

See Amend.

BK 1383 Pg 140

See Amend.

BK 1475 Pg 398  
" 1386-849D  
" 1376-386  
" 1651-304

BK 1301 Pg 466

0002531

Filed for record 9-17-99  
Date 9-17-99  
Time 10:00 AM  
JUDY A. PRICE, Register of Deeds  
Union County, North Carolina  
Rev. 9/16/99

rd 5.T.

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HAMILTON PLACE SUBDIVISION, PHASE I**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
is made this 16<sup>th</sup> day of September, 1999 by Dan Moser Co., Inc., a North Carolina "S"  
Corporation, 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 "Hamilton Place Subdivision, Phase I", 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 Hamilton Place Subdivision, Phase I 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.

**ARTICLE I  
DEFINITIONS**

**Section 1.** "Homeowners Association" shall mean and refer to the Homeowners  
Association for Dan Moser Co., 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.

ma/TO  
Dan Moser  
PO Box 350  
Mineral Springs, NC 28108

RECORDED  
AND  
VERIFIED  
CGG

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 Hamilton Place Subdivision, Phase I 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 Dan Moser Co., Inc. and its assigns.

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

## 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 the [Final Plat of Hamilton Place Subdivision, Phase I dated \_\_\_\_\_ at File \_\_\_\_\_ of the Union County Public Registry (the "Map")]. Such property is subject to the conditions and requirements set forth in that certain Special Use Permit No. \_\_\_\_\_ issued by the City of Monroe (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 by the Declarant.

Section 3. Monroe Zoning Code. The provisions of the City of Monroe's land use ordinances 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) 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.

**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 owner using their lots 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 Special Use Permit. No such dedication or transfer shall be effective unless 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. 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 Special Use 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 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 principle 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 principle 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. 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. Declarant shall maintain the common areas until such time as the common areas are turned over to the Association. Declarant shall convey the common areas to the Association upon the closing of 50% of the lots in each phase.

**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 therefore, 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.

BK 1301 PG 471

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 One Hundred Dollars (\$100.00) per Class A 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 apportioned 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 earlier of (a) the first day of the month following the conveyance to the Homeowners Association of the Common Area, or (b) \_\_\_\_\_

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 specification 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 a 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**

**WHEREAS**, Dan Moser Co., Inc., P.O. Box 350, Mineral Springs, North Carolina is the owner of a certain tract of land located on Rocky River Road in Monroe, North Carolina in Union County, and described in a plat recorded in the Office of the Register of Deeds in Union County, North Carolina, in Tax Parcel I.D. numbers 09-336-019, and designated as Hamilton Place Subdivision, Phase I.

**WHEREAS**, DMC Land Development Company Inc. now desires for the use and benefit of their Company, its heirs, successors and assigns and its future grantees and lessees, to place and impose certain restrictive covenants on the subject property and the owners and holders.

**NOW, THEREFORE**, in consideration of the premises, and for the purpose aforesaid, Dan Moser Co., Inc., for their Company, its heirs, successors and assigns and their future grantees and lessees, do hereby place and impose upon each lot shown on the above referenced plat and included in the subject property the following restrictive covenants for the period ending 20 years from the date hereof.



**Section 1. Land Use.** All lots shall be known and described as 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 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 sidelines 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.

**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 and must be in compliance with City Subdivision Regulations.

**Section 4. Size of Structure.** No residential structure shall be erected or placed having a total finished heated area of less than one thousand six hundred heated square feet (1,600) 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.

**Section 5.** Any house built on a slab foundation shall have a minimum four course brick masonry veneer skirt (of standard brick size) extending up the face of the slab.

**Section 6.** The wall of the architectural front of the dwelling shall not run unbroken (i.e. unarticulated) for a distance greater than twenty-four linear feet. All wall offsets should be at least one foot in depth.

**Section 7.** The exterior walls of all dwellings (excluding trim) shall be made of wood, brick, vinyl, stone, stucco, or similar materials.

**Section 8.** A minimum of twenty-five percent of the architectural front wall area (including door and window openings) (excluding foundations) of any house constructed of vinyl shall have a brick, stucco, or stone finish.

