shall be held, sold and conveyed subject to the covenants, easements, conditions and restrictions contained in the Original Declaration.

2. **Additional Restrictions**. With respect to the Additional Property, the Original Declaration shall be modified as follows:

(a) The "Now, therefore" paragraph on page 2 is hereby amended and restated in full as follows: "**NOW, THEREFORE**, Declarant, by this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, does declare that the Additional Property is and shall be held, transferred, sold, conveyed, and occupied subject to the North Carolina Planned Community Act, N.C. Gen. Stat., Chapter 47E and to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof."

(b) Article V, Section 8 ("Effect of Nonpayment of Assessment: Remedies of the Homeowners Association") is hereby amended and restated in full as follows: "Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the annual rate of eighteen percent (18%) or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is the lesser. In addition to such interest charge, the delinquent Owner shall also pay such fees, charges, late charges and fines as may have been theretofore established by the Board of Directors of the Homeowners Association to defray the costs of late payment. The Homeowners Association may file a claim of lien and bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot by action or by power of sale pursuant to N.C.G.S. Section 47E-3-116 and any other applicable provisions under North Carolina law. Pursuant to N.C.G.S. Section 47E-3-116(a), any and all fees, charges, late charges, interest and fines, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such, and be enforceable as, assessment hereunder. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot."

3. **Ratification**. Except as expressly supplemented and amended by this First Supplemental Declaration, the Original Declaration shall continue in full force and effect in accordance with its terms, and is hereby ratified by Declarant.

[Remainder of page left intentionally blank.]

Amended & Restated 1144-548

See Amend. to Restrictions BK 1771 Pg 243

See Amend. to Restrictions
BK 1464 PG 219 = Ph III

RECORDED AND VERIFIED BCS

See Supp Rest.
BK 1473 PG 279 = Ph II

See Amend to Restrictions BK 1771 Pg 246

Mail to Jerry Rigsby
1226 S. Kings Dr.
Charlotte, NC 28207

BK991PG404

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 18th day of July, 1997, by Rocky River of Monroe, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of the real property which is described in Article II hereof, and desires to create thereon an exclusive residential community of single-family houses to be named "Colonial Village"; and

WHEREAS, Declarant desires to insure the attractiveness of the subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of all properties within the subdivision and to provide for the maintenance and upkeep of the Common Area, as hereinafter defined; and, to this end desires to subject the said real property to the covenants, conditions, restrictions, easements, charges, and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has incorporated or will incorporate under North Carolina law the Homeowners Association For Colonial Village, Inc. as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions, and Restrictions, does declare that all of the property described in Article II hereof is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

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ARTICLE I
DEFINITIONS

Section 1. "Homeowners Association" shall mean and refer to the Homeowners Association For Colonial Village, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot (as hereinafter defined) which is a part of the Properties, including contract sellers, but excluding Declarant and those having such interests merely as security for the performance of an obligation.

C-38693 (10947.01020)

Filed for record
Date 7.21.97
Time 9:00 o'clock A. m
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

Section 3. "Properties" shall mean and refer to the property described in Article II hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Homeowners Association.

Section 4. "Common Area" shall mean all real property owned by the Homeowners Association for the common use and enjoyment of the Owners. Common Area within the Properties shall be shown on the Plat(s) of Colonial Village recorded or to be recorded in the Union County Public Registry and designated thereon as "Common Areas," but shall exclude all Lots and public streets dedicated and accepted in accordance with Article IV, Section 3.

Section 5. "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines, appearing on any recorded subdivision map of the Properties with the exception of the Common Area and public streets dedicated and accepted in accordance with Article IV, Section 3.

Section 6. "Declarant" shall mean and refer to Rocky River of Monroe, LLC, and, if and only to the extent that Rocky River of Monroe, LLC shall assign its rights as Declarant hereunder, shall also mean and refer to any person, firm, or corporation which shall hereafter become vested, at any given time, with title to two or more undeveloped Lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to Rocky River of Monroe, LLC shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and unconveyed), but no longer.

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

Section 8. "Permit" shall mean and refer to that certain Special Use Permit No. SUP-97-01 issued by the City of Monroe.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE HOMEOWNERS ASSOCIATION

Section 1. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and shall be within the jurisdiction of the Homeowners Association is located in the City of Monroe, Union County, North Carolina, and is more particularly described on that plat entitled "Colonial Village Preliminary Plan" drawn by Robert D. Davis Consulting Engineers, Revision No. 4, dated July 18, 1997, and recorded July 18, 1997, in Map Book _____ at Page _____ of the Union County Public Registry (the "Map"). Such property is subject to the conditions and requirements set forth in the Permit.

Section 2. Additions to Existing Property. Additional land may be brought within the scheme of and made subject to this Declaration and the Homeowners Association in the following manner:

(a) All or part of the land either (i) located within the area described in the metes and bounds description attached hereto as Exhibit A, owned by Declarant and incorporated herein by reference (except for the portion shown in the Map) or (ii) adjacent to the property described in that Exhibit A and subsequently acquired by Declarant may be added to the Properties by Declarant, in future stages of development, without the consent of any Owner or Owners, provided that said additions must occur within six (6) years after the date of this instrument; and provided further that so long as Class B Lots remain, annexation of additional properties shall require the determination by HUD/VA that such annexation is in accord with the general plan for Colonial Village previously approved by HUD/VA. Declarant, in its sole discretion, may remove all or part of the property from the description, attached hereto as Exhibit A, at any time prior to its addition to the Properties by filing a written declaration of removal in the Union County Public Registry.

(b) The additions authorized under subsection (a) above shall be made by the recordation of Supplemental Declarations of Covenants, Conditions, and Restrictions which shall be signed by the Declarant, shall specify the land to be added to the Properties and shall evidence HUD/VA approval, if necessary. From and after the recordation of each Supplemental Declaration, the additional land specified therein shall be fully subject to (i) this Declaration and to the benefits, agreements, restrictions and obligations set forth herein and (ii) the conditions and requirements set forth in the Permit, in each case as if it had been a part of the Properties at the time this Declaration was recorded.

Section 3. Monroe Zoning Code. The provisions of The City of Monroe's zoning code and any amendments thereto and the conditions and requirements set forth in the Permit shall at all times be paramount to the restrictions set forth in this Declaration and in the event of a conflict, the former shall be controlling over the latter.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a Member of the Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Every owner of a Lot shall notify the Homeowners Association of the owner's acquisition of title to a Lot within fifteen (15) days after title is acquired.

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

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Each Class A Lot shall entitle the Owner(s) of said Lot to one vote. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any one Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as provided in (1) or (2) below. The Declarant shall be entitled to three votes for each Class B Lot owned by it. The Class B Lots shall cease to exist and shall be converted to Class A Lots on the first to occur of:

(1) When the total number of votes appurtenant to the Class A Lots is greater than or equal to the total number of votes appurtenant to the Class B Lots, or

(2) On June 15, 2004.

Section 3. Notwithstanding the provisions of Section 1 and Section 2 above, the total votes cast by any nonresident Owners, other than the Declarant, shall not exceed forty-nine percent (49%) of all votes cast on any matter for action by the Owners or the Homeowners Association.

ARTICLE IV
PROPERTY RIGHTS

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

(a) The right of the Homeowners Association to charge reasonable admission and other fees for the use of any recreation facilities situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on the Properties as their principal residence in the City of Monroe, Union County, North Carolina, and to their families, tenants, contract purchasers, and guests, as provided in Section 2 of this Article IV.

(b) The right of the Homeowners Association to suspend the voting rights and rights to the use of the recreational facilities of any 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 Homeowners Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that such dedication or transfer shall comply with the conditions and requirements of the Permit. No such dedication or transfer shall be effective unless (1) the Members entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and at least two-thirds (2/3) of the votes appurtenant to Class B Lots consent to such dedication or transfer and signify their consent and agreement in a signed and recorded written instrument; and (2) the dedication is approved by HUD/VA so long as Class B Lots remain. This subsection shall not preclude the Board of Directors of the Homeowners Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities, and drainage facilities upon, over, under, and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Properties or are necessary for the convenient use and enjoyment of the Properties; provided, however, that such easements shall comply with the conditions and requirements of the Permit.

(d) The right of the Homeowners Association, with the written assent of the Members entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and at least two-thirds (2/3) of the votes appurtenant to Class B Lots, and so long as any Class B Lots remain, with the written approval of HUD/VA, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owners' family who occupy the residence of the Owner within the Properties as their principal residence in the City of Monroe, Union County, North Carolina.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their

principal residence in the City of Monroe, Union County, North Carolina; provided that no such delegation shall relieve the Owner of his responsibilities and obligations under this Declaration and the Owner shall remain fully responsible for the acts or omissions of any tenant or contract purchaser.

(c) Guests. Recreational facilities situated upon the Properties may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Homeowners Association, as may be established by its Board of Directors, governing said use. Owners, tenants and contract purchasers shall be responsible for the conduct, acts and omissions of their guests.

Section 3. Ownership of Common Areas. Declarant shall convey the Common Areas to the Association free and clear of all liens and encumbrances. Notwithstanding the recordation of any map or any other action by Declarant or the Association, all Common Areas, including cul-de-sacs and roads, if any, shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; provided, however, that the Declarant or the Association may offer such cul-de-sacs and roads for dedication to the appropriate governmental authorities. Fo so long as Class B Lots remain, HUD/VA prior approval shall be required for any dedication of Common Area. If accepted for dedication by such government authorities, then the cul-de-sacs or roads shall then be considered dedicated to the use and enjoyment of the public.

Section 4. Owners' Easements for Ingress and Egress. To the extent that cul-de-sacs and roads have not been dedicated to the use and enjoyment of the public sufficient to provide access to a Lot, every Lot shall be conveyed with and each Owner is hereby granted a perpetual, nonexclusive easement over any cul-de-sac or roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot. Upon dedication and acceptance of such cul-de-sacs and roadways, these easement rights shall terminate with respect thereto.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners Association: (1) annual assessments and (2) special assessments, such assessments to be established and collected as hereinafter provided. Any such assessment, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each

such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Homeowners Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Properties in connection with the use and enjoyment of the Common Area, including, but not limited to, the cost of maintenance, repair, replacement, or additions thereto, the cost of labor, equipment, materials, management, and supervision thereof, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws of the Homeowners Association, the employment of attorneys to represent the Homeowners Association, when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Sixty Dollars ($60.00) per Class A Lot and Fifteen Dollars ($15.00) per Class B Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment above established may be increased by the Board of Directors of the Homeowners Association, effective January 1 of each year, without a vote of the membership, but subject to the limitation that any such increase shall not exceed the percentage increase, if any, in the Consumer Price Index (published by the United States Department of Labor) U.S. city average, for all Cities over the immediately preceding twelve (12) month period which ended on the previous October 1. The base period for the Consumer Price Index is presently (1982 - 1984 = 100).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, said maximum annual assessments may be increased without limitation, if such increase is approved by two-thirds (2/3) of the votes of all Members present in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors of the Homeowners Association may permit the annual assessment to be paid in installments but the ratio of the assessment established for each Class A Lot to the assessment established for each Class B Lot shall always be four to one.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Homeowners Association may levy,

in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, any operating cost deficit or other expense for which annual assessments receipts are insufficient or the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots within each class and shall be collected on a monthly basis.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting of the Homeowners Association called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called for the same purpose and subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting date.

Section 7. Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance to the Homeowners Association of the Common Area. Notwitstanding the preceding sentence, Declarant may elect to postpone the commencement of the annual assessments as to all Lots; provided, that Declarant shall pay all annual assessments that would are due; and provided, further, that any such postponement will not extend beyond such time that at least two-thirds (2/3) of the Lots are Class A lots.

