

# COPY

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### FOR SUMMERFIELD TOWNHOMES

THIS DECLARATION IS MADE THIS 28th day of October, 1999, by SUMMERFIELD LIMITED, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant").

#### WITNESSETH:

WHEREAS, Declarant is the owner of the real property shown on map of Summerfield Townhomes, recorded in Map Book 32 at page 122 in the Mecklenburg County Public Registry, which property is more particularly described in Section 1. of Article II below, and

WHEREAS, Declarant desires to create thereon an exclusive residential community of single-family attached residential units to be named **Summerfield Townhomes**; and

WHEREAS, Declarant desires to insure the attractiveness of the community, to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the community, to provide for the maintenance and upkeep of the Common Areas, as hereinafter defined, and including the private streets, parking areas, pool and cabana, and of the exterior of all residential units and those areas of the lots which are outside the exterior walls of the residential units and not within the Common Area, and to this end desires to subject the real property described in Section 1. of Article II to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property described below and each owner thereof, and

WHEREAS, to achieve the above objectives, Declarant has deemed it desirable to create an organization to which will be delegated and assigned the power of owning, maintaining and administering the Common Area, maintaining and repairing the exterior of the residential units, administering and enforcing the covenants and restrictions applicable to the community and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under North Carolina law, Summerfield Townhomes Owners Association of Mecklenburg, Inc. as a non-profit corporation for the purpose of exercising and performing the aforesaid functions;

DRAWN BY AND PLEASE MAIL TO:  
PERRY, PATRICK, FAIMER & MICHAEL  
1601 ROXBOROUGH LANE  
CHARLOTTE, NC 28211

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the properties shown on the aforesaid map of Summerfield Townhomes and described in Section 1. of Article II below, and such additions thereto as may be hereafter made pursuant to Article II hereof, is and shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions, charges and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of the properties, and which shall run with the title to the real property, shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to **Summerfield Townhomes Owners Association of Mecklenburg, Inc.**, a North Carolina non-profit corporation, its successors and/or assigns.

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

Section 3. "Properties" shall mean and refer to the "Existing Property" described in Article II, Section 1., hereof and such additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Association under the provisions of Article II hereof.

Section 4. "Lot" shall mean and refer to any plot of land, with delineated boundary lines appearing on any recorded subdivision map of the Properties (with the exception of Common Area), and shall include all improvements thereon.

Section 5. "Declarant" shall mean and refer to **SUMMERFIELD LIMITED, LLC**, a North Carolina limited liability company, and shall also mean and refer to any person, firm or corporation which shall hereafter become vested, at any given time, with title to two or more undeveloped Lots for the purpose of causing residence/building(s) to be constructed thereon, and any such successor in title to Summerfield Limited, LLC shall be a Declarant during such period of time as said party is vested with title to two or more such Lots, so long as said Lots are undeveloped, developed but unconveyed or improvements constructed thereon are unoccupied, but only during such period.

Section 6. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners. Common Areas, with respect to the

property subject to this Declaration, shall be shown on the various plats of Summerfield Townhomes recorded or to be recorded in the Mecklenburg Public Registry and designated thereon as "Common Area", "Common Open Space", or other similar designations, but shall exclude all Lots as hereinabove defined which are shown thereon. "Common Area" shall include all private streets and parking areas, pool and cabana, and waste water collection systems and/or disposal facilities and other various areas and facilities shown as Common Area on plats as now recorded or as hereafter recorded in the Mecklenburg Public Registry. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is shown as such on the plat of the Properties identified in Section 1. of Article II.

Section 7. "Limited Common Area" shall mean and refer to any portion of the Common Area which is allocated for the exclusive use and enjoyment of one or more, but fewer than all, of the Owners. "Limited Common Area" shall include all driveways which connect a Lot to a private street located to the front or side of the Lot and any paved parking or turn-around areas adjoining such driveways.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 9. "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes.

Section 10. "Special Declarant Rights" shall mean the rights as defined in Section 47F-1-103(28) of the Act for the benefit of a Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising Summerfield Townhomes; to use easements through the Common Area for the purpose of making improvements within Summerfield Townhomes or within real estate which may be added to Summerfield Townhomes; and to elect, appoint or remove any officer or Board member of the Association during any period of Declarant control.

Section 11. "Temporary Entrance" shall mean and refer to the entrance located at the intersection of Summerfield Ridge Lane and Margaret Wallace Road which is a planned temporary entrance and will be closed upon the completion of the Northeast Parkway or as required by the North Carolina Department of Transportation and/or other local governmental authority.

Section 12. "Private Streets" shall mean and refer to Stoneham Court, Summergate Court, Bit Creek Court and the southernmost portion of Summerfield Ridge Lane and any other streets designated "Private Street" on a recorded map of the Properties and which is a portion of the Common Area owned and maintained by the Association.

Section 13. "Public Streets" shall mean and refer to the major portion of Summerfield Ridge Lane, Cross Pointe Circle, Mill Valley Court, Calabash Lane and Northeast Parkway and any other streets designated and/or dedicated as public streets on a recorded map of the Properties.

## ARTICLE II

### PROPERTIES SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and within the jurisdiction of the Association is located in Mecklenburg County, North Carolina, and is described as follows:

Being all of the property shown on the map recorded in Map Book 32 at Page 122 in the Mecklenburg County Public Registry.

Section 2. Additions to Existing Property. Additional property may be brought within the scheme of this Declaration and the jurisdiction of the Association in the following ways:

(a) Additional land within the area described in the metes and bounds description attached hereto as Schedule A and incorporated herein by reference may be annexed to the Properties by SUMMERFIELD LIMITED, LLC, or its designated assignee(s), and brought within the scheme of this Declaration and within the jurisdiction of the Association in future stages of development without the consent of the Association or its members, provided, that said annexations, if any, must occur within seven (7) years after the date of this instrument.