**Section 9.** The majority of all roof areas on any house shall have a minimum 6/12 roof Pitch.

**Section 10.** A planted strip of at least twenty-four inches shall be placed between the street and curb and sidewalk.

**Section 11.** The front yard of each lot shall contain at least two trees, suitable for healthy growth in our climate, each with a minimum caliper of one and one-half inches measured at a height of six inches above the ground.

**Section 12.** All exposed chimneys shall have a brick veneer.

**Section 13. 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 of representative. This Section shall not be applicable to temporary construction trailers, sales offices, and material storage facilities used during construction.

**Section 14. 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.

**Section 15. 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 16. 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 17. 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 18. Residence.** No mobile homes, manufactured houses, relocation of existing older homes, no metal buildings, 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 19. Each owner shall keep his lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. None of the following items shall be erected or located closer to the front yard than the rear corners of any dwelling erected on the lot:**

- (a) Free standing radio or television transmission or reception towers and antennas, satellite dishes must be less than three (3) feet in diameter and they must not be visible from in front of the house.
- (b) Swimming pools (above ground pools prohibited), Jacuzzis, or hot tubs.
- (c) Trampolines.
- (d) Fences or walls, including invisible fencing. Any fencing should not have a height over 4 feet except a 6-foot fence may be allowed to enclose a patio, pool, Jacuzzi, or hot tub for privacy. No structures (including fences) shall be built or placed on berm. The following fencing would be prohibited: chain link and/or chicken wire.

**Section 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 35 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, or as shown on the Recorded Plat. 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 obstructions of such sight lines.

**Section 26. 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. No vehicles of any type which are abandoned, inoperative, or dismantled shall be allowed on property.

**Section 27. 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 28. Basketball Goal Support.** No basketball goal supports shall be erected or placed within any street right-of-way.

Section 29. 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 access to Rocky River Road only by streets within the Properties.

Section 30. 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 off-street parking for at least four cars.

#### 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 of 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.

RECORDED  
AND  
VERIFIED  
JF

BK 1376 PG 386 BK 1380 PG 466

OCT 16 1999

Filed for record 9-17-99  
Date 9-16-99  
Time 1:50 PM  
JUDY G. PRICE, Register of Deeds  
Union County, Monroe, North Carolina

Rev. 9/16/99

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HAMILTON PLACE SUBDIVISION, PHASE I**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 16<sup>th</sup> day of September, 1999 by Dan Moser Co., Inc., a North Carolina "S" Corporation, hereinafter referred to as "Declarant."

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property which is described in Article I hereof, and desires to create thereon an exclusive residential community of single-family houses to be named "Hamilton Place Subdivision, Phase I"; 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 Hamilton Place Subdivision, Phase I 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.

**ARTICLE I  
DEFINITIONS**

Section 1. "Homeowners Association" shall mean and refer to the Homeowners Association for Dan Moser Co., 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.

Dan Moser Co.  
PO Box 350

This document is being rerecorded to include the plat cabinet reference which was inadvertently left out.

Mineral Springs, NC

By: Sharon Ball, Vice President Dan Moser Co. CGG

28/08 Sharon Ball

RECORDED  
AND  
VERIFIED

BK 1301PG467

BK 1376PG387

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 Hamilton Place Subdivision, Phase I 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 Dan Moser Co., Inc. and its assigns.

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

## 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 the [Final Plat of Hamilton Place Subdivision, Phase I dated \_\_\_\_\_ and recorded 8-11-89 in Plat Cabinet \_\_\_\_\_ at File 1083-154 of the Union County Public Registry (the "Map")]. Such

property is subject to the conditions and requirements set forth in that certain Special Use Permit No. \_\_\_\_\_ issued by the City of Monroe (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 by the Declarant.

Section 3. Monroe Zoning Code. The provisions of the City of Monroe's land use ordinances 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.

BK 1301 PG 468

BK 1376 PG 388

### 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) 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.

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 owner using their lots as their principle 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.