At least thirty (30) days before January 1 of each year, the Board of Directors of the Homeowners Association shall fix the amount of monthly assessments against each Lot for the next year and at least fifteen (15) days before January 1 shall send written notice of such fixed assessment to every Owner subject thereto. Failure of the Board of Directors or the Homeowners Association to fix the amount of annual assessment or to notify any Owners shall not relieve any Owner of the obligation to pay assessment when due. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Homeowners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessment; Remedies of the Homeowners Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the annual rate of eighteen percent (18%) or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is the lesser. 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 Homeowners Association to defray the costs of late payment. The Homeowners Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot by action or by power of sale to the extent permitted under North Carolina law, and interest, late payment fees, costs, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage, or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage or first deed of trust, pursuant to a foreclosure thereof, shall extinguish the lien of such assessments to the extent the assessments became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

No building, fence, wall, structure or other improvement shall be commenced or maintained upon the Properties, nor shall any exterior addition, change or alteration be made, including, without limitation, the erection of antennas, aerials or awnings or the placement of reflective or other material in windows until detailed plans and specifications showing the nature, kind, shape, heights, materials, colors, and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Homeowners Association, or by an architectural control committee composed of three (3) or more representatives appointed by that Board. The Board or architectural control committee shall review the plans and specifications to determine if the external

design and location of the proposed improvement is in harmony with surrounding structures and topography. The Board may, but is not required, to adopt more specific guidelines for architectural review and may revoke or amend guidelines previously adopted at any time. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. No action or inaction by the Board of Directors or the architectural control committee with respect to a specific improvement, addition or alteration made or proposed shall operate as waiver or estoppel with respect to any later submission or proposal. The Homeowners Association shall have the right to charge a reasonable fee for receiving such application in an amount not to exceed fifty dollars ($50.00). Neither the Board of Directors nor the architectural control committee shall approve any alterations, decorations, or modifications which would jeopardize or impair the value or appearance of any Lot or the Common Area. Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant in accordance with its general plan of development.

ARTICLE VII
USE RESTRICTIONS

Section 1. Land Use. All Lots shall be known and described as residential lots. Lots are to be used exclusively for single-family residential purposes and are devoted exclusively to dwelling use. No structure shall be erected, altered, placed, or permitted to remain on any Lot other than a single-family dwelling, not to exceed two and one-half stories in height and a private garage for each unit for not more than three cars and other accessory structures customarily incidental to the above described use of the Lot.

Section 2. Building Lines. No building shall be located nearer to the front or side lines than the building setback lines shown on the recorded plat, if such lines are shown. In any event, no building shall be placed nearer to any front, side, or rear setback line as required by the City of Monroe's Zoning Ordinances. Unintentional violations not exceeding ten percent (10%) of the minimum building line requirements set forth shall not be considered a violation of this section. However, the previous sentence shall not be construed to permit any violations of any conditions or requirements of the Permit.

Section 3. Subdivision of Lots. No person or entity may subdivide or re-subdivide any Lot or Lots without the prior written consent of the Declarant.

Section 4. Size of Structure. No residential structure shall be erected or placed having a total finished heated area of less than one thousand three hundred heated square feet (1,300) in addition to a two-car garage of standard size. Such required

garage may be used for any uses that are legal under the local laws and ordinances. Unintentional violations not exceeding ten percent (10%) of the minimum square footage requirements herein set forth shall not be considered a violation of this section. However, the previous sentence shall not be construed to permit any violations of any conditions or requirements of the Permit.

Section 5. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Homeowners Association, or its designated agent or representative. This Section shall not be applicable to temporary construction trailers, sales offices, and material storage facilities used during construction.

Section 6. Use of Common Area. The Common Area shall not be used in any manner except as shall be set forth in this Declaration or as shall be approved or specifically permitted by the Homeowners Association; provided, however, that all permitted uses shall be subject to the requirements of the Permit.

Section 7. 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 patios) within the Properties other than between the hours of 8:00 A.M. and 5:00 P.M. on Monday through Friday and 8:00 A.M. and 1:00 P.M. on Saturdays (except when any such day shall fall on a holiday) and clothes hanging devices such as lines, reels, poles, frames, etc. shall be stored out of sight other than during the times and days aforementioned.

Section 8. Regulations. Reasonable regulations governing the use of the Common Area may be made and amended from time to time by the Board of Directors of the Homeowners Association. All such regulations and amendments thereto shall be approved by a majority of the votes of Owners voting in person or by proxy at the annual meeting or a special meeting called for that purpose before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished to each Member by the Homeowners Association upon request.

Section 9. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereof which may be or become an annoyance or nuisance to the neighborhood.

Section 10. Residence. No trailer, basement, tent, shack, garage, barn, or other outbuilding erected on the Properties shall be at any time used as a dwelling or residence, temporarily or permanently, nor shall any structure of a temporary character be used as a dwelling or residence.

Section 11. Radio and Television Antennas. No free standing radio or television or electronic reception towers, antennas, dishes or disks shall be erected on any Lot. Only radio and television antennas not exceeding fifteen (15) feet in height above

the roof line of the residence and only dishes or disks not exceeding four (4) feet in diameter and not visible from any point on the street in front of the residence shall be permitted.

Section 12. Harmony of Structures. No structure shall be constructed or moved onto any Lot unless it shall conform to and be in harmony with existing structures on the Properties.

Section 13. Easements. A perpetual easement is reserved over the rear 10 feet of each Lot for utility installment and maintenance and/or as shown on recorded map. A perpetual easement is reserved over the side 5 feet and rear 10 feet of each Lot for public storm drain and/or as shown on recorded map.

Section 14. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot; one sign of not more than five square feet, advertising the property for sale or rent; or signs used by a builder to advertise the property during the construction and sales period.

Section 15. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

Section 16. Trash Disposal. All rubbish, trash, garbage, or waste of any kind shall be kept in sanitary containers and shall in no event be placed on Common Area. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 17. Fences. No chain link fence shall be erected on any Lot, and no fences shall be erected on any Lot closer to any street line than the building setback line shown on the recorded map (or in any case between the residential structure located on the Lot and the road right-of-way), nor shall any fence be erected except in accordance with the architectural control provisions of Article VI hereof. Provided, however, that notwithstanding anything contained in this Section or elsewhere to the contrary, Declarant may install decorative fencing on any Lot used by it containing a model home, and Declarant may install fences in the Common Area as Declarant deems to be necessary or appropriate.

Section 18. Sight Line Limitations. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such

intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 19. Parking of Vehicles. No truck over one ton, school bus, camper, trailer, boat or boat trailer, recreation vehicles, nor any other vehicle, craft or watercraft shall be parked in the street, in a driveway, in the front yard, in a side yard, or in the back yard of any Lot except as expressly permitted by the Board of Directors of the Homeowners Association, its architectural control committee or its designated subcommittee.

Section 20. Mailbox and Newspaper Box. No masonry mailbox supports shall be permitted. Declarant shall designate the type of mailbox and newspaper box that may be installed on the Properties, and no other type of mailbox or newspaper box may be installed on any Lot.

Section 21. Basketball Goal Support. No basketball goal supports shall be erected or placed within any street right of way.

Section 22. No Access from Rocky River Road. No driveway, accessway, curbcut or other vehicular access shall be permitted between any Lot abutting Rocky River Road and connecting directly to Rocky River Road and all such Lots shall have access to Rocky River Road only by streets within the Properties.

Section 23. Construction of Driveway. The driveway from the curb to the garage shall be constructed of concrete (in particular, no part of the driveway shall be constructed of asphalt or gravel), and shall provide for a pad for off-street parking of at least eighteen feet (18') by thirty feet (30').

Section 24. Other Requirements. In addition to any and all other applicable requirements, each house to be constructed on a Lot shall provide for the following:

A. The roof of each house shall have a minimum slope of 6/12;

B. The exterior materials shall be brick, vinyl siding, and/or stucco (including synthetic stucco-type products);

C. The foundation walls shall be a minimum of four (4) courses of standard brick above grade;

D. If the plans provide for wood-burning fireplaces with exposed chimneys, any and all such chimneys must be constructed of brick and/or stucco (including synthetic stucco-type products);

E. No concrete block or foundation of concrete shall be visible from the road right-of way;

F. With respect to all one-story houses, (1) the wall of the architectural front of each house shall not run unbroken

(i.e. unarticulated) for a distance greater than twenty-four (24) lineal feet, and (2) all wall offsets shall be at least one (1) foot in depth; this requirement does not apply to traditional two-story house styles (including but not limited to Georgian, salt-box, and Connecticut river valley);

G. A minimum of twenty-five percent (25%) of the architectural front wall (excluding the foundation) of any house with vinyl siding shall have a brick or stucco finish (including synthetic stucco-type products); and

H. There shall be a planting strip of at least forty-eight inches (48") in width between the curb and the sidewalk.

ARTICLE VIII
EASEMENTS

Easements for the installation and maintenance of fences, driveways, walkways, parking areas, water lines, gas lines, telephone, cable TV, electric power lines, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat and as further described in Article VII, Section 13 of this instrument. Within any such easements above provided for, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of sewerage 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. Declarant, its successors and assigns, hereby reserves and shall have temporary easements for itself, its agent and employees over the Common Area to facilitate construction of living units and related improvements to be completed in developing the Properties.

ARTICLE IX
GENERAL PROVISIONS

Section 1. Enforcement. The Homeowners Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. In any such action, the court may award reasonable attorney's fees to the prevailing party. Failure by the Homeowners Association or any Owner to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.

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

Section 3. Effect of Restrictions and Amendment. The covenants and restrictions of this Declaration shall bind only to the land specifically herein described and shall run with and bind that land. This Declaration may be amended prior to July 17, 2001, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots and by the Declarant, so long as the Declarant still owns any Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. Any amendment must be properly recorded. For so long as Class B Lots remain, any amendment shall also require HUD/VA prior approval.

Section 4. HUD/VA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with HUD/VA insured mortgage loans, then so long as Declarant is vested with title to two or more undeveloped Lots subject to this Declaration of Covenants, Conditions and Restrictions, amendment of this Declaration of Covenants, Conditions and Restrictions will require HUD/VA prior approval.

IN WITNESS WHEREOF, the undersigned, Rocky River of Monroe, LLC, a North Carolina limited liability company, Declarant by virtue of the provisions of the preamble of the aforesaid Declaration of Covenants, Conditions, and Restrictions, has caused this instrument to be duly executed under seal as of the day and year first above written.

ROCKY RIVER OF MONROE, LLC,
a North Carolina limited liability company

By: _____ (SEAL)
Jerry C. Rigsby, Manager

STATE OF NORTH CAROLINA

COUNTY OF Union

I, Amy M. Tomberlin, a Notary Public for said County and State, do hereby certify that JERRY C. RIGSBY, a manager of **ROCKY RIVER OF MONROE, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal, this the 18th day of July, 1997.

Amy M. Tomberlin
Notary Public

My commission expires: 5-19-2001

[NOTARIAL SEAL]
AMY M. TOMBERLIN
NOTARY PUBLIC
UNION COUNTY, N.C.

The foregoing certificate(s) of
Amy M Tomberlin, NP of
Union Co NC
is/are certified to be correct. This instrument and certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Judy G. Price
Register of Deeds
Union County, NC

BY: Sherra Ciocca
Assistant/Deputy

BK 1464 PG 719

0032224

Drawn by and after recording mail to:
Robinson, Bradshaw & Hinson, P.A.
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246
Attn: Julie C. Chiu

Filed for record
Date 11.13.2000
Time 10:55 o'clock A M.
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

STATE OF NORTH CAROLINA

UNION COUNTY

FIRST SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE

THIS FIRST SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE (the "Supplemental Declaration") is made as of September 5, 2000 by Rocky River of Monroe, LLC, a North Carolina limited liability company ("Declarant").