(b) Additional residential property (and Common Area), outside of the area described in the aforementioned Schedule A may be annexed to the Properties and brought within the scheme of this Declaration and the jurisdiction of the Association with the consent of the Members entitled to at least two-thirds (2/3) of the votes appurtenant to all Class A Lots and at least two-thirds (2/3) of the votes appurtenant to all Class B Lots, if any, as such classes are hereinafter defined in Article III, Section 2. The Association may participate in mergers or consolidations with other non-profit corporations organized for the same or similar purposes as the Association, thereby adding to the Association, or to a surviving homes association, the properties, rights and obligations of the non-profit corporation with which it merges or consolidates. Any such merger or consolidation must have the assent of the Members as provided above in this subsection (b), and no such merger or consolidation shall revoke, change or add to any of the provisions of this Declaration except as herein provided.

(c) The additions authorized under Subsections (a) and (b) shall be made by filing of record Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional properties, which Supplementary Declarations of Covenants, Conditions and Restrictions shall extend the scheme of this Declaration and the jurisdiction of the Association to such properties and thereby subject such additions to assessment for their just share of the Association's expenses.

A Supplementary Declaration may contain such complementary additions and modification of the covenants, conditions and restrictions contained in this Declaration as may be deemed by Declarant to be necessary or desirable with respect to the Properties which will be subject to the proposed Supplementary Declaration but unless approved by written and recorded agreement of sixty-seven (67) percent of the Owners of the Lots which are then subject to this Declaration, the provisions of the proposed Supplementary Declaration may not amend or modify the provisions of this Declaration (as previously amended, if amended) insofar as it applies to Lots which are shown on maps recorded prior to recordation of the newly proposed Supplementary Declaration.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have two (2) classes of voting membership.

(a) Class A. Except as provided below, Class A Members shall be all Lot Owners except the Declarant, and Class A Members shall be entitled to one (1) vote for each Lot (Class A Lot) owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the vote appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. Class B Member shall be the Declarant (as defined in this Declaration); and such Member shall be entitled to three (3) votes for each Lot (Class B Lot) owned.

The Class B membership shall cease to exist and shall be converted to Class A membership with one vote for each Lot owned, on the happening of either of the following events, whichever occurs earlier:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; provided, that the Class B Lots shall be reinstated with all rights, privileges and responsibilities of such Class, if, after conversion of the Class B Lots to Class A Lots hereunder, additional land containing Lots is annexed to the Existing Property pursuant to Article II above, thus making Declarant the owner, by virtue of the newly created Lots and of other Lots owned by Declarant, of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and re-conversion shall occur automatically as often as the foregoing facts shall occur); or

(2) On December 31, 2006.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other Owners of Class A Lots.

Provided, further, that nothing herein shall be construed to prohibit Declarant from converting all or part of the Class B membership to Class A membership, with the results set forth above at any time earlier than the alternative events referred to above, by written statement executed by the Declarant and delivered to the Association.

Section 3. Suspension of Voting Rights. Voting rights attributable to an ownership interest in a Lot shall be suspended throughout the term for any default under the By-Laws or of this Declaration of Covenants, Conditions and Restrictions by an Owner of such Lot.

Section 4. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration or in the By-Laws, Declarant hereby retains the right to appoint and remove any Members of the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to transpire outlined in Section 2. herein concerning the termination of the Class B membership status of Declarant or until the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to the Declaration of Covenants, Conditions and Restrictions executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant, if it then owns one or more Lots, and a special meeting of the Association shall be called and held within ninety (90) days after the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver to the new Board of Directors the books, accounts, and records which it has kept on behalf of the Association, as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association as is provided in this Section.

#### ARTICLE IV

#### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Area and each Owner of a Lot with a driveway located on a Limited Common Area shall have a right and easement to use and enjoy the Limited Common Area for such Lot, which rights and easements shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on the Properties as their principal residence in Mecklenburg 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 Association to suspend the voting rights and right of use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations, if any;

(c) The right of the 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. No such dedication or transfer shall be effective unless the Members entitled to at least eighty percent (80%) of the votes appurtenant to each Class of Lots (Class A and Class B) (and, in the case of Limited Common Areas, all of the Owners for whom use and enjoyment of the Limited Common Areas is reserved) agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that the foregoing shall not preclude the Association or Declarant, without such agreement by the Members, from granting easements to public authorities or utilities, or to others for the installation and maintenance of electrical, telephone, cablevision, water and sewerage service and drainage facilities upon, over, under and across the Common Area, including the Limited Common Area, without the assent of the membership when, in the sole opinion of the Board of Directors or Declarant, 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;

(d) The right of each Owner to the exclusive use of the parking and driveway areas located on the Common Area between such Owner's Lot and the private street which passes in front of, or on the side of, the Lot (Limited Common Area);

(e) The right of the Association to limit the number of guests of Members;

(f) The right of the Association, with the written assent of Members entitled to at least eighty percent (80%) of the votes appurtenant to each Class of Lots (Class A and Class B) to mortgage, pledge and deed in trust any and all of its real or personal property as security for money borrowed or debts incurred for the purpose of improving the Common Area and facilities, with the rights of such creditors to be subordinate to the rights of the Owners hereunder, provided, that the written consent of all Owners entitled to the use and enjoyment of Limited Common Areas shall be required as a condition to the grant or conveyance of any mortgage, pledge or deed of trust encumbering those Areas;

(g) The right of the Association to adopt, publish, and enforce rules and regulations as provided in Article X;

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

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

(j) The right of the Association to join with other parties having an interest in the dedication of the Connector Road as a public road;

(k) The right of the Association to enter into agreements amending or abrogating the Lake Easement.