BK 1301PG469

BK 1376PG389

- (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 Special Use Permit. No such dedication or transfer shall be effective unless 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. 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 Special Use 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 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 principle 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 principle 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



BK 1301 PG 470 BK 1376 PG 390

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. 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. Declarant shall maintain the common areas until such time as the common areas are turned over to the Association. Declarant shall convey the common areas to the Association upon the closing of 50% of the lots in each phase.

**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 therefore, 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.

BK 1301 PG 471

BK 1376 PG 391

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 One Hundred Dollars (\$100.00) per Class A 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.

BK 1301PG472 BK 1376PG392

**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 earlier of (a) the first day of the month following the conveyance to the Homeowners Association of the Common Area, or (b) \_\_\_\_\_

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.

BK 1301PG473

BK 1376PG393

#### 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 specification 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

WHEREAS, Dan Moser Co., Inc., P.O. Box 350, Mineral Springs, North Carolina is the owner of a certain tract of land located on Rocky River Road in Monroe, North Carolina in Union County, and described in a plat recorded in the Office of the Register of Deeds in Union County, North Carolina, in Tax Parcel I.D. numbers 09-336-019, and designated as Hamilton Place Subdivision, Phase I.

WHEREAS, DMC Land Development Company Inc. now desires for the use and benefit of their Company, its heirs, successors and assigns and its future grantees and lessees, to place and impose certain restrictive covenants on the subject property and the owners and holders.

NOW, THEREFORE, in consideration of the premises, and for the purpose aforesaid, Dan Moser Co., Inc., for their Company, its heirs, successors and assigns and their future grantees and lessees, do hereby place and impose upon each lot shown on the above referenced plat and included in the subject property the following restrictive covenants for the period ending 20 years from the date hereof.

BK 1301 PG 4 74

BK 1376 PG 394

**Section 1. Land Use.** All lots shall be known and described as 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 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 sidelines 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.

**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 and must be in compliance with City Subdivision Regulations.

**Section 4. Size of Structure.** No residential structure shall be erected or placed having a total finished heated area of less than one thousand six hundred heated square feet (1,600) 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.

**Section 5.** Any house built on a slab foundation shall have a minimum four course brick masonry veneer skirt (of standard brick size) extending up the face of the slab.

**Section 6.** The wall of the architectural front of the dwelling shall not run unbroken (i.e. unarticulated) for a distance greater than twenty-four linear feet. All wall offsets should be at least one foot in depth.

**Section 7.** The exterior walls of all dwellings (excluding trim) shall be made of wood, brick, vinyl, stone, stucco, or similar materials.

**Section 8.** A minimum of twenty-five percent of the architectural front wall area (including door and window openings) (excluding foundations) of any house constructed of vinyl shall have a brick, stucco, or stone finish.

**Section 9.** The majority of all roof areas on any house shall have a minimum 6/12 roof pitch.

**Section 10.** A planted strip of at least twenty-four inches shall be placed between the street and curb and sidewalk.

**Section 11.** The front yard of each lot shall contain at least two trees, suitable for healthy growth in our climate, each with a minimum caliper of one and one-half inches measured at a height of six inches above the ground.

**Section 12.** All exposed chimneys shall have a brick veneer.

**Section 13. Temporary Structures.** No structure of a temporary nature shall be

BK 1301 PG 475

BK 1376 PG 395

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 of representative. This Section shall not be applicable to temporary construction trailers, sales offices, and material storage facilities used during construction.

**Section 14. 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.

**Section 15. 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 16. 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 17. 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 18. Residence.** No mobile homes, manufactured houses, relocation of existing older homes, no metal buildings, 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 19. Each owner shall keep his lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. None of the following items shall be erected or located closer to the front yard than the rear corners of any dwelling erected on the lot:**

- (a) Free standing radio or television transmission or reception towers and antennas, satellite dishes must be less than three (3) feet in diameter and they must not be visible from in front of the house.
- (b) Swimming pools (above ground pools prohibited), Jacuzzis, or hot tubs.
- (c) Tranmpolines.
- (d) Fences or walls, including invisible fencing. Any fencing should not have a height over 4 feet except a 6-foot fence may be allowed to enclose a patio, pool, Jacuzzi, or hot tub for privacy. No structures (including fences) shall be built or placed on berm. The following fencing would be prohibited: chain link and/or chicken wire.