RECITALS

A. Declarant has previously executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Colonial Village dated July 18, 1997 and recorded July 21, 1997 in Book 991 at Page 404, as amended and restated by that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions dated as of July 18, 1997 and recorded September 29, 1998, each in the Union County Public Registry (the "Registry") (collectively, the "Original Declaration"), which imposed certain easements, conditions and restrictions on certain real property owned by Declarant.

B. Section 2 of Article II of the Original Declaration provides that additional land within the area described in a metes and bounds legal description attached as Exhibit A thereto may be brought within the scheme of and made subject to the Original Declaration by recording a Supplemental Declaration.

C. Declarant is executing this Supplemental Declaration to add all that land (the "Additional Property") located in Union County, North Carolina, and more particularly described on the map entitled "Final Record Plat of Colonial Village, Ph. III" (the "Map") dated June 8, 2000 and recorded September 5, 2000 in Plat Cabinet G at File 175 in the Registry, to the operation of the Original Declaration.

NOW, THEREFORE, in consideration of the premises and the purposes set forth therein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Declarant, for itself and its successors and assigns, hereby supplements the Original Declaration, as follows:

1. **Supplementary Declaration by Declarant**. Pursuant to the provisions of Section 2 of Article II of the Original Declaration, Declarant hereby declares that all of the Additional Property shall be held, sold and conveyed subject to the covenants, easements, conditions and restrictions contained in the Original Declaration.

2. **Additional Restrictions**. With respect to the Additional Property, the Original Declaration shall be modified as follows:

(a) The "Now, therefore" paragraph on page 2 is hereby amended and restated in full as follows: "**NOW, THEREFORE**, Declarant, by this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, does declare that the Additional Property is and shall be held, transferred, sold, conveyed, and occupied subject to the North Carolina Planned Community Act, N.C. Gen. Stat., Chapter 47E and to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof."

(b) Article V, Section 8 ("Effect of Nonpayment of Assessment: Remedies of the Homeowners Association") is hereby amended and restated in full as follows: "Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the annual rate of eighteen percent (18%) or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is the lesser. In addition to such interest charge, the delinquent Owner shall also pay such fees, charges, late charges and fines as may have been theretofore established by the Board of Directors of the Homeowners Association to defray the costs of late payment. The Homeowners Association may file a claim of lien and bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot by action or by power of sale pursuant to N.C.G.S. Section 47E-3-116 and any other applicable provisions under North Carolina law. Pursuant to N.C.G.S. Section 47E-3-116(a), any and all fees, charges, late charges, interest and fines, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such, and be enforceable as, assessment hereunder. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot."

3. **Ratification**. Except as expressly supplemented and amended by this First Supplemental Declaration, the Original Declaration shall continue in full force and effect in accordance with its terms, and is hereby ratified by Declarant.

[Remainder of page left intentionally blank.]

BK1149PG0598

Drawn by, and after recording mail to:
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246
Attn: Julie C. Chiu

Filed for record
Date 9-29-98
Time 9:35 o'clock A M.
JUDY G. PRICE, Register of Deeds
Union County, Monroe North Carolina

RECORDED AND VERIFIED MAM

STATE OF NORTH CAROLINA

UNION COUNTY

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE

This **AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** is made as of the 18th day of July, 1997, by Rocky River of Monroe, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

WITNESSETH: 060347

WHEREAS, Declarant is the owner of that approximately 70.559 acre parcel of land located in the City of Monroe, Union County, North Carolina and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land");

WHEREAS, Declarant desires to create on the Land an exclusive residential community of single-family houses to be named "Colonial Village";

WHEREAS, Declarant desires to insure the attractiveness of the subdivision and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of all properties within the subdivision and to provide for the maintenance and upkeep of the Common Area, as hereinafter defined; and, to this end desires to subject the said real property to the covenants, conditions, restrictions, easements, charges, and liens hereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

WHEREAS, by filing Articles of Incorporation on June 18, 1997 with the North Carolina Secretary of State, Declarant has incorporated under North Carolina law the "Homeowners Association For Colonial Village, Inc." as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions;

WHEREAS, Declarant has previously caused the Declaration of Covenants, Conditions and Restrictions for Colonial Village (the "Original Declaration") dated July 18, 1997 to be recorded July 21, 1997 in Book 991 at Page 404 of the Union County Public Registry (the "Registry"); and

WHEREAS, the Original Declaration did not include the legal description of the Land, and Declarant now wishes to make these Amended and Restated Declaration of Covenants, Conditions and Restrictions for Colonial Village to subject the property described in Article II below to the covenants, conditions, restrictions, easements, charges, and liens set forth herein.

NOW, THEREFORE, Declarant, by this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, does declare that all of the property described in Article II hereof is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Homeowners Association" shall mean and refer to the "Homeowners Association For Colonial Village, Inc.," a North Carolina nonprofit corporation, and its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot (as hereinafter defined) which is a part of the Properties, including contract sellers, but excluding Declarant and those having such interests merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to the property described in Article II hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Homeowners Association.

Section 4. "Common Area" shall mean all real property owned by the Homeowners Association for the common use and enjoyment of the Owners. Common Area within the Properties shall be shown on the Plat(s) of Colonial Village recorded or to be recorded in the Registry and designated thereon as "Common Areas," but shall exclude all Lots and public streets dedicated and accepted in accordance with Article IV, Section 3.

Section 5. "Lot" shall mean and refer to any numbered plot of land, with delineated boundary lines, appearing on any recorded subdivision map of the Properties with the exception of the Common Area and public streets dedicated and accepted in accordance with Article IV, Section 3.

Section 6. "Declarant" shall mean and refer to Rocky River of Monroe, LLC, and, if and only to the extent that Rocky River of Monroe, LLC shall assign its rights as Declarant hereunder, shall also mean and refer to any person, firm, or corporation which shall hereafter become vested, at any given time, with title to two or more undeveloped Lots for the purpose of causing residence building(s) to be constructed thereon, and any such successor in title to Rocky River of Monroe, LLC shall be a Declarant during such period of time as said party is vested with title to two or more such Lots (whether undeveloped or developed and unconveyed), but no longer.

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

Section 8. "Permit" shall mean and refer to that certain Special Use Permit No. SUP-97-01 issued by the City of Monroe and recorded July 21, 1997 in Book 991 at Page 438 of the Registry.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE HOMEOWNERS ASSOCIATION

Section 1. The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and shall be within the jurisdiction of the Homeowners Association is located in the City of Monroe, Union County, North Carolina, and is more particularly described and shown on (a) that plat entitled "Final Record Plat of Colonial Village Ph. 1 Sec. 1" drawn by Derick L. Miles (NCRLS #3380) dated September 7, 1997 (last revised October 16, 1997) and recorded October 23, 1997 in Plat Cabinet E, File 857 and (b) that plat entitled "Final Record Plat of Colonial Village Ph. 1 Sec. 2" drawn by Derick L. Miles (NCRLS #3380) dated March 12, 1998 (last revised April 8, 1998) and recorded April 8, 1998 in Plat Cabinet F File 58, both in the Registry (collectively, the "Map"). Such property is subject to the conditions and requirements set forth in the Permit.

Section 2. Additions to Existing Property. Additional land may be brought within the scheme of and made subject to this Declaration and the Homeowners Association in the following manner:

(a) All or part of the land either (i) located within the area described in the metes and bounds description of the Land and attached hereto as Exhibit A, owned by Declarant and incorporated herein by reference (except for the portion shown in the Map) or (ii) adjacent to the property described in that Exhibit A and subsequently acquired by Declarant may be added to the Properties by Declarant, in future stages of development, without the consent of any Owner or Owners, provided that said additions must occur within six (6) years after the date of this instrument; and provided further that so long as Class B Lots remain, annexation of additional properties shall require the determination by HUD/VA that such annexation is in accord with the general plan for Colonial Village previously approved by HUD/VA. Declarant, in its sole discretion, may remove all or part of the property from the description, attached hereto as Exhibit A, at any time prior to its addition to the Properties by filing a written declaration of removal in the Registry.

(b) The additions authorized under subsection (a) above shall be made by the recordation of Supplemental Declarations of Covenants, Conditions, and Restrictions which shall be signed by the Declarant, shall specify the land to be added to the Properties and shall evidence HUD/VA approval, if necessary. From and after the recordation of each Supplemental Declaration, the additional land specified therein shall be fully subject to (i) this Declaration and to the benefits, agreements, restrictions and obligations set forth herein and (ii) the conditions and requirements set forth in the Permit, in each case as if it had been a part of the Properties at the time this Declaration was recorded.

Section 3. Monroe Zoning Code. The provisions of The City of Monroe's zoning code and any amendments thereto and the conditions and requirements set forth in the Permit shall at all times be paramount to the restrictions set forth in this Declaration and in the event of a conflict, the former shall be controlling over the latter.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall be a Member of the Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Every owner of a Lot shall notify the Homeowners Association of the owner's acquisition of title to a Lot within fifteen (15) days after title is acquired.

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

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Each Class A Lot shall entitle the Owner(s) of said Lot to one vote. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any one Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been converted to Class A Lots as provided in (1) or (2) below. The Declarant shall be entitled to three votes for each Class B Lot owned by it. The Class B Lots shall cease to exist and shall be converted to Class A Lots on the first to occur of:

(1) When the total number of votes appurtenant to the Class A Lots is greater than or equal to the total number of votes appurtenant to the Class B Lots, or

(2) On June 15, 2004.

Section 3. Notwithstanding the provisions of Section 1 and Section 2 above, the total votes cast by any nonresident Owners, other than the Declarant, shall not exceed forty-nine percent (49%) of all votes cast on any matter for action by the Owners or the Homeowners Association.

ARTICLE IV
PROPERTY RIGHTS

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

(a) The right of the Homeowners Association to charge reasonable admission and other fees for the use of any recreation facilities situated upon the Common Area and

to limit the use of said facilities to Owners who occupy a residence on the Properties as their principal residence in the City of Monroe, Union County, North Carolina, and to their families, tenants, contract purchasers, and guests, as provided in Section 2 of this Article IV.

(b) The right of the Homeowners Association to suspend the voting rights and rights to the use of the recreational facilities of any 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 Homeowners Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that such dedication or transfer shall comply with the conditions and requirements of the Permit. No such dedication or transfer shall be effective unless (1) the Members entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and at least two-thirds (2/3) of the votes appurtenant to Class B Lots consent to such dedication or transfer and signify their consent and agreement in a signed and recorded written instrument; and (2) the dedication is approved by HUD/VA so long as Class B Lots remain. This subsection shall not preclude the Board of Directors of the Homeowners Association from granting easements to public authorities or others for the installation and maintenance of sewerage, utilities, and drainage facilities upon, over, under, and across the Common Area without the assent of the membership when, in the sole opinion of such Board, such easements do not interfere with the use and enjoyment of the Properties or are necessary for the convenient use and enjoyment of the Properties; provided, however, that such easements shall comply with the conditions and requirements of the Permit.

(d) The right of the Homeowners Association, with the written assent of the Members entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and at least two-thirds (2/3) of the votes appurtenant to Class B Lots, and so long as any Class B Lots remain, with the written approval of HUD/VA, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owners' family who occupy the residence of the Owner within the Properties as their principal residence in the City of Monroe, Union County, North Carolina.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in the City of Monroe, Union County, North Carolina; provided that no such delegation shall relieve the Owner of his responsibilities and obligations under this Declaration and the Owner shall remain fully responsible for the acts or omissions of any tenant or contract purchaser.

(c) Guests. Recreational facilities situated upon the Properties may be utilized by guests of Owners, tenants, or contract purchasers subject to the rules and regulations of the Homeowners Association, as may be established by its Board of Directors, governing said use. Owners, tenants and contract purchasers shall be responsible for the conduct, acts and omissions of their guests.