## Section 2. Delegation of Use.

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

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

(c) Guests. Common Area may be utilized by guests of Owners, tenants or contract purchasers subject to the rules and regulations of the Association governing said use, as established by the Board of Directors.

Section 3. IV Antennas and Cablevision. The Association may provide one or more central television antennas for the convenience of the Members and may supply cablevision, and the cost of these may be included in annual or special assessments.

Section 4. Temporary Entrance at Margaret Wallace Road. The Temporary Entrance into Summerfield located at the intersection of Summerfield Ridge Lane and Margaret Wallace Road is temporary and is to provide an entrance into Summerfield from Margaret Wallace Road until the completion and opening of the Northeast Parkway or as required by the North Carolina Department of Transportation and/or other local governmental authority. Upon such closing of that portion of Summerfield Ridge Lane, access to Margaret Wallace Road via Summerfield Ridge Lane shall be prohibited. In the event any portion of Summerfield Ridge Lane is undedicated as a public road right-of-way, such undedicated portion of Summerfield Ridge Lane shall become Common Area.



## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) annual assessments or charges and (b) special assessments for capital improvements; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot 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 the Owner of such Lot at the time when the assessment fell due, but not of an Owner's successors in title unless expressly assumed by such successor.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for the improvement and maintenance of the Common Areas and of the exterior of the dwellings including the maintenance, repair, and reconstruction of private streets, driveways, walks, street lights, parking areas, pool and cabana, the cutting and removal of weeds and grass, and the removal of trash and rubbish, and for the exterior maintenance of the residences situated upon the Properties, as hereinafter provided, all for the use and enjoyment of the Common Area, including, but not limited to, the cost of repairs, replacements, and additions; the cost of labor, equipment, materials, management, and supervision; the payment of taxes and public assessments assessed against the Common Area. Assessments shall also be used to pay the water bills for all Lots in Summerfield including bills to master water meters and individual water meters. In addition, the assessments may be used for the procurement and maintenance of insurance in accordance with this Declaration; the employment of attorneys to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, roofs, paving, and any other major expense for which the Association is responsible; and such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas and to those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

Section 4. 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 \$1,320.00 per Class A Lot and \$330.00 per Class B Lot, which assessments shall be payable annually or in installments, as determined by the Board of Directors. In the event Class B Lots are occupied

by persons under leases, options or installment sales contracts with Declarant, the Declarant shall be assessed at the same rate as Class A Lots, beginning at the time of occupancy.

(2) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors, effective January 1 of each year, without a vote of membership, but subject to the limitation that any such increase shall not exceed the greater of ten percent (10%) or the percentage increase in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for All Cities over the preceding twelve (12) month period.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 4(a) above if such increase is approved by Members entitled to no less than two-thirds (2/3rds) of the votes appurtenant to each Class of Lots represented in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

(c) The Board of Directors may fix the annual assessment at amounts not in excess of the maximum, 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 (4) to one (1).

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment or assessments ("Special Assessments") or the purpose of defraying, in whole or in part, any costs incurred by the Association which are not paid for out of funds on hand in the Association or out of the annual assessments collected by the Association. Such costs may include, but shall not be limited to, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or in connection with exterior maintenance of improvements constructed on the Lots, including fixtures and personal property related thereto. Notwithstanding the above, all fees and costs incurred by the Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such Special Assessment must be approved by a vote of the Members entitled to cast no less than two-thirds (2/3rds) of all votes entitled to be cast by the Members. Any Special Assessment shall have the same assent of the Members as provided in Section 4(b) of this Article and shall be in the ratio of four (4) to one (1) as provided in Section 4(c).

Section 6. Notice and Quorum for any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all Members no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members and 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 subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half

( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided for a difference in Class A and Class B Lots, be fixed at a uniform rate for all Lots and shall be collected on a schedule established by the Board of Directors.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots within a building on the first day of the month following the conveyance of the first Lot in that building. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot and in the event the Board elects not to affix such assessment as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any change in the assessment rate shall be sent to every Owner. The due dates for the payment of annual and special assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be assessed a late charge in the amount of Fifteen and No/100 Dollars (\$15.00) or in an amount to be determined from time to time by the Board of Directors, and the assessment with late charge shall bear interest from the due date at an annual rate of twelve percent (12%) per annum. The Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien as provided in Section 47F-3-116 of the Act against the Lot to which the assessment related; and, in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot and to any ad valorem taxes on such 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 mortgage or deed of trust pursuant to a foreclosure thereof, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer (but shall not affect the personal liability of the Owner for payment of such assessments.) No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All Property dedicated to, and accepted by, a local public authority and all properties, other than Lots, 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. No Lot shall be exempt from assessments.

Section 12. Working Capital Fund. At the time of closing of the sale of each Lot, a sum equal to two month's assessment for each Lot shall be collected and transferred to the Association to be held as a Working Capital Fund. The purpose of said Fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

## ARTICLE VI

### MAINTENANCE, REPAIR AND REPLACEMENT

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Area and all improvements located thereon. This maintenance shall include without limitation maintenance, repair and replacement of all landscaping and grass areas; streets, retaining walls, driveways, sidewalks, street lights, pool and cabana and other improvements situated on the Common Area. The Association shall maintain and keep in good repair all landscaping and grass areas within the boundaries of Lots. The Association shall maintain and keep in good repair all paved, gravel or concrete walkways, driveways and parking areas originally installed on Lots (and within the adjoining Limited Common Areas) in connection with the construction of residence buildings and shall maintain and keep in good repair the water, sewer, gas and electricity lines, including those located partially or wholly within the boundaries of a Lot. The Association shall maintain and keep in good repair all water and sewer pipes or facilities which serve more than one (1) Lot, whether located within or without the boundary of a Lot.