BK 1301 PG 4 76

BK 1376 PG 396

**Section 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 35 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, or as shown on the Recorded Plat. 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 obstructions of such sight lines.

**Section 26. 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. No vehicles of any type which are abandoned, inoperative, or dismantled shall be allowed on property.

**Section 27. 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 28. Basketball Goal Support.** No basketball goal supports shall be erected or placed within any street right-of-way.



BK 1301PG477 BK 1376PG397

Section 29. No Access from Rocky River Road. No driveway, accessway, curbside 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 access to Rocky River Road only by streets within the Properties.

Section 30. 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 off-street parking for at least four cars.

#### 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 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 of 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.

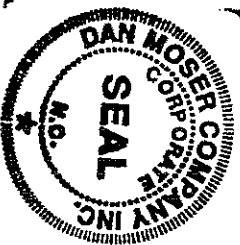
Section 3. Effect of Restrictions and Amendment. The covenants and restrictions of this Declaration shall bind only to the land specifically herein described and shall run with and bind that land. This Declaration may be amended prior to July 17, 2001, by an instrument signed by the Owners of not less 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.



BK 1301 PG 478 BK 1376 PG 398

IN WITNESS THEREOF, the parties hereto have executed this Declaration under seal as of the  
17<sup>th</sup> day of September, 1999

Dan Moser Co., Inc.



ATTEST:

BY: [Signature]  
Dan L. Moser

[Signature]  
Secretary

I, Joy H. Hayward, a Notary Public of the County and State aforesaid,  
certify that Tricia Faust personally came before me this day and  
acknowledged that she is secretary of Dan L. Moser Construction & Realty Co., Inc., a North  
Carolina corporation, and that by authority duly given and as the act of the corporation, the  
foregoing instrument was signed in its name by its President, sealed with its corporate seal and  
attested by her and its Secretary.

Witness my hand and official stamp or seal, this 17<sup>th</sup> day of  
September, 1999.

[Signature]  
Notary Public (SEAL)

My Commission Expires: 10/5/2003



NORTH CAROLINA - UNION COUNTY

The foregoing is the true and correct copy of

[Signature] Notary Public

to be correct. Filed for record this 17 day  
of Sept, 1999. 11:30 AM

NOTARY PUBLIC REGISTERED OF DEEDS  
BY: [Signature]

State of North Carolina

Drawn by and Mail to:

County of Union

Catherine C. Hunter  
10800 Sikes Place, Suite 205  
Charlotte, NC 28277

*Filed for record*  
Date 12.8.2000  
Time 11:05 o'clock A.M.  
JUDY G. PRICE, Register of Deeds  
Union County, Monroe North Carolina

AMENDMENT OF DECLARATION  
AND  
SUPPLEMENTAL DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HAMILTON PLACE SUBDIVISION

THIS AMENDMENT AND SUPPLEMENTAL DECLARATION, made this 25 day of October, 2000, by Dan Moser Company, Inc., hereinafter referred to as "Declarant", and D. BALLARD CONSTRUCTION, INC., TRUSTWAY HOMES, INC., MCGLOTHIN, INC., WILLIAMS MASONRY, INC., HERRICK HOMES, INC., hereinafter referred to as Phase I Lot Owners and BEACON HOMES OF CHARLOTTE, INC., MICHAEL ANTHONY BUILDERS, INC., TRUSTWAY HOMES, INC., MCGLOTHIN, INC., GENESIS BUILDERS, INC., hereinafter referred to as Phase III Lot Owners:

## WITNESSETH

WHEREAS, Declarant executed and recorded the Declaration of Covenants, Conditions and Restrictions for Hamilton Place Subdivision, Phase I, on the 17<sup>th</sup> day of September, 1999, and they are recorded in Book 1301 at Page 466 in the Union County Public Registry and rerecorded in Book 1376 at Page 386 and said declaration was amended by document recorded in Book 1383 at page 140 in the said registry (the Declaration).