Section 3. Ownership of Common Areas. Declarant shall convey the Common Areas to the Association free and clear of all liens and encumbrances. Notwithstanding the recordation of any map or any other action by Declarant or the Association, all Common Areas, including cul-de-sacs and roads, if any, shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; provided, however, that the Declarant or the Association may offer such cul-de-sacs and roads for dedication to the appropriate governmental authorities. For so long as Class B Lots remain, HUD/VA prior approval shall be required for any dedication of Common Area. If accepted for dedication by such government authorities, then the cul-de-sacs or roads shall then be considered dedicated to the use and enjoyment of the public.

Section 4. Owners' Easements for Ingress and Egress. To the extent that cul-de-sacs and roads have not been dedicated to the use and enjoyment of the public sufficient to provide access to a Lot, every Lot shall be conveyed with and each Owner is hereby granted a perpetual, nonexclusive easement over any cul-de-sac or roadway which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot. Upon dedication and acceptance of such cul-de-sacs and roadways, these easement rights shall terminate with respect thereto.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Homeowners Association: (1) annual assessments and (2) special assessments, such assessments to be established and collected as hereinafter provided. Any such assessment, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purposes of Assessments. The assessments levied by the Homeowners Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Properties in connection with the use and enjoyment of the Common Area, including, but not limited to, the cost of maintenance, repair, replacement, or additions thereto, the cost of labor, equipment, materials, management, and supervision thereof, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws of the Homeowners Association, the employment of attorneys to represent the Homeowners Association, when necessary, and such other needs as may arise.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Sixty Dollars ($60.00) per Class A Lot and Fifteen Dollars ($15.00) per Class B Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment above established may be increased by the Board of Directors of the Homeowners Association, effective January 1 of each year, without a vote of the membership, but subject to the limitation that any such increase shall not exceed the percentage increase, if any, in the Consumer Price Index (published by the United States Department of Labor) U.S. city average, for all Cities over the immediately preceding twelve (12) month period which ended on the previous October 1. The base period for the Consumer Price Index is presently (1982 - 1984 = 100).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, said maximum annual assessments may be increased without limitation, if such increase is approved by two-thirds (2/3) of the votes of all Members present in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors of the Homeowners Association may permit the annual assessment to be paid in installments but the ratio of the assessment established for each Class A Lot to the assessment established for each Class B Lot shall always be four to one.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Homeowners Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, any operating cost deficit or other expense for which annual assessments receipts are insufficient or the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the same assent of the Members as provided in Section 3(b) of this Article.

Section 5. Assessment Rate. Both annual and special assessments must be fixed at a uniform rate for all Lots within each class and shall be collected on a monthly basis.

Section 6. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting of the Homeowners Association called for the purpose of taking any action authorized under Section 3 or 4 above shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of the votes appurtenant to each Class of Lots (Class A and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called for the same purpose and subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting date.

Section 7. Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance to the Homeowners Association of the Common

Area. Notwithstanding the preceding sentence, Declarant may elect to postpone the commencement of the annual assessments as to all Lots; provided, that Declarant shall pay all annual assessments that would are due; and provided, further, that any such postponement will not extend beyond such time that at least two-thirds (2/3) of the Lots are Class A lots.

At least thirty (30) days before January 1 of each year, the Board of Directors of the Homeowners Association shall fix the amount of monthly assessments against each Lot for the next year and at least fifteen (15) days before January 1 shall send written notice of such fixed assessment to every Owner subject thereto. Failure of the Board of Directors or the Homeowners Association to fix the amount of annual assessment or to notify any Owners shall not relieve any Owner of the obligation to pay assessment when due. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Homeowners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessment; Remedies of the Homeowners Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the annual rate of eighteen percent (18%) or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is the lesser. 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 Homeowners Association to defray the costs of late payment. The Homeowners Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot by action or by power of sale to the extent permitted under North Carolina law, and interest, late payment fees, costs, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage, or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any first mortgage or first deed of trust, pursuant to a foreclosure thereof, shall extinguish the lien of such assessments to the extent the assessments became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or first deed of trust.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI
ARCHITECTURAL CONTROL

No building, fence, wall, structure or other improvement shall be commenced or maintained upon the Properties, nor shall any exterior addition, change or alteration be made, including, without limitation, the erection of antennas, aerials or awnings or the placement of reflective or other material in windows until detailed plans and specifications showing the nature, kind, shape, heights, materials, colors, and location of the same shall have been submitted to and approved in writing by the Board of Directors of the Homeowners Association, or by an architectural control committee composed of three (3) or more representatives appointed by that Board. The Board or architectural control committee shall review the plans and specifications to determine if the external design and location of the proposed improvement is in harmony with surrounding structures and topography. The Board may, but is not required, to adopt more specific guidelines for architectural review and may revoke or amend guidelines previously adopted at any time. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. No action or inaction by the Board of Directors or the architectural control committee with respect to a specific improvement, addition or alteration made or proposed shall operate as waiver or estoppel with respect to any later submission or proposal. The Homeowners Association shall have the right to charge a reasonable fee for receiving such application in an amount not to exceed fifty dollars ($50.00). Neither the Board of Directors nor the architectural control committee shall approve any alterations, decorations, or modifications which would jeopardize or impair the value or appearance of any Lot or the Common Area. Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant in accordance with its general plan of development.

ARTICLE VII
USE RESTRICTIONS

Section 1. Land Use. All Lots shall be known and described as residential lots. Lots are to be used exclusively for single-family residential purposes and are devoted exclusively to dwelling use. No structure shall be erected, altered, placed, or permitted to remain on any Lot other than a single-family dwelling, not to exceed two and one-half stories in height and a private garage for each unit for not more than three cars and other accessory structures customarily incidental to the above described use of the Lot.

Section 2. Building Lines. No building shall be located nearer to the front or side lines than the building setback lines shown on the recorded plat, if such lines are shown. In any event, no building shall be placed nearer to any front, side, or rear setback line as required by the City of Monroe's Zoning Ordinances. Unintentional violations not exceeding ten percent (10%) of the minimum building line requirements set forth shall not be considered a violation of this section. However, the previous sentence shall not be construed to permit any violations of any conditions or requirements of the Permit.

Section 3. Subdivision of Lots. No person or entity may subdivide or re-subdivide any Lot or Lots without the prior written consent of the Declarant.

Section 4. Size of Structure. No residential structure shall be erected or placed having a total finished heated area of less than one thousand three hundred heated square feet (1,300) in addition to a two-car garage of standard size. Such required garage may be used for any uses that are legal under the local laws and ordinances. Unintentional violations not exceeding ten percent (10%) of the minimum square footage requirements herein set forth shall not be considered a violation of this section. However, the previous sentence shall not be construed to permit any violations of any conditions or requirements of the Permit.

Section 5. Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Homeowners Association, or its designated agent or representative. This Section shall not be applicable to temporary construction trailers, sales offices, and material storage facilities used during construction.

Section 6. Use of Common Area. The Common Area shall not be used in any manner except as shall be set forth in this Declaration or as shall be approved or specifically permitted by the Homeowners Association; provided, however, that all permitted uses shall be subject to the requirements of the Permit.

Section 7. 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 patios) within the Properties other than between the hours of 8:00 A.M. and 5:00 P.M. on Monday through Friday and 8:00 A.M. and 1:00 P.M. on Saturdays (except when any such day shall fall on a holiday) and clothes hanging devices such as lines, reels, poles, frames, etc. shall be stored out of sight other than during the times and days aforementioned.

Section 8. Regulations. Reasonable regulations governing the use of the Common Area may be made and amended from time to time by the Board of Directors of the Homeowners Association. All such regulations and amendments thereto shall be approved by a majority of the votes of Owners voting in person or by proxy at the annual meeting or a special meeting called for that purpose before the same shall become effective. Copies of such regulations and amendments thereto shall be furnished to each Member by the Homeowners Association upon request.

Section 9. Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereof which may be or become an annoyance or nuisance to the neighborhood.

Section 10. Residence. No trailer, basement, tent, shack, garage, barn, or other outbuilding erected on the Properties shall be at any time used as a dwelling or residence, temporarily or permanently, nor shall any structure of a temporary character be used as a dwelling or residence.

Section 11. Radio and Television Antennas. No free standing radio or television or electronic reception towers, antennas, dishes or disks shall be erected on any Lot. Only radio and television antennas not exceeding fifteen (15) feet in height above the roof line of the

residence and only dishes or disks not exceeding four (4) feet in diameter and not visible from any point on the street in front of the residence shall be permitted.

Section 12. Harmony of Structures. No structure shall be constructed or moved onto any Lot unless it shall conform to and be in harmony with existing structures on the Properties.

Section 13. Easements. A perpetual easement is reserved over the rear 10 feet of each Lot for utility installment and maintenance and/or as shown on recorded map. A perpetual easement is reserved over the side 5 feet and rear 10 feet of each Lot for public storm drain and/or as shown on recorded map.

Section 14. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one square foot; one sign of not more than five square feet, advertising the property for sale or rent; or signs used by a builder to advertise the property during the construction and sales period.

Section 15. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purpose.

Section 16. Trash Disposal. All rubbish, trash, garbage, or waste of any kind shall be kept in sanitary containers and shall in no event be placed on Common Area. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 17. Fences. No chain link fence shall be erected on any Lot, and no fences shall be erected on any Lot closer to any street line than the building setback line shown on the recorded map (or in any case between the residential structure located on the Lot and the road right-of-way), nor shall any fence be erected except in accordance with the architectural control provisions of Article VI hereof. Provided, however, that notwithstanding anything contained in this Section or elsewhere to the contrary, Declarant may install decorative fencing on any Lot used by it containing a model home, and Declarant may install fences in the Common Area as Declarant deems to be necessary or appropriate.

Section 18. Sight Line Limitations. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 19. Parking of Vehicles. No truck over one ton, school bus, camper, trailer, boat or boat trailer, recreation vehicles, nor any other vehicle, craft or watercraft shall be parked in the street, in a driveway, in the front yard, in a side yard, or in the back yard of any Lot except as expressly permitted by the Board of Directors of the Homeowners Association, its architectural control committee or its designated subcommittee.

Section 20. Mailbox and Newspaper Box. No masonry mailbox supports shall be permitted. Declarant shall designate the type of mailbox and newspaper box that may be installed on the Properties, and no other type of mailbox or newspaper box may be installed on any Lot.

Section 21. Basketball Goal Support. No basketball goal supports shall be erected or placed within any street right of way.

Section 22. No Access from Rocky River Road. No driveway, accessway, curbcut or other vehicular access shall be permitted between any Lot abutting Rocky River Road and connecting directly to Rocky River Road and all such Lots shall have access to Rocky River Road only by streets within the Properties.

Section 23. Construction of Driveway. The driveway from the curb to the garage shall be constructed of concrete (in particular, no part of the driveway shall be constructed of asphalt or gravel), and shall provide for a pad for off-street parking of at least eighteen feet (18') by thirty feet (30').

Section 24. Other Requirements. In addition to any and all other applicable requirements, each house to be constructed on a Lot shall provide for the following:

A. The roof of each house shall have a minimum slope of 6/12;

B. The exterior materials shall be brick, vinyl siding, and/or stucco (including synthetic stucco-type products);

C. The foundation walls shall be a minimum of four (4) courses of standard brick above grade;

D. If the plans provide for wood-burning fireplaces with exposed chimneys, any and all such chimneys must be constructed of brick and/or stucco (including synthetic stucco-type products);

E. No concrete block or foundation of concrete shall be visible from the road right-of way;

F. With respect to all one-story houses, (1) the wall of the architectural front of each house shall not run unbroken (i.e. unarticulated) for a distance greater than twenty-four (24) lineal feet, and (2) all wall offsets shall be at least one (1) foot in depth; this requirement does not apply to traditional two-story house styles (including but not limited to Georgian, salt-box, and Connecticut river valley);

G. A minimum of twenty-five percent (25%) of the architectural front wall (excluding the foundation) of any house with vinyl siding shall have a brick or stucco finish (including synthetic stucco-type products); and

H. There shall be a planting strip of at least forty-eight inches (48") in width between the curb and the sidewalk.

ARTICLE VIII
EASEMENTS

Easements for the installation and maintenance of fences, driveways, walkways, parking areas, water lines, gas lines, telephone, cable TV, electric power lines, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat and as further described in Article VII, Section 13 of this instrument. Within any such easements above provided for, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of sewerage 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. Declarant, its successors and assigns, hereby reserves and shall have temporary easements for itself, its agent and employees over the Common Area to facilitate construction of living units and related improvements to be completed in developing the Properties.