The Association shall provide exterior maintenance upon Lot improvements as follows: paint, stain, repair, replace and care for roof surfaces and roof systems, gutters and downspouts and all exterior building surfaces, [with the exception of entry doors (including garage doors) and their appurtenant hardware and all exterior glass including windows and patio doors, all of which shall be maintained, repaired and replaced by the Lot Owner, with any replacement windows and doors being the same as originally installed by Declarant or by the Association.]

In the event that the need for replacement, maintenance or repair is caused through the willful or negligent act of the Owner, the Owner's family, guests, or invitees, the cost of such replacement, maintenance or repairs shall be the obligation of that Owner and shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted a right of access to each Lot for performance of repairs or maintenance, whether the work is to be accomplished to fulfill the Association's responsibility therefor or to perform work which is the unfulfilled obligation of the Lot Owner.

Section 2. Owner's Responsibility. Except as provided in Section 1. above, all replacement, maintenance and repair of the improvements on the Lot shall be the responsibility of the Owner thereof, including all replacement and repair necessitated by a fire or other casualty against which the Owner is required to maintain insurance under the provisions of Article IX hereof. Each Owner shall maintain, repair and replace, at his or her expense, all exterior light fixtures attached to the Owner's dwelling and all interior portions of the improvements which shall need repair, including bathroom and kitchens fixtures, light fixtures or other electrical or plumbing equipment, pipes and fittings serving the Lot. Further, each Owner shall repair, maintain and replace, at his or her expense, the heating and air-conditioning systems servicing said Owner's dwelling, whether located on the Owner's Lot or in the Common Area adjacent to the Lot. Each Owner shall be responsible for interior pest control.

In the event that the Board of Directors of the Association determines (a) that an Owner has failed or refused to discharge properly the Owner's obligations with regard to the maintenance, repair or replacement of items for which the Owner is responsible hereunder, or (b) that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees, the Association may perform the repair, replacement or maintenance at the Owner's cost and expense with credit, however, for the proceeds from any insurance payments; provided that except in emergency situations, the Association shall give the Owner written notice of the necessity of the maintenance, repairs or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair or replacement or if the maintenance, repair or replacement cannot be completed within a ten (10) day period, Owner must commence such work within the ten (10) day period and complete the work within a reasonable time. If the Owner does not comply with the provisions hereof, the Association may provide the work and the cost thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Management Agreement. The Association shall have the right to hire a management company to undertake any of its responsibilities set forth in the Declaration. However, any such management agreement shall be terminable by the Association, without liability, upon not more than ninety (90) days' notice to the other party.

## ARTICLE VII

### PARTY WALLS

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

Section 2. Sharing of Repair and Maintenance. The cost of replacement, repair and maintenance of a party wall shall be equally divided by the Owners of the homes which share the wall, except that if the portion of the wall which requires the replacement, repair or maintenance is an outside wall for one of the homes, but not for the other (that is, not common to both homes) the replacement, repair or maintenance cost of that portion of the wall shall be borne by the Owner of the home utilizing that portion of the wall, if, and to the extent that, the Association does not have that responsibility.

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Section 2., above, if a party wall is destroyed or damaged by fire or other casualty or requires maintenance and one of the common Owners of the wall repairs, replaces or performs necessary maintenance work, the other Owner shall promptly reimburse the Owner who effects the work in an amount equal to one-half of the cost thereof, provided that this obligation shall not be absolute but shall be subject to the general rules of law regarding negligence and wrongful acts.

Section 4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

#### ARTICLE VIII

#### ARCHITECTURAL CONTROL

No building, fence, sign, wall, statuary or other structure or improvement of any kind (including a paved surface) shall be commenced, erected, installed, or maintained upon any Lot or upon the Common Area nor shall any exterior addition to or change or alteration of a residence building be made, including, but not limited to, color or painting of the exterior or change of the type of exterior finish, the installation of aerials or awnings or the placement of reflective or other material in the windows of a dwelling, or the addition of an exterior attachment (such as a storm door) until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee, if the Board of Directors shall elect to establish such a committee, composed of three (3) or more representatives appointed by the Board (said committee being hereinafter referred to as the "Architectural Control Committee"). Absent such written approval, the proposed improvement may not be effected and, if undertaken, may be enjoined by the Association.

The installation of antennae and of satellite dishes or disks shall be permitted on a Lot if accomplished in strict compliance with the limitations and conditions imposed by the Telecommunications Act of 1996, as amended from time to time, but no antenna or disk which is in any dimension larger than prescribed by the Act or which is not installed in accordance with the

advance notice requirements and location guidelines of the Act may be installed or maintained on any Lot except with the prior written approval of the Board or the Architectural Control Committee.

In the event an Owner of a Lot shall make an unauthorized change to the Lot, as described in the two preceding paragraphs, the Board of Directors (or the Architectural Control Committee, if any) shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore its appearance, as nearly as reasonably possible, to the same as it was prior to the unauthorized change. The cost of such work and any other costs or attorney's fees incurred in the enforcement of these provisions shall be added to and become a part of the assessments to which such Lot is subject

The provisions of this Article VIII shall not apply to improvements of any kind constructed upon any Lot or upon the Common Area by Declarant and Declarant is expressly exempt from the provisions of this Article VIII

## ARTICLE IX

### INSURANCE

Section 1. By Owners. Each Owner shall procure and maintain fire and extended coverage insurance as follows:

(a) Coverage. Each townhome unit and other improvements upon a Lot shall be insured in an amount equal to one hundred percent (100%) of its insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and

(ii) Such other risks as from time to time shall be reasonably required by the Association

(b) Liability. Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand and No/100 (\$300,000.00) Dollars per occurrence.