WHEREAS, the Declaration allows amendment upon the signature of 90% of the Lot Owners and the Declarant and the undersigned Phase I Lot Owners do account for 90 % of the Lot Owners:

NOW THEREFORE, the Declarant and the Phase I Lot Owners desire to amend the Declaration by adding new sections to be referred to as Article XI as follows:

ARTICLE XI. ANNEXATION. Additional residential property and Common Area may be annexed to the Properties with the consent of Two-thirds (2/3) of each class of members.

Additional land within the area described in Deed Book 1339, Page 216, and Deed Book 1339 Page 219 and Deed Book 1339 Page 224 and Deed Book 1226 Page 109 and 1303 page 534 of

the Union County Public Registry may be annexed by the Declarant without the consent of members within 15 years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

WHEREAS, this AMENDMENT OF DECLARATION, allows the annexation of additional land and makes the same subject to the Declaration,

NOW THEREFORE, the Declarant and the Phase III Lot Owners, do hereby publish and declare that all the land more particularly described below is subject to the Declaration and all the terms and conditions thereof, and, further, such land is subject to the jurisdiction of the Association and the assessments levied by the Association allocable to such additional land. The additional land hereby annexed is more particularly described as follows:

Located in the City of Monroe, Union County, North Carolina, and being more particularly described as follows:

Being all of the property described as Hamilton Place Phase 3 on plats recorded in the Union County Public Registry at Plat Cabinet G at Pages 1,2,3, and 4.

And being all of the property described in the Deeds recorded at Deed Book 1339 Page 216 and Deed Book 1339 Page 219 and Deed Book 1339 Page 224 in the Union County Public Registry, to be commonly known as Hamilton Place Phase II.

WHEREAS, the Declarant filed an identical Declaration of Covenants Conditions and Restrictions, on May 5, 2000 at Book 1389 Page 839 in the Union County Public and the Declarant and the Phase III Lot Owners desire to nullify and make void that additional, identical Declaration of Covenants,

NOW THEREFORE, the Declarant and the Phase III Lot Owners, do hereby nullify and void the Declaration of Covenants Conditions and Restrictions recorded in Book 1389 at Page 839 in the Union County Public Registry.

IN WITNESS WHEREOF, the Declarant, the Phase I Lot Owners and the Phase III Lot Owners have hereunto set their hands and seals the day first written above.

---

BK 1383PG 140

*by gm*

0011173

Filed for record Date 4-25-2000

Time 12:25 o'clock PM

JUDY G. PRICE, Register of Deeds  
Union County, Marro, North Carolina

STATE OF NORTH CAROLINA  
COUNTY OF UNION

AMENDMENT TO DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HAMILTON PLACE SUBDIVISION, PHASE I

RECORDED  
AND  
VERIFIED  
CGG

THIS AMENDMENT, made this the 13<sup>th</sup> day of April, 2000, by Dan Moser Company, Inc., hereinafter referred to as "Declarant":

WITNESSETH:

WHEREAS, Declarant executed and recorded the Declaration of Covenants, Conditions and Restrictions for Hamilton Place Subdivision, Phase I, on the 17<sup>th</sup> day of September, 1999, and they are recorded in Book 1301 at Page 466 in the Union County Public Registry; and

WHEREAS, Declarant desires to amend the original Declaration by adding thereto a new Section to be referred to as Article X, as follows:

Article X. HUD/VA Approval. Annexation of additional properties, dedication of common area, and amendment of the Declaration of Covenants, Conditions and Restrictions, requires HUD/VA prior approval as long as there is a Class B membership.

IN WITNESS WHEREOF, the Declarant has hereunto set its hand and seal the day first written above.

Dan Moser Company, Inc.