ARTICLE IX
GENERAL PROVISIONS

Section 1. Enforcement. The Homeowners Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. In any such action, the court may award reasonable attorney's fees to the prevailing party. Failure by the Homeowners Association or any Owner to enforce any covenant or restriction herein contained shall in no way be deemed a waiver of the right to do so thereafter.

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

Section 3. Effect of Restrictions and Amendment. The covenants and restrictions of this Declaration shall bind only to the land specifically herein described and shall run with and bind that land. This Declaration may be amended prior to July 17, 2001, by an instrument signed by the Owners of not less than ninety percent (90%) of the Lots and by the Declarant, so long as the Declarant still owns any Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots. Any amendment must be properly recorded. For so long as Class B Lots remain, any amendment shall also require HUD/VA prior approval.

Section 4. HUD/VA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with HUD/VA insured mortgage loans, then so long as Declarant is vested with title to two or more undeveloped Lots subject to this Declaration of Covenants, Conditions and Restrictions, amendment of this Declaration of Covenants, Conditions and Restrictions will require HUD/VA prior approval.

IN WITNESS WHEREOF, the undersigned, Rocky River of Monroe, LLC, a North Carolina limited liability company, Declarant by virtue of the provisions of the preamble of the aforesaid Amended and Restated Declaration of Covenants, Conditions, and Restrictions, has caused this instrument to be duly executed under seal as of the day and year first above written.

ROCKY RIVER OF MONROE, LLC,
a North Carolina limited liability company

By: _____ (SEAL)
Jerry C. Rigsby, Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, David Barkford, a Notary Public for said County and State, do hereby certify that Jerry C. Rigsby, a manager of **ROCKY RIVER OF MONROE, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal, this the 25th day of September, 1998.

_____
Notary Public

My commission expires:

My Commission Expires August 24, 2003

[NOTARIAL SEAL]

NORTH CAROLINA - UNION COUNTY
The foregoing certificate(s) of
David A. Barkford
Notary Public
of Meck. Co., N.C. is/are certified
to be correct. Filed for record this 29 day
of Sept., 1998 at 9:35 A.M.

JUDY G. PRICE, REGISTER OF DEEDS
BY: Cindy S. Baldwin
Asst./Dept.

C-541445 (10947 01020)

EXHIBIT A

COMPOSITE LEGAL DESCRIPTION
ROCKY RIVER ROAD / 70.559 ACRES

Being all that certain tract or parcel of land lying and being in the City of Monroe, Monroe Township, Union County, North Carolina, and being more particularly described as follows:

To find the point and place of **BEGINNING**, commence at a set nail in the centerline of Rocky River Road, said set nail being located N. 19-26-13 E. 3,222.01 feet from the intersection of the centerline of Rocky River Road and Gold Mine Road; thence, with and along the centerline of Rocky River Road N. 18-55-29 E. 35.61 feet to the point and place of **BEGINNING**; thence, from the point and place of BEGINNING, with and along the centerline of Rocky River Road, N. 18-55-29 E. 619.11 feet to a set nail in the centerline of Rocky River Road; thence, leaving the centerline of Rocky River Road, passing a found iron at 30.04 feet, with and along the southern boundary line of the property of David C. Hinson (now or formerly) as described in Deed Book 623, Page 305 in the Union County Public Registry, S. 67-57-45 E. 2,208.41 feet to a found old iron and stone, a common corner of the property of David C. Hinson, Pine Dell Subdivision as shown in Map Book 7, Page 58 in the Union County Public Registry and K.C. Long (now or formerly) as described in Deed Book 327, Page 663 in the Union County Public Registry; thence, with and along the western boundary line of the property of K.C. Long, S. 36-47-33 W. 2,353.63 feet to a found iron pipe; the northeastern corner of the property of Bessie S. Yow (now or formerly) as described in Deed Book 113, Page 373 in the Union County Public Registry; thence, with and along the northern boundary line of the property of Bessie S. Yow, N. 78-17-33 W. 407.99 feet to a found old iron in old road bed, the northwestern corner of the property of Bessie S. Yow and the northeastern corner of the property of Henry Bigham (now or formerly) as described in Deed Book 255, Page 208 in the Union County Public Registry; thence, with and along the northern boundary line of the property of Henry Bigham, N. 79-22-19 W. 256.23 feet to a large white oak, the southeastern corner of the property of Betty Lou S. Crook (now or formerly); thence, with and along the eastern boundary line of the property of Betty Lou S. Crook, N. 06-26-13 E. 731.65 feet to a found iron pipe, the northeastern corner of the property of Betty Lou S. Crook and the southeastern corner of the property of Dennis Ray Privette (now or formerly) as described in Deed Book 246, Page 387 in the Union County Public Registry; thence, with and along the eastern boundary line of the property of Dennis Ray Privette, N. 07-07-02 E. 548.78 feet to an old axle at wild cherry tree, the northeastern corner of the property of Dennis Ray Privette and the southwestern corner of the property of Bobby C. Surratt (now or formerly) as described in Deed Book 418, Page 303 in the Union

County Public Registry; thence, with and along the boundary line of the property of Bobby C. Surratt, the following two (2) courses and distances: (1) S. 80-41-59 E. 137.42 feet to a found iron; and (2) N. 06-31-23 E. 634.81 feet to a found iron, the northeastern corner of the property of Bobby C. Surratt and the southeastern corner of the property of Shirley Surratt (now or formerly) as described in Deed Book 119, Page 304 in the Union County Public Registry; thence, with and along the boundary line of the property of Shirley Surratt, the following four (4) courses and distances: (1) N. 00-59-34 E. 169.42 feet to a point; (2) N. 35-03-50 W. 104.21 feet to a point, (3) S. 85-06-16 W. 170.35 feet to a found iron; and (4) S. 14-59-24 E. 181.96 feet to a point; thence, N. 81-41-43 W. 368.91 feet to a point, the point and place of **BEGINNING** and containing 70.559 acres, more or less, all as shown on a "Boundary Survey of a 70.799 Acre Tract for Rocky River of Monroe, LLC", prepared by Derick L. Miles, N.C.R.L.S., dated October 21, 1996 and last revised June 12, 1997;

BK 1473PG279 M.D.J.

Drawn by and after recording mail to:
Robinson, Bradshaw & Hinson, P.A.
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246
Attn: Julie C. Chiu

0034283

Filed for record
Date 12.1.2000
Time 4:58 o'clock P. M.
JUDY G. PRICE, Register of Deeds
Union County, Monroe North Carolina

STATE OF NORTH CAROLINA

UNION COUNTY

SECOND SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE

THIS SECOND SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR COLONIAL VILLAGE (the "Supplemental Declaration") is made as of June 23, 1999 by Rocky River of Monroe, LLC, a North Carolina limited liability company ("Declarant").

RECITALS

A. Declarant has previously executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Colonial Village dated July 18, 1997 and recorded July 21, 1997 in Book 991 at Page 404, as amended and restated by that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions dated as of July 18, 1997 and recorded September 29, 1998 in Book 991 at Page 404, as amended by that certain First Supplemental Declaration of Covenants, Conditions and Restrictions for Colonial Village dated as of September 5, 2000 and recorded November 13, 2000 in Book 1464 at Page 719, each in the Union County Public Registry (the "Registry") (collectively, the "Original Declaration"), which imposed certain easements, conditions and restrictions on certain real property owned by Declarant.

B. Section 2 of Article II of the Original Declaration provides that additional land within the area described in a metes and bounds legal description attached as Exhibit A thereto may be brought within the scheme of and made subject to the Original Declaration by recording a Supplemental Declaration.

C. Declarant is executing this Supplemental Declaration to add all that land (the "Additional Property") located in Union County, North Carolina, and more particularly described on the map entitled "Final Record Plat of Colonial Village, Ph. II" (the "Map") dated June 1, 1999 and recorded June 23, 1999 in Plat Cabinet F at File 632 in the Registry, to the operation of the Original Declaration.

NOW, THEREFORE, in consideration of the premises and the purposes set forth therein, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Declarant, for itself and its successors and assigns, hereby supplements the Original Declaration, as follows:

1. **Supplementary Declaration by Declarant**. Pursuant to the provisions of Section 2 of Article II of the Original Declaration, Declarant hereby declares that all of the Additional Property shall be held, sold and conveyed subject to the covenants, easements, conditions and restrictions contained in the Original Declaration.

2. **Additional Restrictions**. With respect to the Additional Property, the Original Declaration shall be modified as follows:

(a) The "Now, therefore" paragraph on page 2 is hereby amended and restated in full as follows: "**NOW, THEREFORE**, Declarant, by this Amended and Restated Declaration of Covenants, Conditions, and Restrictions, does declare that the Additional Property is and shall be held, transferred, sold, conveyed, and occupied subject to the North Carolina Planned Community Act, N.C. Gen. Stat., Chapter 47E and to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof."

(b) Article V, Section 8 ("Effect of Nonpayment of Assessment: Remedies of the Homeowners Association") is hereby amended and restated in full as follows: "Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the annual rate of eighteen percent (18%) or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is the lesser. In addition to such interest charge, the delinquent Owner shall also pay such fees, charges, late charges and fines as may have been theretofore established by the Board of Directors of the Homeowners Association to defray the costs of late payment. The Homeowners Association may file a claim of lien and bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the Lot by action or by power of sale pursuant to N.C.G.S. Section 47E-3-116 and any other applicable provisions under North Carolina law. Pursuant to N.C.G.S. Section 47E-3-116(a), any and all fees, charges, late charges, interest and fines, and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such, and be enforceable as, assessment hereunder. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot."

3. **Ratification**. Except as expressly supplemented and amended by this Second Supplemental Declaration, the Original Declaration shall continue in full force and effect in accordance with its terms, and is hereby ratified by Declarant.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the undersigned has caused this Second Supplemental Declaration to be duly executed under seal as of the day and year first above written.

ROCKY RIVER OF MONROE, LLC,
a North Carolina limited liability company

By: _____(SEAL)
Jerry C. Rigsby, Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Henry F. Wallace II, a Notary Public for said County and State, do hereby certify that Jerry C. Rigsby, a manager of **ROCKY RIVER OF MONROE, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal, this is the 30th day of November, 2000.

Henry F. Wallace II
Notary Public

My commission expires:

10/28/04

[NOTARIAL SEAL]

NORTH CAROLINA - UNION COUNTY
The foregoing certificate(s) of
Henry F. Wallace II
Notary Public
of
is/are certified
to be correct. Filed for record this 1st day
of Dec. 2000 at 4:58PM

JUDY G. PRICE, REGISTER OF DEEDS
BY: Deputy/Asst. Dep.

RECORDED and VERIFIED BCS

BK9911PG420 MAIL TO: JERRY RIGSBY 1220 S. KINGS D CHARLOTTE NC 28207

COLONIAL VILLAGE SUBDIVISION

LOT PURCHASE AND SALE AGREEMENT

Filed for record
Date 7.21.99
Time 9:00 o'clock A m
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina
By: Debra Cicca Deputy

THIS LOT PURCHASE AND SALE AGREEMENT ("Agreement") is made as of June _____, 1997 by and between **ROCKY RIVER OF MONROE, LLC**, a North Carolina limited liability company ("Seller"), and _____, a _____ ("Builder").