All policies shall name the Association as one of the insured and copies of said policies and renewals thereof shall be furnished to the Association. Upon failure of an Owner to procure the required coverage or to promptly pay the premiums due thereon, the Association may, but is not required to, procure such insurance and/or to pay the premiums due thereon (as the case may be) and the amount of such premium shall be due and payable to the Association on or before the first day of the calendar month following payment of same by the Association, failing which such indebtedness

shall become a lien on the Owner's Lot and collectible by the Association, as in the case of unpaid assessments.

Section 2. By Association. The Association shall procure and maintain insurance coverage as follows:

(a) Common Areas. All insurance policies upon the Common Area shall be purchased by the Association for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and provisions shall be made for the issuance for certificates or mortgagee endorsements to the mortgagees of Owners upon request therefor by any Owner.

(b) Coverage. All buildings and insurable improvements upon the Common Areas and all personal property of the Association included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and
- (ii) Such other risks as the Association may from time to time elect to protect against.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million and No/100 (\$1,000,000.00) Dollars per occurrence and shall include an endorsement to cover liability of the Owners, as a group, to a single Owner.

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

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

- (i) Proceeds on account of damage to Common Areas and facilities shall be paid to and held by the Association;
- (ii) If an insured casualty shall occur on the Common Area, resulting in damage to Lots or to personal property of Owners or injury to an Owner or members of an



Owner's family, proceeds from Association insurance shall be held in undivided shares for the affected Owners in proportion to the cost of repairing the damage or injuries suffered by each Owner, which cost shall be determined by the Association;

(iii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner of that Lot shall be held in trust for the mortgagee and the other Owners, as their interests may appear.

Section 3. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Common Area. Any proceeds remaining after defraying such cost shall be distributed to the affected Owners as provided in Section 2.(c)(ii) of this Article.

Section 4. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise exercise control over the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated at the time of the bonding.

## ARTICLE X

### USE RESTRICTIONS

Section 1. Rules and Regulations. Use and enjoyment of the Properties shall be governed and regulated by the rules and regulations set out in this Article X, which may be amended or abrogated only by amendment to this Declaration, as provided in Article XIII, Section 3. However, the Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable supplemental rules and regulations and may provide for imposition of fines and other penalties for the violation thereof or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Antennas/Satellite Dishes. As provided in Article VIII, except for such as are covered by, and installed in strict compliance with, the requirements of the Telecommunications Act of 1996, as amended, no outside radio or transmission tower or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner or permitted by an Owner to remain on his or her Lot without the prior written approval of the Board of Directors or the Architectural Control Committee, if any.

Section 2a. Residential Use. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes only. Lease or rental of a townhouse for residential purposes shall not be considered to be a violation of this Covenant, so long as the lease is in compliance with the provisions of this Declaration, the Bylaws and reasonable Rules and Regulations adopted by the Board.

Section 2b. Prohibition of Renting for Transient or Hotel Purposes. No Owner shall rent his Lot for transient or hotel purposes, which, for the purposes of this Declaration shall be defined as either a rental for any period less than one hundred eighty (180) days or any rental if the lessee of the Lot is provided customary hotel services. Each permitted lease shall be in writing and shall be subject to this Declaration, the Bylaws, and the Rules and Regulations adopted hereunder and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Other than the foregoing restrictions, each Owner shall have the full right to lease all or any portion of his Lot.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. Dwelling Size. The total square footage of the main structure located on a Lot, exclusive of one-story open porches and garages, shall not be less than 1400 square feet.

Section 5. Nuisances. No activity deemed noxious or offensive by the Board of Directors or the Architectural Control Committee, if any, shall be carried on upon any Lot or within the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Board or Committee. Examples of such offensive activities shall include, but not be limited to, the origination or emission of any loud or disturbing noise or vibrations, failure of townhome occupants to insure that garage doors are closed at all times except when automotive traffic is moving in or out, the maintenance of an auto repair site; the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces or yards; and similar unsightly activity (such as use of outdoor clothes drying lines) not in keeping with the aesthetic character and high level of appearance of the community.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner that will not permit spills or runoff of such materials anywhere within the Properties. No activity shall be allowed which violates local, state or federal laws or regulations and the Board shall have the right, but not the obligation, to take enforcement action in the event of a violation.

Section 6. Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs and cats, shall not exceed two (2) in number, except for newborn offspring of such household pets which are under six (6) months in age. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal of, any dog or other animal which the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard after consideration of factors such as size, breed and disposition of the animal, likely interference by the animal with the peaceful enjoyment of the Properties by Owners and the security measures taken by the Owner with respect to such animal.

Section 7. Temporary Structures and Parking of Vehicles Onstreet and Offstreet. No residence or other improvement of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. No mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers", commercial vehicles

of any kind or boats or boat trailers shall be permitted, parked or stored in the Common Area or within any Lot, unless inside the garage of that Lot with the garage door closed; provided that the temporary parking of commercial vehicles will be permitted while the driver thereof is on business delivering goods or services to a customer within the Properties.