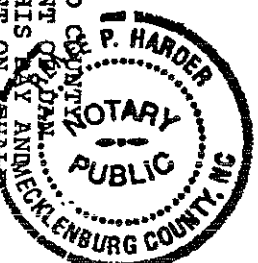
By: Sharon Ball

Vice President

DRAWN BY AND MAIL TO:  
FOODMAN, SURANE, HUNTER & KARNES, PLLC  
10800 SIKES PLACE #205, CHARLOTTE NC 28277

STATE OF NORTH CAROLINA, COUNTY OF MECKLENBURG:

I, THE UNDERSIGNED, A NOTARY PUBLIC FOR THE STATE AND COUNTY OF NORTH CAROLINA, DO CERTIFY THAT SHARON BALL, VICE PRESIDENT OF DAN MOSER COMPANY, INC., PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT ON BEHALF OF DAN MOSER COMPANY, INC. WITNESS MY HAND AND SEAL, THIS 12TH DAY OF APRIL, 2000.



Renee P. Harder  
Notary Public Commission expiration 6-27-00

NORTH CAROLINA - Union County Renee P. Harder  
The foregoing certificate of

Notary Public of

is (isn't) certified to be correct. This instrument was presented for registration and recorded in this office at Book 1383 Page 140  
this 25 day of April 2000 at 12:25 o'clock PM  
JUDY G. PRICE, REGISTER OF DEEDS By: Lundy G. Polk Assistant Deputy

RECORDED  
AND  
VERIFIED  
CGG

Prepared by: Dan Moser Co.  
P.O. Box 550  
Murrell Springs  
NC  
2105

Filed for record 5-10-2000  
Date 12:00 o'clock P.M.  
Time  
JUDY G. PRICE, Register of Deeds  
Union County, Monroe North Carolina

BK 1389 PG 839  
1012925  
Rev. May 9, 2000 (10)

482

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HAMILTON PLACE SUBDIVISION, PHASE III

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 9<sup>th</sup> day of May, 2000 by Dan Moser Co., Inc., a North Carolina "S" Corporation, 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 "Hamilton Place Subdivision, Phase III"; 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 Hamilton Place Subdivision, Phase III 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.

ARTICLE I  
DEFINITIONS

Section 1. "Homeowners Association" shall mean and refer to the Homeowners Association for Dan Moser Co., 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.

JK 1389 PG 840

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 Hamilton Place Subdivision, Phase III 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 Dan Moser Co., Inc. and its assigns.

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

## 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 the [Final Plat of Hamilton Place Subdivision, Phase III dated January 21, 2000 and recorded April 13, 2000 in Plat Cabinet G at File 1, 2, 3, and 4 of the Union County Public Registry (the "Map")]. Such property is subject to the conditions and requirements set forth in that certain Special Use Permit No. SUP-99-07 issued by the City of Monroe (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 by the Declarant.

Section 3. Monroe Zoning Code. The provisions of the City of Monroe's land use ordinances 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.

BK 1389PG841

### 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) 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.

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 owner using their lots 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.

BK 1389PG842

(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 Special Use Permit. No such dedication or transfer shall be effective unless 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. 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 Special Use 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 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 principle 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 principle 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



BK 1389PG843

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. 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. Declarant shall maintain the common areas until such time as the common areas are turned over to the Association. Declarant shall convey the common areas to the Association upon the closing of 50% of the lots in each phase.

**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 therefore, 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. Purpose 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.

BK 1389PG846

#### 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 specification 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 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 a 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

WHEREAS, Dan Moser Co., Inc., P.O. Box 350, Mineral Springs, North Carolina is the owner of a certain tract of land located on Rocky River Road in Monroe, North Carolina in Union County, and described in a plat recorded in the Office of the Register of Deeds in Union County, North Carolina, and designated as Hamilton Place Subdivision, Phase III.

WHEREAS, DMC Land Development Company Inc. now desires for the use and benefit of their Company, its heirs, successors and assigns and its future grantees and lessees, to place and impose certain restrictive covenants on the subject property and the owners and holders.

NOW, THEREFORE, in consideration of the premises, and for the purposes aforesaid, Dan Moser Co., Inc., for their Company, its heirs, successors and assigns and their future grantees and lessees, do hereby place and impose upon each lot shown on the above referenced plat and included in the subject property the following restrictive covenants for the period ending 20 years from the date hereof.