BACKGROUND STATEMENT

A. Seller plans to acquire that approximately seventy-one (71) acre parcel of land located on Rocky River Road in Monroe, Union County, North Carolina and more particularly described in Exhibit A attached hereto and incorporated herein (the "Land"). Upon such acquisition, Seller plans to develop on the Land a planned community to be known as "Colonial Village" (the "Development"). Seller anticipates that Phase I of the Development will be located on an approximately twenty-six (26) acre portion of the Land and will contain approximately sixty-seven (67) building lots.

B. Attached hereto as Exhibit B is an engineering plan/preliminary plat of Phase I of the Development (the "Engineering Plan"). After Seller has revised the Engineering Plan as Seller deems necessary or appropriate, the Engineering Plan will be recorded in the Union County Public Registry (the "Registry") and shall be the "Preliminary Plat," which shall be attached to this Agreement as Exhibit B to replace the current Engineering Plan. The Preliminary Plat, together with any and all amendments thereto, and any other plats of Phase I of the Development to be recorded in the Registry, are collectively referred to herein as the "Plat." Each building lot shown on the recorded Plat is referred to herein as a "Lot."

012876

C. Builder is engaged in the business of constructing residential dwellings for sale to others and desires to purchase from Seller, and Seller desires to sell to Builder, certain Lots within the Development for the purpose of constructing single-family residential dwellings for resale, all upon the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the sum of Five Thousand and No/100 Dollars ($5,000.00) (the "Deposit") paid by Builder upon execution of this Agreement to Seller in cash, the mutual covenants contained in this Agreement and other good and valuable considerations each to the other paid, the receipt and adequacy of which are acknowledged, Seller and Builder, intending to be legally bound, agree as follows:

1. **Colonial Village Builder Program**.

(a) Builder acknowledges that Seller has established a program by which builders are selected and become eligible to

construct homes in Phase I of the Development. That program consists of various procedures and requirements established by Seller as set forth in this Agreement (the "Builder Program"). Seller agrees to admit Builder to the Builder Program, making Builder eligible to purchase Lots in Phase I of the Development on the terms and conditions set forth below and to construct homes on such Lots for sale to others. Builder's continued eligibility for participation in the Builder Program shall be subject to Builder's full and complete compliance with the terms and conditions of this Agreement. Builder agrees that it shall hold, improve and sell all Lots in the Development purchased by Builder in full compliance with the terms and conditions of this Agreement.

(b) Builder acknowledges that Seller's obligations under this Agreement are subject to (i) the acquisition by Seller of the Land upon terms satisfactory to Seller in its sole discretion, including but not limited to the rezoning of the Land to a classification that will permit approximately two and eight/tenths (2.8) lots per acre, (ii) the closing by Seller of an acquisition and development loan acceptable to Seller in its sole discretion, and (iii) the approval of Builder by Seller's lender of such acquisition and development loan in the sole discretion of such lender. If any of these conditions is not satisfied on or before March 31, 1998, Seller shall promptly return the Deposit to Builder, and this Agreement shall be of no further effect. Builder further acknowledges that Seller's lender may at any time and from time to time obtain copies of Builder's credit report.

(c) Builder acknowledges that the property within the Development is subject to the conditions and requirements set forth in that certain Special Use Permit No. SUP-97-01 issued by the City of Monroe (the "Permit"), and Builder agrees to comply fully with those conditions and requirements. If Builder fails to comply fully with the conditions and requirements set forth in the Permit, the Deposit shall be forfeited to Seller (if the Deposit had not yet been applied), and, in addition to any other rights and remedies Seller may have for such default, Seller shall have the unilateral right to terminate Builder's rights under this Agreement effective immediately upon Seller's written notice of such termination to Builder. Builder hereby waives any claims against Seller in connection with such termination.

2. Planned Community and Association Membership.

(a) Builder acknowledges that the Development is a planned community to be created by recordation of the Declaration of Covenants, Conditions and Restrictions for Colonial Village (the "Declaration") in the Registry. The nature and extent of Builder's rights and obligations in acquiring and owning Lots will be controlled by and subject to: (i) the Declaration; (ii) the articles of incorporation, bylaws, and the rules and regulations of Colonial Village

Homeowners Association, Inc. (the "Association"); (iii) such design guidelines (the "Design Guidelines") as may be adopted from time to time by the Association, as each of the foregoing documents may be amended from time to time; and (iv) Builder's plans for construction of each residential dwelling to be approved by Seller. Builder agrees that it and its agents, employees and subcontractors will comply fully with and be bound by all of the terms and conditions and obligations set forth in this Agreement and each of the foregoing documents. Builder shall not impose any additional protective covenants, deed restrictions or similar restrictions on all or any part of property in the Development owned or purchased by Builder without Seller's prior written approval, which approval may be granted or withheld in Seller's sole discretion. Builder agrees to provide copies of the Declaration, bylaws and articles of incorporation of the Association to each purchaser of a home in the Development from Builder at or prior to closing of such purchase.

(b) Upon conveyance of title to any Lot to Builder, Builder shall automatically become a member of the Association and shall be subject to the assessment obligations and other provisions set forth in the Declaration. Builder agrees that the annual assessments (as defined in the Declaration), levied by the Association, if any, against each Lot purchased by Builder shall be prorated between Seller and Builder as of the date of closing on the purchase of such Lot by Builder from Seller. Any installments of annual assessments due after such date shall be paid directly to the Association by Builder or by Builder's successor in title in accordance with the terms and provisions of the Declaration.

3. **Design Review Approval**. In order to assure that homes constructed by Builder in the Development are compatible with other residential construction in the Development and meet certain design standards established by Seller, all construction in the Development and any modifications thereof shall be subject to the approval of the board of directors of the Association (or by Seller, prior to the formation of the Association) or by an architectural control committee appointed by that board, all in accordance with the Declaration. Prior to commencing any site work or other construction within the Development, Builder shall submit to Seller for submission to and review by the Association and approval by both Seller and the Association those documents required to be submitted pursuant to the Declaration.

4. **Replatting, Resubdividing or Rezoning**. Seller reserves the right to change the uses, density and zoning of the property in the Development without Builder's consent; provided, however, that Builder shall have the right to approve or disapprove any such changes to any Lot owned by Builder (or any subsequent owner). Seller also reserves the right at any time and from time to time to modify or amend the Plat and/or to replat and to record any replatting with appropriate authorities, all or any part of the Development; provided, however, that Seller shall not replat any

Lot owned by Builder (or any subsequent owner) without its prior written consent, which consent shall not be unreasonably withheld.

5. **Signage Restrictions**. Builder agrees that it shall not erect or permit to be erected on its behalf any sign in the Development except such signs as may be permitted by the Declaration.

6. **Maintenance**. In order to enhance marketing of homes, whether under construction or complete, Builder agrees to perform continuing interior and exterior maintenance and landscaping with respect to all lots and homes in the Development owned by Builder so long as such property is owned by Builder.

7. **Trash Removal/Job Site Conditions**. Builder agrees to maintain its job sites in a neat and orderly condition throughout construction and not to allow trash and debris from its activities to be carried by wind or otherwise scattered within the Development. Builder shall not store any construction materials on property within the Development except materials to be used in construction of homes, and then only on the Lot where the home is being constructed, and further subject to such conditions, rules and regulations as may be set forth in or pursuant to the Declaration. Builder agrees to keep all roadways, rights of way, easements and other property within the Development clear of construction materials, trash and mud from its activities at all times. Builder agrees that all trash and debris shall be contained in standard size dumpsters or other appropriate trash receptacles or removed from Builder's job sites each week.

Builder shall be entitled to maintain one (1) construction trailer within the Development, of a type and size approved by Seller and at such location as is specified by Seller. Any construction trailer shall be removed within ten (10) days after substantial completion of construction on all Lots purchased or under contract to be purchased by Builder. Builder acknowledges and agrees that Seller may require Builder to relocate such trailer to other reasonable locations specified by Seller within the Development upon thirty (30) days' prior written notice, and Builder agrees to comply with such notice.

8. **Grading and Landscaping**.

(a) Builder shall be responsible for providing all landscaping on each Lot acquired by Builder, which landscaping shall be in accordance with the Declaration and subject to the approval of Seller and the Association. Builder shall submit to Seller and the Association, and Seller and the Association shall have the right to approve or disapprove, the landscaping plans for each Lot prior to Builder's installing any landscaping on such Lot. In addition to complying with the terms and conditions of the Declaration, Builder agrees to plant two (2) red maple trees of at least one and one-half inch (1 1/2") caliper at a minimum of twelve inches (12") above the finish grade on each Lot at a location approximately

fifteen feet (15') from the curb or at such other location determined by Seller. Builder may submit typical landscaping plans to Seller for pre-approval and, upon approval by Seller, it shall only be necessary for Builder to submit individual landscaping plans on each Lot for approval in the event that the proposed plan for such Lot substantially deviates from the pre-approved plan.

(b) All landscaping for each home in the Development shall be completed by the earlier of: (i) thirty (30) days from the date on which the exterior of the home is completed, or (ii) the date on which a certificate of occupancy is issued for such home; provided, if due to seasonal conditions, landscaping cannot practically be completed by such date, Builder shall complete all landscaping as soon as weather conditions permit.

(c) Builder acknowledges that Seller has established a drainage plan as part of the sedimentation and erosion control plan approved by the City of Monroe for the Development and that Seller has established drainage patterns for each Lot. Builder agrees to conduct its grading and construction activities on each Lot purchased by Builder so as not to disturb such drainage patterns unless otherwise approved in writing by Seller, which approval may be granted or withheld in Seller's sole discretion.

9. Insurance. Prior to or upon closing of the purchase of any Lot by Builder, Builder shall obtain and shall maintain in force throughout the term of this Agreement and until all activities of Builder in the Development are completed and terminated, comprehensive public liability insurance, including coverage for contractual liability, products/completed operations liability, and explosion, collapse and underground damage liability, with a single combined limit of not less than One Million and No/100 Dollars ($1,000,000.00), covering all losses, damages and claims arising out of Builder's occupation, use of, activities on and ownership of property within the Development, including property damage, bodily injury and death. The policy shall name Builder as the insured party and Seller as an additional insured party, and shall provide at least thirty (30) days' notice to Seller prior to the termination, cancellation or reduction in coverage of such policy.

In addition, Builder shall obtain and maintain in force throughout the term of this Agreement and until all activities of Builder in the Development are completed and terminated: workers' compensation insurance, employer's liability insurance; automobile liability insurance covering all motor vehicles owned, hired or used in connection with Builder's construction activities in the Development; and builder's risk insurance covering Builder's activities in the Development, all in such amounts as are reasonably acceptable to Seller.

A certificate evidencing such insurance shall be provided to Seller at or prior to the closing of the purchase of any Lot by Builder, and such insurance shall be maintained in effect as provided above.

10. Subcontractors. Builder shall be responsible for ensuring compliance with the terms and conditions of this Agreement by its agents, subcontractors and employees, which for purposes of this Agreement shall include Builder's marketing and sales agents. In the event of violation of any of the terms or conditions of this Agreement by any agent, subcontractor or employee of Builder which is not cured within fifteen (15) days of receipt of notice of the violation by Builder, Seller shall have the option of either: (i) removing or curing the violation and charging Builder for any cost incurred and prohibiting any violating subcontractor from performing any further services for Builder in the Development, without liability to Builder or the violating subcontractor; or (ii) declaring Builder in default under this Agreement and proceeding in accordance with Seller's rights and remedies under this Agreement. Builder shall indemnify and hold Seller harmless against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees and court costs, that may be incurred or suffered by Seller as a result of its taking any action against Builder's agent, subcontractor and/or employee pursuant to this section.