No vehicle of any type which is abandoned or inoperative shall be stored, parked or kept in the Common Area nor shall any such vehicle be stored, parked or kept on any Lot if it can be seen from any other Lot or from any street within the Properties, and no automobiles or other mechanical equipment may be dismantled or parts thereof stored on any said Lot. No vehicles of any type shall be parked on the sidewalk or within a street right-of-way, nor shall vehicles of any type be parked or stored on any part of a Lot not improved for that purpose (a garage, driveway or parking pad). This prohibition shall not preclude occasional, overnight or temporary daytime overflow parking within the street right-of-way by guests of an Owner, or tenant of an Owner, as long as no inconvenience is imposed upon one or more Owners of other Lot(s).

The provisions of this Section 7. shall not preclude the parking of construction trailers within the Properties or the construction, maintenance and use by Declarant of temporary buildings and other structures while there are new townhome construction and/or sales activities within the Properties. Daytime and overnight parking of trucks and other construction vehicles shall also be permitted throughout the Lot development and townhome construction periods.

Section 8. Signs. No signs or other advertising devices shall be erected upon or displayed or otherwise exposed to view on any Lot, or any improvement thereon, without the prior written consent of the Association, except that "For Sale" signs not exceeding 18" x 35" may be placed in the window of a townhouse unit and provided, further, that Declarant may post temporary "For Sale" and other advertising signs anywhere on the Properties until such time as all Lots owned by Declarant have been sold and conveyed.

Section 9. Street Lamps. The street lamps installed in the Common Areas at or near the roads upon which Lots face shall be maintained, repaired and replaced at the expense of the Association and the electricity bills shall be paid by the Association. No Owner may or shall disconnect a street light or remove any element thereof or in any way damage or deface a street light.

Section 10. Control of Dogs. Every person owning or having possession, charge, care, custody or control of a dog shall keep such dog exclusively upon his or her Lot; provided, that such dog may be off premises if it is under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

Section 11. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, and all trash, garbage and other waste shall be stored in sanitary containers in accordance with the rules and regulations of the Association and of any health or public safety authority having jurisdiction over the Properties. No trash, garbage or other waste may be placed within the Common Area, except in containers approved by the Association.

Section 12. Garages. Garages are included in the required number of parking spaces and shall not be converted into living space.

## ARTICLE XI

### EASEMENTS

Section 1. General. All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewer lines, storm drainage facilities, gas lines, telephone lines, electric power lines and other public utilities as shall be established by the Declarant, and Declarant, prior to conveying the Common Area to the Association, and the Association, after conveyance of the Common Area to the Association, shall have the power and authority to grant and establish upon, over, under, and across the Common Areas such further easements as are in the opinion of either of them, requisite for the convenient use, development and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress, and regress across all Common Areas now or hereafter owned by the Association, for the purpose of development of the Properties and construction of improvements within the Properties.

Each Lot and the Common Area shall be and is subject to an easement for building encroachments created by initial construction and by subsequent settling and overhangs. A valid easement for said encroachments and for maintenance of same shall continue so long as said encroachments exist. In the event a multi-family building covering parts of two or more Lots is partially or totally destroyed, and then rebuilt, minor encroachments over parts of the adjacent Lots or Common Area resulting from the reconstruction shall also be permitted and a valid easement for said encroachments and the maintenance thereof shall continue.

Section 2. Construction. Declarant hereby reserves a construction easement over the Properties for the purposes reasonably related to installation of streets and utilities and construction of dwellings on the Lots and improvements on the Common Areas, and Declarant and its contractors shall have full rights of ingress and egress to and through, over and about the Properties during such period of time that Declarant is engaged in any construction or improvement work on or within the Properties and shall further have an easement for the purpose of storing the materials, vehicles, tools, equipment, etc., which are being utilized in such construction. No Owner, nor his/her guests or invitees, shall in any way interfere or hamper Declarant or its employees or contractors in the exercise of these rights and easements.

Section 3. Emergency. There is hereby reserved, without further assent or permit, and to the extent permitted or required by law, a general easement exercisable by all firemen, ambulance personnel, policemen and similar persons to enter upon any portion of the Properties in the performance of their respective duties. The Association and its agents shall also have the right to enter the Lots and any improvements located thereon for the purpose of making emergency repairs or replacements.

Section 4. Ingress and Egress. Declarant reserves and hereby dedicates easements for pedestrian and vehicular ingress and egress over the streets and sidewalks of the Properties and easements for pedestrian traffic over and along the jogging trails and other Common Areas within the Properties, which easements may and shall be freely enjoyed by all Owners, and by their families and invitees, so long as such use and enjoyment is not in violation of law, of the Use Restrictions set out in Article X or of any supplemental rules and regulations promulgated by the Board of Directors.

## ARTICLE XII

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any member of Declarant, nor any Member, nor the Board (individually or collectively), nor the Association, nor any officers, directors, agents or employees of any of them, shall be personally liable for debts contracted for, or otherwise incurred by, the Association or for a tort of Member, whether such Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents, members or employees, shall be liable for any incidental or consequential damages for failure to inspect the Lots, the Common Areas or any other portion of the Properties, or any improvements thereon, or for failure to repair or maintain the same. Neither Declarant, the Association nor any other person, firm or association making such repairs or maintenance shall be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Properties or improvements.

The Association shall, to the extent permitted by applicable law, indemnify, defend and save harmless all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify every director, officer, former director and former officer of the Association and any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not-for-profit, against expenses (including attorneys' fees) and liabilities actually and reasonably incurred by him or her in connection with the defense of, or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being, or having been, such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, by-law, agreement, vote of members or of disinterested directors, or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall undertake to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XII, or in the by-laws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

### ARTICLE XIII

#### GENERAL PROVISIONS

Section 1. Enforcement. The Association, and each Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions for this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment and Termination. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless abrogated by a written termination agreement signed by seventy-five (75) percent of the Members and filed in the Register of Deeds of Mecklenburg County within sixty (60) days prior to the beginning of a ten (10) year extension period. This Declaration may also be amended by an instrument signed by the Owners entitled to not less than sixty-seven (67) percent of the votes eligible to be cast at the time of the amendment. Any such amendment shall not be effective until such amendment has been filed for record in the Mecklenburg County Public Registry.