BK 1389 PG 850

**Section 29. No Access from Rocky River Road.** No driveway, accessway, curbside 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 access to Rocky River Road only by streets within the Properties.

**Section 30. 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 off-street parking for at least four cars.

## 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 of 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.

PM 1654 PG 324

filed for record  
Date 9-28-2001  
Time 8:55 o'clock  
JUDY G. PRICE, Register of Deeds  
Union County, North Carolina  
Rev. 9/19/01

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS 71160  
FOR HAMILTON PLACE SUBDIVISION, PHASE II

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 11<sup>th</sup> day of September, 2001 by Dan Moser Co., Inc., a North Carolina "S" Corporation, 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 "Hamilton Place Subdivision, Phase II", 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 Hamilton Place Subdivision, Phase II 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.

ARTICLE I  
DEFINITIONS

Section 1. "Homeowners Association" shall mean and refer to the Homeowners Association for Dan Moser Co., 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.

*Planning Dept - mail to  
City Hall  
PO Box 69  
Mooresville 28111*

**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 Hamilton Place Subdivision, Phase II 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 Dan Moser Co., Inc. and its assigns.

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

## 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 the Final Plat of Hamilton Place Subdivision, Phase II dated 3/7/01 and recorded 9/27/01 in Plat Cabinet G at File 649 - 654 of the Union County Public Registry (the "Map"). Such property is subject to the conditions and requirements set forth in that certain Special Use Permit No. 48 - 03 issued by the City of Monroe (the "Permit").

**Section 2.** **Additional to Existing Property.** Additional land may be brought within the scheme of and made subject to this Declaration and the Homeowners Association by the Declarant.

**Section 3.** **Monroe Zoning Code.** The provisions of the City of Monroe's land use ordinances 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) 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.

**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 owner using their lots as their principle 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 Special Use Permit. No such dedication or transfer shall be effective unless 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. 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 Special Use 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 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 principle 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 principle 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. 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. Declarant shall maintain the common areas until such time as the common areas are turned over to the Association. Declarant shall convey the common areas to the Association upon the closing of 50% of the lots in each phase.

**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 therefore, 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 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, the maintenance of the private 30' alley coming off Chatterleigh Drive, running behind lots 66 & 67, and accessing the common area, 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 One Hundred Dollars (\$100.00) per Class A 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 earlier of (a) the first day of the month following the conveyance to the Homeowners Association of the Common Area, or (b) \_\_\_\_\_.

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 specification 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 that 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

WHEREAS, Dan Moser Co., Inc., P.O. Box 350, Mineral Springs, North Carolina is the owner of a certain tract of land located on Rocky River Road in Monroe, North Carolina in Union County, and described in a plat recorded in the Office of the Register of Deeds in Union County, North Carolina, in Tax Parcel I.D. numbers 09-336-019, and designated as Hamilton Place Subdivision, Phase II.

WHEREAS, Dan Moser Co., Inc., now desires for the use and benefit of their Company, its heirs, successors and assigns and its future grantees and lessees, to place and impose certain restrictive covenants on the subject property and the owners and holders.

NOW, THEREFORE, in consideration of the premises, and for the purpose aforesaid, Dan Moser Co., Inc., for their Company, its heirs, successors and assigns and their future grantees and lessees, do hereby place and impose upon each lot shown on the above referenced plat and included in the subject property the following restrictive covenants for the period ending 20 years from the date hereof.

**Section 1. Land Use.** All lots shall be known and described as 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 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 sidelines 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.

**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 and must be in compliance with City Subdivision Regulations.

**Section 4. Size of Structure.** No residential structure shall be erected or placed having a total finished heated area of less than one thousand six hundred heated square feet (1,600) 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.

**Section 5.** Any house built on a slab foundation shall have a minimum four course brick masonry veneer skirt (of standard brick size) extending up the face of the slab.