11. Modification of Declaration. Builder acknowledges that all Lots shall be subject to the Declaration, and Builder agrees to cooperate with Seller in executing any documents necessary to amend the Declaration or any exhibits to the Declaration so long as such amendments do not materially and adversely affect any Lot owned by Builder. Builder hereby acknowledges and consents to all amendments to the Declaration or the bylaws of the Association which Seller may institute prior to recordation of such instruments in the Registry or closing on the purchase of any Lot from Seller, whichever is first to occur.

12. Repairs to Subdivision Improvements. Builder agrees to use its best efforts to avoid altering or causing damage to Seller's subdivision improvements (which may include, but are not limited to, paved streets, curbing and drainage, central water lines, central sewer lines, signage, landscaping, entrance features and irrigation systems) during Builder's construction of homes in the Development, and Builder hereby assumes full responsibility for the cost of any maintenance and repair of subdivision improvements which are necessitated by Builder's activities or the activities of its employees or subcontractors in the Development.

13. Other Builders. Builder hereby acknowledges that other builders are or may be carrying on construction and marketing activities within the Development. Builder agrees not to interfere with or hinder the construction, marketing and other activities of such other builders within the Development, and further agrees to cause its agents, subcontractors and employees not to interfere

with or hinder the construction, marketing and other activities of such other builders within the Development.

14. No Reliance. Builder acknowledges that any purchase of Lots from Seller shall be made by Builder without reliance on any representation of Seller, either oral or written, other than the representations specifically set forth in this Agreement, and Builder warrants and represents that its decision to purchase Lots in the Development shall be based solely on its own inspection of the Lots and the Development and its independent investigation and evaluation of the merit of purchasing such property. Builder shall assume full responsibility for ensuring compliance with federal and state wetlands regulations of any Lots purchased by Builder and for taking precautions during construction to avoid impacting adjacent wetlands, if any.

15. Statutory Compliance. Builder acknowledges that the property within the Development is not registered under the Interstate Land Sales Full Disclosure Act. Builder agrees not to take any action which would negate the availability of any exemption from such registration and to comply with federal and state law.

16. Agreement to Sell and Purchase.

(a) Seller shall sell and Builder shall purchase two (2) Lots, together with all rights, members and appurtenances thereto and all improvements and fixtures, if any, located thereon (the "Initial Lots").

(b) Subject to the terms and conditions set forth below, Seller shall sell and Builder shall purchase additional Lots, together with all rights, members and appurtenances thereto and all improvements and fixtures, if any, located thereon (the "Additional Lots"). Builder's selection of the Initial Lots and the Additional Lots shall be in accordance with such procedure as Seller may establish for Builder and the other builders participating in the Builder Program. If the Preliminary Plat has not been recorded at the time of the selection of the Initial Lots, Builder shall select Lots based on the Engineering Plan.

17. Closings/Take Down Schedule.

(a) Initial Closings. The date that Seller notifies Builder that the Plat for approximately twenty (20) Lots (the "Initial Plat") has been recorded in the Registry shall be the "Commencement Date." The closing of the purchase and sale of the two (2) Initial Lots (the "Initial Closing") shall be held within thirty (30) calendar days of the Commencement Date. At the time of the Initial Closing, (i) the roads shown on the Initial Plat shall have been graded, (ii) the construction of the sewer, water and storm drainage systems shall have been substantially completed, and (iii) the corners of each of the Lots shown on the Initial Plat shall be marked by iron pins. For the purpose of this Section 17(a), "substantially

completed" shall mean at least eighty-five percent (85%) completed as determined by Seller's engineer.

(b) Subsequent Closings.

(i) On or before December 31, 1997, Builder shall close on the purchase of not less than two (2) Additional Lots. Thereafter, beginning March 31, 1998, and by the last business day of each subsequent calendar quarter (that is, by the last business day before each subsequent June 30, September 30, December 31 and March 31), Builder shall close on the purchase of not less than four (4) Additional Lots. Each such closing is referred to as a "Subsequent Closing."

(ii) Notwithstanding subsection (i) above, if the Commencement Date has not occurred by September 30, 1997, then the date of each Subsequent Closing shall be extended by the same number of days by which the Commencement Date occurred after September 30, 1997.

(iii) At least seven (7) business days prior to the date for each Subsequent Closing, Builder shall designate in writing to Seller the Additional Lots which it desires to purchase at such Subsequent Closing. Such designation of Lots shall, in each case, be subject to the approval of Seller.

(iv) Builder may elect to close upon Additional Lots more frequently and/or in greater numbers than required in Section 17(b)(i) above. If Builder closes the purchase of Additional Lots in excess of those required for any period described in that Section 17(b)(i), such excess shall be credited against the purchase requirement for subsequent take down periods. If, however, after credit for any such additional purchases, Builder shall not have purchased the minimum Lot requirement for any period after the acquisition of the Initial Lots, then, in addition to any other rights and remedies Seller may have for such default, Seller shall have the unilateral right to terminate Builder's rights under this Agreement effective immediately upon Seller's written notice of such termination to Builder. Builder hereby waives any claims against Seller in connection with such termination.

(v) The date of the Initial Closing or any Subsequent Closing (each, a "Closing," and collectively, "Closings") shall be extended as necessary to cure defects in title or to cure other obligations of Seller as may be required by this Agreement; provided, however, that each Closing shall occur no later than thirty (30) days following the date originally scheduled. If the date originally scheduled for any Closing is so extended, then the time periods within which each Subsequent

Closing must occur shall be extended for the same period of time but there shall be no such extension of any Closing date for any delay in any Closing arising out of any act or omission of Builder.

(vi) Seller agrees to perform or cause to be performed at Seller's sole cost and expense, all work required so that as of the date of each Closing, each Lot to be purchased at such Closing will be a "Finished Lot." For the foregoing purposes, a Lot will be deemed to be a "Finished Lot" if the Lot:

(A) is shown on a duly recorded subdivision plat;

(B) is suitable for issuance of a single-family residential building permit under local ordinances and North Carolina statutes and regulations, with water and sewer lines extended to the Lot, or the completion bonded with the appropriate governmental authorities. Builder acknowledges that electricity, natural gas and telephone service are being installed by local utility companies and such installation may not be completed at the time of Closing. Builder agrees that such conditions shall not entitle Builder to delay any Closing nor shall they constitute a default by Seller. Seller agrees to diligently pursue completion of such improvements so as not to delay Builder's ability to obtain a certificate of occupancy;

(C) fronts on a street sufficient to provide access to the Lot;

(D) is substantially free of debris created by Seller's development activities; and

(E) is otherwise in compliance with the obligations of Seller set forth in this Agreement.

It is agreed that Seller's obligation to deliver Finished Lots at the time of each Closing and to meet its other obligations under this Agreement shall be conditioned upon the absence of events or circumstances which are beyond Seller's reasonable control. If, due to acts of God, weather conditions, governmental restrictions or delays, unavailability of required materials or other events or circumstances beyond Seller's reasonable control, the completion of necessary development work cannot be accomplished prior to the closing on any affected Lot, Seller shall not be in default but shall proceed to complete the work as soon as possible and the date by which any Subsequent Closing on any affected Lot must occur shall be extended for the period of such delay, Seller shall not be liable for

damages suffered by Builder on account of such delay and this Agreement shall continue in full force and effect.

(vii) Place of Closing. Each Closing shall occur in the offices of Builder's attorneys in Union County, or at such other place as Seller and Builder may agree.

18. Purchase Price and Method of Payment.

(a) Between the date of this Agreement and September 30, 1998, the purchase price for each Lot shall be Twenty One Thousand Five Hundred and No/100 Dollars ($21,500.00). During each calendar quarter thereafter, the purchase price for each Lot shall be increased by one and one-half percent (1.5%) from the price applicable to the immediately preceding quarter.

(b) Notwithstanding subsection (a) above, if the Commencement Date has not occurred by September 30, 1997, then (i) September 30, 1998 as set forth in subsection (a) above shall be extended by the same number of days by which the Commencement Date occurred after September 30, 1997, and (ii) during each ninety-one (91) days thereafter, the purchase price for each Lot shall be increased by one and one-half percent (1.5%) from the price applicable to the immediately preceding ninety-one (91) day period.

(c) At each Closing, Builder shall pay the purchase price for each Lot in immediately available funds.

(d) The Deposit heretofore paid by Builder to Seller shall be credited against the purchase price for the fourth (4th) Lot actually purchased by Builder from Seller. If, for any reason, other than the fault or default of Seller, Builder shall not have purchased four (4) Lots within the period set forth in Section 17(a) and Section 17(b)(i) above, then the Deposit shall be forfeited to Seller, but such forfeiture shall not affect any other right or remedy of Seller under this Agreement.

19. Closing Costs and Prorations.

(a) At each Closing, (i) Seller shall pay (A) any costs incident to the release of the Lots being conveyed from any existing security instruments in respect of financing obtained by Seller, if any, (B) the cost of preparation of the deed, (C) the deed stamp excise taxes in respect of the conveyance of each Lot to Builder, and (D) all other closing costs incurred by Seller, and (ii) Builder shall pay (A) all costs and charges incident to recording the deed for the Lot(s) being conveyed to Builder, (B) any costs incident to any financing obtained by Builder, (C) all title insurance premiums and survey costs, and (D) all other closing costs incurred by Builder. Each party shall be responsible for its own attorneys' fees.

(b) Real property taxes on each Lot for the year of sale shall be prorated between Builder and Seller as of the date of Closing on such Lot (based on the valuation and tax rate for the prior year if the current year tax bill is not available). If the proration is based upon an estimate and the actual bill varies from the estimate, the parties agree to make any necessary adjustments within ten (10) days of the receipt of the actual tax bill. Builder acknowledges that as of any Closing, the Lots being conveyed at such Closing might not have been assessed as separately described parcels of real estate and that the real property taxes for the year of sale might be assessed under a tax bill in the name of Seller which covers additional property. If this is the case, Builder and Seller agree that the tax proration for such Lots shall be determined by multiplying the total tax by a fraction, the numerator of which shall be the number of Lots being purchased and the denominator of which shall be the total number of Lots covered by the applicable tax bill, and then prorating the product of such multiplication as of the date of such Closing.

(c) Annual assessments, if any, levied against each Lot by the Association in accordance with the Declaration shall be prorated between Builder and Seller as of the date of Closing on such Lot.

20. Title; Possession.

(a) At each Closing, Seller shall convey to Builder good and marketable insurable title in fee simple to the Lots being purchased by general warranty deed which shall expressly be made subject only to matters approved or waived by Builder, ad valorem property taxes and assessments not delinquent prior to Closing, general utility and right-of-way easements serving such Lots and other easements shown on the Plat and/or reserved in the Declaration, zoning ordinances, the Declaration and other matters of record affecting the Lot; provided, that no such matter shall impair marketability of title or Builder's use of such Lots for construction of single-family residential dwellings. Such Lots shall not be subject to any mortgage or deed of trust or other encumbrance or title defect that is monetary in nature, and Seller agrees to pay and satisfy of record any such matter prior to Closing at Seller's expense.

(b) If any dispute exists between the parties as to whether title to any Lot is such as is required by the terms of this Agreement, the willingness of a title insurance company to issue a title insurance commitment for an owner's policy of title insurance, subject only to the matters and things set forth above, and the usual and customary exceptions contained in an owner's policy of title insurance shall be binding and conclusive upon the parties that title to the Lot which Seller proposes to convey to Builder is such as is required by the terms of this Agreement.

(c) At each Closing, Seller shall deliver possession of the Lot(s) being purchased to Builder. **Builder acknowledges that occupancy or other possession or use of the Lot prior to the Closing will not be permitted.**

21. **Lots Purchased "As Is."** Builder acknowledges that, except for Seller's representations and warranties contained in this Agreement, Seller, by execution and delivery of this Agreement or of any document or instrument executed and delivered in connection with any Closing, makes no warranty, express or implied, as to the suitability or fitness of any Lot for any purpose, or as to the merchantability, value, quality, condition or salability of such Lot. The sale of any Lot by Seller to Builder shall be "as is" and "where is," except as specified above. Builder acknowledges that it is Builder's responsibility to inspect each Lot to ensure that it is suitable for Builder's use.