Section 4. Management and Contract Rights of Association. Declarant may enter into a contract with a management company or manager for the purpose of providing professional services

in the operation, care, supervision, maintenance, and management of the Properties. However, no such contract shall be binding upon the Association except through express adoption or ratification of the terms and conditions of such contract by the Board of Directors of the Association. Any management contract entered into by Declarant, or by the Association while Declarant is in control thereof, shall contain a provision allowing the Association to terminate such contract without justification or penalty after transfer of control by Declarant to the Association.

Section 5. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon written request therefor (acknowledged by the Association), be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Properties or the Lot securing its mortgage, (e) receive written notice of any sixty (60) day delinquency in the payment of dues, assessments or charges owed by the Owner of the Lot on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto caused these presents to be executed as of the day and year first above written.

SUMMERFIELD LIMITED, LLC (SEAL)

By: *James L. Tucker* (SEAL)  
Manager/Member

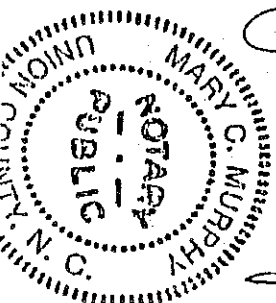
STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, the undersigned, a Notary Public for the County and State aforesaid, do hereby certify that James L. Tucker, Manager/Member of SUMMERFIELD LIMITED, LLC, personally appeared before me this day and acknowledged the execution of the foregoing instrument for and on behalf of said limited liability company.

WITNESS my hand and official seal this 28<sup>th</sup> day of October, 1999.

My Commission Expires: 2-2-2004

*Mary C. Murphy*  
Notary Public





#### SCHEDULE A

Lying and being located in the City of Charlotte, Mecklenburg County, North Carolina, and being more particularly described as follows:

Beginning at an iron found located in the southerly margin of the right-of-way of Margaret Wallace Road, said iron marking the northwesterly corner of Lot 1, Block 3 of Ashley Farm subdivision as same is shown on a map thereof recorded in Map Book 24 at Page 46 in the Mecklenburg County Public Registry and running thence from said Beginning point so established with the rear or westerly property lines of Lots 1 through 4 (inclusive), Block 3 of Ashley Farm subdivision as shown on the aforesaid map, Lot 5, Block 3 of Ashley Farm subdivision as same is shown on map thereof recorded in Map Book 24 at Page 152 in the Mecklenburg County Public Registry and Lots 7 through 11 (inclusive), Block 3 of Ashley Farm subdivision as shown on map recorded in Map Book 25 at Page 21 in the Mecklenburg County Public Registry, S. 05-49-42 E. 842.82 feet to an iron found marking the westernmost corner of the aforesaid Lot 11, Block 3 of Ashley Farm subdivision as shown on the aforesaid map recorded in Map Book 25 at Page 21 in the Mecklenburg County Public Registry, thence continuing with the rear or westerly property lines of Lots 11 through 19 (inclusive), Block 3 of Ashley Farm subdivision as shown on the aforesaid map recorded in Map Book 25 at Page 21 in the Mecklenburg County Public Registry two (2) calls and distances as follows: 1) S. 40-03-11 E. 542.12 feet to an iron found; and 2) S. 09-26-53 E. 171.93 feet to an iron found marking the common rear corner of the aforesaid Lot 19, Block 3 of Ashley Farm subdivision and Lot 48, Block 3 of Ashley Farm subdivision as shown on map thereof recorded in Map Book 26 at Page 701 in the Mecklenburg County Public Registry, thence with the rear or westerly property lines of Lots 48 through 54 (inclusive), Block 3 of Ashley Farm subdivision as shown on map thereof recorded in Map Book 26 at Page 701 in the Mecklenburg County Public Registry and the westerly property line of the property dedicated to Meck Co. Parks & Rec. as Greenway on map thereof recorded in Map Book 26 at Page 185 in the Mecklenburg County Public Registry two (2) calls and distances as follows: 1) S. 09-26-53 E. 505.93 feet to an iron found marking the common rear corner of the aforesaid Lots 53 and 54, Block 3 of Ashley Farm subdivision and 2) S. 04-35-39 W. 467.56 feet to an iron set marking the northeasterly corner of the property dedicated as Greenway on map recorded in Map Book 25 at Page 968 in the Mecklenburg County Public Registry, thence with the northerly property line of said property dedicated as Greenway on the aforesaid map recorded in Map Book 25 at Page 968 in the Mecklenburg County Public Registry, S. 60-37-34 W. 419.19 feet to an iron found marking a common corner of the aforesaid area dedicated as Greenway and the property of Walsh/Cross Creek Limited Partnership as said property is described in deed recorded in Book 5789 at Page 36 in the Mecklenburg County Public Registry, thence with the easterly property line of the Walsh/Cross Creek Limited Partnership as described in the aforesaid deed, three (3) calls and distances as follows: 1) N. 45-44-47 W. 346.68 feet to an axle found; 2) N. 15-23-56 W. 935.36 feet to an iron found; and 3) N. 17-26-34 W. 472.51 feet to a pinch pipe found marking a corner of the Woodway Mathews, Inc. property as said property is described in deed recorded in Book 8718 at Page 133 in the Mecklenburg County Public Registry, thence with the easterly property line of the Woodway Mathews, Inc. property as described in the aforesaid deed, two (2) calls and distances as follows: 1) N. 17-26-11 W. 157.33 feet to an iron set and 2) N. 19-04-49 W. 661.46 feet to an iron found, thence N. 68-39-39 E. 116.26 feet to an iron found, thence N. 27-38-36 W. 5.90 feet to an iron found, thence N. 65-40-14 E. 169.21 feet to an iron found, thence N. 77-23-25 E. 298.96 feet to an iron set located in the southerly margin of the right-of-way of Margaret Wallace Road, thence with the southerly margin of the right-of-way of Margaret Wallace Road two (2) calls and distances as follows: 1) thence in a easterly direction with an arc of a circular curve to the left having a radius of 877.25 feet, an arc distance of 190.37 feet (having a chord bearing in distance of N. 78-55-23 E. 190.00 feet) to an iron set, and 2) N. 76-22-13 E. 21.39 feet to the Beginning point and containing 40.460 acres all is shown on boundary survey entitled "Project Thompson Orphanage Property" dated August 7, 1998 by Sam F. Williams, NCRLS, reference to which boundary survey is hereby made for a more particular description.