**Section 6.** The wall of the architectural front of the dwelling shall not run unbroken (i.e. unarticulated) for a distance greater than twenty-four linear feet. All wall offsets should be at least one foot in depth.

**Section 7.** The exterior walls of all dwellings (excluding trim) shall be made of wood, brick, vinyl, stone, stucco, or similar materials.

**Section 8.** A minimum of twenty-five percent of the architectural front wall area (including door and window openings) (excluding foundations) of any house constructed of vinyl shall have a brick, stucco, or stone finish.

**Section 9.** The majority of all roof areas on any house shall have a minimum 6/12 roof Pitch.

**Section 10.** A planted strip of at least twenty-four inches shall be placed between the street and curb and sidewalk.

**Section 11.** The front yard of each lot shall contain at least two trees, suitable for healthy growth in our climate, each with a minimum caliper of one and one-half inches measured at a height of six inches above the ground.

**Section 12.** All exposed chimneys shall have a brick veneer.

**Section 13. 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 of representative. This Section shall not be applicable to temporary construction trailers, sales offices, and material storage facilities used during construction.

**Section 14. 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.

**Section 15. 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 16. 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 17. 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 18. Residence.** No mobile homes, manufactured houses, relocation of existing older homes, no metal buildings, 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 19. Each owner shall keep his lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty.** None of the following items shall be erected or located closer to the front yard than the rear corners of any dwelling erected on the lot:

- (a) Free standing radio or television transmission or reception towers and antennas, satellite dishes must be less than three (3) feet in diameter and they must not be visible from in front of the house.
- (b) Swimming pools (above ground pools prohibited), Jacuzzis, or hot tubs.
- (c) Trampolines.
- (d) Fences or walls, including invisible fencing. Any fencing should not have a height over 4 feet except a 6-foot fence may be allowed to enclose a patio, pool, Jacuzzi, or hot tub for privacy. No structures (including fences) shall be built or placed on berm. The following fencing would be prohibited: chain link and/or chicken wire.

**Section 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 35 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, or as shown on the Recorded Plat. 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 obstructions of such sight lines.

**Section 26. 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. No vehicles of any type which are abandoned, inoperative, or dismantled shall be allowed on property.

**Section 27. 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 28. Basketball Goal Support.** No basketball goal supports shall be erected or placed within any street right-of-way.

**Section 29. 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 access to Rocky River Road only by streets within the Properties.

**Section 30. 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 off-street parking for at least four cars.

## 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 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 of 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.** Invalidity 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, 2002, 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.

BK 1654 PG 336

IN WITNESS THEREOF, the parties hereto have executed this Declaration under seal as of the  
21<sup>st</sup> day of September, 19-2001

Dan Moser Co., Inc.



ATTEST:

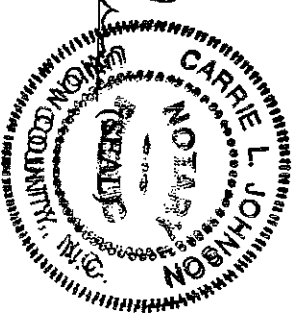
Wanda Stafford  
Secretary

BY: Dan L. Moser  
Dan L. Moser  
President

I, Carrie L. Johnson, a Notary Public of the County and State aforesaid,  
certify that Wanda Stafford personally came before me this day and  
acknowledged that she is secretary of Dan Moser Co., Inc., a North Carolina corporation, and  
that by authority duly given and as the act of the corporation, the foregoing instrument was  
signed in its name by its President, sealed with its corporate seal and attested by her and its  
Secretary.

Witness my hand and official stamp or seal, this 21<sup>st</sup> day of  
September, 1999. 2001

Carrie L. Johnson  
Notary Public



My Commission Expires: 12/01/2004

NORTH CAROLINA - UNION COUNTY

The foregoing certificate(s) of

Carrie L. Johnson Notary Public

of Union Co, NC is/are certified

to be correct. Filed for record this 21 day  
of Sept, 2001, at 8:55 AM

JUDY G. PRICE, REGISTER OF DEEDS  
BY: Judy G. Price Admin. Dept.