22. **Subdivision Requirements**.

(a) Seller represents that, on or prior to the Closing Date for the sale of each Lot from Seller to Builder, all subdivision improvements necessary to permit Builder to obtain a building permit for construction of a single-family residence on such Lot shall be fully permitted, and either completed or under contract and scheduled for completion. Builder acknowledges and agrees that, notwithstanding that such subdivision improvements may not be fully completed at the time of such Closing, such condition will not prevent Builder from initiating such construction. Builder acknowledges and recognizes that there may be certain inconveniences until construction is completed, and Builder waives all claims with respect thereto. Seller shall post a bond or bonds with the City of Monroe to secure the obligation of Seller to complete any incomplete subdivision improvements.

(b) Seller shall provide stub-out connections for each Lot to permit the dwelling on each Lot to be connected to water and sewer serving the Development. Builder shall tie in at the connections provided to obtain water and sewer and any other utility service for each Lot. Under no circumstances shall Builder dig up streets or curbs or create new connections without Seller's prior written approval. Builder shall be responsible for and shall pay all charges and fees (including but not limited to installation and tie-in charges such as "meter," "tap on," "hook-up," and "capacity type-impact" fees) related to connection of structures on the Lot to water and sewer services and all other utilities to serve such Lot.

23. **Seller's Representations and Warranties**. As of the date of each Closing, Seller represents and warrants to Builder that Seller owns fee simple title to each Lot being conveyed and that Seller's execution and delivery and performance of this Agreement is not prohibited by and will not constitute a default under any other agreement binding on Seller. Seller further represents and

warrants to Builder that, as of the date of each Closing, to the knowledge of Seller, there will be no toxic or hazardous wastes (as such terms are now defined by current law and regulations) present on any Lot conveyed to Builder in such quantities as would require remediation. Builder acknowledges that Seller has previously furnished to Builder a soils report in respect of the Lots within the Development. Builder shall not be required to purchase and Seller shall not be required to sell any Lot (a) which requires construction of the foundation of a house over a "stump hole" or (b) on which the building pad for a single-family residence is not located outside of the one hundred (100) year flood plain. Seller represents and warrants that as of the date of each Closing, each Lot to be conveyed by Seller to Builder at such Closing shall be served by public water and sewer, underground electricity and natural gas, and such Lots shall have recorded access to a publicly maintained and paved road. It is acknowledged, however, that the subdivision streets within the Development may not be paved and accepted for public maintenance at the time of such Closing, but Seller represents that paving sufficient for such dedication and for such public maintenance shall be appropriately bonded on or before such Closing by Seller at its expense and for the benefit of the appropriate governmental authority. If Builder elects to purchase any Lot for which the soils condition is such that the necessary footing will exceed three (3) feet in depth, Seller agrees to reimburse Builder for one-half (1/2) of the reasonable cost of constructing such footing in excess of three (3) feet in depth after Seller's receipt of satisfactory evidence that such construction has been completed.

24. Use of Lots.

(a) Builder warrants and represents to Seller that it is and shall, during the term of this Agreement, continuously be authorized to do business in North Carolina. Builder further warrants and represents to Seller that Builder is purchasing Lots for the sole purpose of constructing single-family residential dwellings thereon for resale in the ordinary course of Builder's business.

(b) In addition to the requirements set forth above for submission and approval of building and landscape plans by Seller and by the Association pursuant to the Declaration, Builder acknowledges and agrees that prior to the Initial Closing, it will submit (I) to Seller, for Seller's approval, and (II) to the City of Monroe Planning and Development Department, plans and specifications for all houses to be constructed by Builder in the Development. Those plans shall show the dimensions of heated floor space and outside dimensions for each type of house proposed to be constructed by Builder, and shall provide for the following:

(i) Each house shall have a minimum of one thousand three hundred (1,300) square feet of heated floor space and a two (2) car garage, and there will not be any outbuildings other than the two (2) car garage;

(ii) The roof of each house shall have a minimum slope of 6/12;

(iii) The exterior materials shall be brick, vinyl siding, and/or stucco (including synthetic stucco-type products);

(iv) The foundation walls shall be a minimum of four (4) courses of standard brick above grade;

(v) Builder shall install on each Lot the type of mailbox and newspaper box that has been designated by Seller;

(vi) If the plans provide for wood-burning fireplaces with exposed chimneys, any and all such chimneys must be constructed of brick and/or stucco (including synthetic stucco-type products);

(vii) No concrete block or foundation of concrete shall be visible from the road right-of way;

(viii) The driveway from the curb to the garage shall be constructed of concrete (in particular, no part of the driveway shall be constructed of asphalt or gravel), and shall provide for a pad for off-street parking of at least eighteen feet (18') by thirty feet (30');

(ix) No chain link fences shall be erected on any Lot, and no fences shall be erected on any Lot closer to any street line than the building setback line shown on the recorded map (or in any case between the residential structure located on the Lot and the road right-of-way), nor shall any fence be erected except in accordance with the architectural control provisions of the Declarations; provided, however, that notwithstanding anything contained in this Section or elsewhere to the contrary, Declarant may install decorative fencing on any Lot used by it containing a model home, and Declarant may install fences in the Common Area as Declarant deems to be necessary or appropriate;

(x) With respect to all one-story houses, (A) the wall of the architectural front of each house shall not run unbroken (i.e. unarticulated) for a distance greater than twenty-four (24) lineal feet, and (B) all wall offsets shall be at least one (1) foot in depth; this requirement does not apply to traditional two-story house styles (including but not limited to Georgian, salt-box, and Connecticut river valley);

(xi) A minimum of twenty-five percent (25%) of the architectural front wall (excluding the foundation) of any house with vinyl siding shall have a brick or stucco finish (including synthetic stucco-type products); and

(xii) There shall be a planting strip of at least forty-eight inches (48") in width between the curb and the sidewalk.

(c) Notwithstanding any other provision of this Agreement, Seller shall have no obligation to sell any Lot to Builder unless and until Builder shall have obtained a construction loan for construction of a single-family residence on such Lot and unless Builder shall, contemporaneously with the closing of the sale of such Lot, actually close such construction loan and execute, deliver and record all documents required therefor. Moreover, Builder agrees that, not less than thirty (30) days after the date it shall acquire any Lot pursuant to this Agreement, it shall commence construction of a single-family residence on such Lot and shall thereafter diligently pursue such construction to completion.

(d) Builder agrees that immediately after the closing of the two (2) Initial Lots, Builder will commence and diligently pursue to completion construction on one of those Lots a model home for viewing by the public. At all times during the term of this Agreement, Builder agrees that it shall furnish and maintain at least one (1) model home for viewing by the public and shall cause such model home to be staffed for a minimum of forty (40) hours per week with competent and capable sales personnel. Prior to commencing any site work or other construction within the Development, Builder shall submit to Seller for approval, which approval shall not be unreasonably withheld, Builder's marketing plans for the Development, the resumes of the proposed staff for the model home, and such other information as Seller may reasonably request.

(e) To satisfy the requirement set forth in subsection (d) above, Builder may, together with the other builders admitted by Seller to the Builder's Program for Phase I of the Development, construct, furnish, and maintain one (1) model home; provided, however, that the participating builders shall have first entered into a joint marketing agreement satisfactory to Seller.

(f) Builder agrees that it will at all times (after its purchase of the first four (4) Lots) maintain in the Development for sale to the general public at least four (4) completed houses or houses under construction in addition to the model home.

25. Brokers. Each of Seller and Builder represents and warrants to the other that it has not dealt with a real estate agent or broker in connection with the purchase and sale of Lots contemplated by this Agreement. Each of Seller and Builder covenants and agrees to indemnify the other against any loss, liability, cost, claim, demand or action arising out of or in any manner related to any alleged employment or engagement of any real

estate broker or agent by it in connection with the purchase and sale contemplated by this Agreement.

26. **Indemnification**. Builder acknowledges and agrees that Seller is not a joint venturer or partner of Builder in Builder's development of or construction upon or resale of Lots in the Development and that Seller shall have no liability arising out of resulting from Builder's ownership and activities in the Development. Builder agrees to defend and hold Seller harmless from any and all claims, losses, damages and actions arising out of, or directly or indirectly related to, Builder's activities and the activities of its employees, agents and subcontractors in the Development, including, without limitation, claims or liens by mechanics and materialmen, claims by the Association for assessments or violations of the Declaration and claims by any third parties arising out of any contract with Builder excluding, however, all matters which arise from the negligence or misconduct of Seller. This indemnity shall include reasonable attorneys' fees and investigation costs and all other costs, expenses and liabilities incurred by Seller, and shall survive the expiration or earlier termination of this Agreement.

27. **Default and Remedies**. In the event of Builder's default in the performance of any obligation or covenant under this Agreement (including but not limited to any failure of Builder's agents, subcontractors or employees to comply fully with the terms of this Agreement), Seller may terminate Builder's rights under this Agreement by written notice to Builder, in which event Seller shall have no further obligation with respect to any Lots which have not then been conveyed to Builder, but all obligations of the parties relating to Lots which have previously been conveyed to Builder shall remain in full force and effect. In addition, Seller shall be entitled to cure any such default by Builder and to charge Builder the reasonable cost of correcting such default, and Seller shall be entitled to pursue any and all other remedies available to it in law or in equity.

28. **Notices**. Any notice or demand required or permitted to be given under this Agreement shall be given in writing and shall be delivered either by personally delivering it or by depositing it with the United States mail, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party at its address set forth below. Each such notice shall be deemed delivered at the time of personal delivery or, if mailed, three (3) days after it is deposited as provided above. The address of the parties to which notice is to be sent may be changed by notice given as provided above.

To Seller: Rocky River of Monroe, LLC
1220 South Kings Drive
Charlotte, North Carolina 28207
Attn: Jerry C. Rigsby

to Builder: _____

_____

_____

_____

29. **No Assignment, Successors**. This Agreement shall be binding upon and inure to the benefit of Builder and Seller and their permitted successors and assigns. Builder shall not assign this Agreement or any interest under this Agreement, in whole or in part, without the prior written consent of Seller, which may be withheld for any reason or for no reason. Any attempted assignment by Builder which is not approved in writing by Seller shall be null and void, and shall constitute a default under this Agreement.

30. **Entire Agreement**. This Agreement embodies the entire agreement between Builder and Seller concerning the subject matter hereof and cannot be modified or amended except by written instrument executed by Builder and Seller. Builder has not relied upon and has not been induced by any information, representation, warranty, or statement, oral or written, express or implied, made by Seller or any other person representing or purporting to represent Seller which is not expressly set forth in this Agreement.

31. **Applicable Law**. This Agreement shall be construed in accordance with and interpreted under the laws of the State of North Carolina.

32. **Survival**. All provisions of this Agreement shall survive the Closing of any sale contemplated by this Agreement.

33. **No Waiver**. Failure of either party to insist upon compliance with any provision of this Agreement shall not constitute a waiver of the rights of such party to subsequently insist upon compliance with that provision or any other provision of this Agreement.

34. **Severability**. The provisions of this Agreement are intended to be independent and, in the event any provision of this Agreement should be declared invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect any other provision of this Agreement.

35. **Construction of Agreement**. Builder and Seller acknowledge that they have read and have had the opportunity to be advised by counsel as to the provisions of this Agreement and each party agrees that any court interpreting this Agreement shall not apply any presumption that the terms hereof shall be more strictly construed against one party because that party was responsible for preparation of this Agreement.

36. **Time of Essence**. Time is of the essence of this Agreement and of the performance of each obligation to be performed by each of the parties to this Agreement.