COPY

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG  
SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
SUMMERFIELD TOWNHOMES

THIS SUPPLEMENTAL DECLARATION, made on this 17<sup>th</sup> day of July, 2000, by  
SUMMERFIELD TOWNHOMES, LLC, a North Carolina limited liability company, hereinafter  
referred to as "Declarant";

WITNESSETH:

DATE		7.19.00	TIME	3:00 PM
BOOK		11435	PAGE	697
STAMPS		RECEIVED JULY 19 2000 MECKLENBURG COUNTY, NC		

WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and Restrictions for SUMMERFIELD TOWNHOMES upon a portion of the residential development known as SUMMERFIELD TOWNHOMES, which Declaration is recorded in Book 10879 at page 545 in the Mecklenburg County Public Registry (hereinafter "Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides therein in Article II, Section 2 (a) that "Additional land within the area described in the . . . Schedule A . . . may be annexed to the Properties by Declarant and brought within the scheme of this Declaration and within the jurisdiction of the Association . . . without the consent of the Association or its members . . ."

WHEREAS, the Declarant desires to incorporate the SUMMERFIELD TOWNHOMES property as same is shown on map thereof recorded in Map Book 33 at page 409 the Mecklenburg County Public Registry (hereinafter the "Additional Property") within the Properties subject to the Declaration;

NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants, Conditions and Restrictions for SUMMERFIELD TOWNHOMES, Declarant does hereby annex the Additional Property as shown on the aforesaid map to the property which is subject to the Declaration, to the end that the Additional Property as aforesaid, shall be within the scheme of said

Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 33 at page 409 in the Mecklenburg County Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, SUMMERFIELD TOWNHOMES, LLC has caused this instrument to be executed as of the day and year first above written.

SUMMERFIELD TOWNHOMES, LLC, a North Carolina  
limited liability company (SEAL)

ATTEST:

BY: ROBERT C. RHEIN INTERESTS, INC. As Manager

*James M. McFall*  
Asst. Secretary

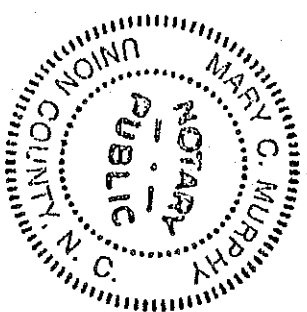
By: *[Signature]*  
Vice President

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

This 17<sup>th</sup> day of July, 2000, personally appeared before me, the undersigned, a Notary Public for Union County and the aforesaid State, James M. McFall, who, being by me first duly sworn, stated that he is the Vice of Robert C. Rhein Interests, Inc., a North Carolina corporation, as Manager of Summerfield Limited, LLC, a North Carolina limited liability company; that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation as Manager and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given acting as Manager of Summerfield Limited, LLC. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager.

*Mary C. Murphy*  
Notary Public

My Commission Expires: 2-2-2004



STATE OF NORTH CAROLINA

**COPY**

COUNTY OF MECKLENBURG

FIRST AMENDMENT TO AND  
RATIFICATION OF DECLARATION  
OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
SUMMERFIELD TOWNHOMES

THIS FIRST AMENDMENT TO AND RATIFICATION OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SUMMERFIELD TOWNHOMES (the "First Amendment") made this 29th day of February, 2000, by SUMMERFIELD LIMITED, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant"; and THE RYLAND GROUP, INC., hereinafter collectively referred to as "Ryland".

WITNESSETH:

WHEREAS, Declarant and Ryland are the owners of all of the property and Lots shown on the recorded maps of Summerfield Townhomes recorded in Map Book 32 at page 122 in the Mecklenburg County Public Registry; and

WHEREAS, Declarant recorded the Declaration of Covenants, Conditions and Restrictions for Summerfield Townhomes in Book 10879 at page 545 in the Mecklenburg County Public Registry (hereinafter "Declaration"); and

WHEREAS, Declarant and Ryland desire to amend said Declaration as provided in Section 3 of Article XIII of the Declaration and further desire to ratify and affirm the Declaration.

NOW, THEREFORE, Declarant and Ryland do hereby amend said Declaration and ratify and affirm the Declaration as follows:

1. The square footage requirement set forth in Section 4 of Article X appearing on Page 18 of the Declaration is hereby amended by deleting the number "1400" and substituting, therefor, the number "1050."
2. In all other respects the Declaration shall remain unchanged and is hereby approved, ratified and affirmed.

IN WITNESS WHEREOF, Declarant and Ryland have caused these presents to be executed as of the day and year first above written.

SUMMERFIELD LIMITED, LLC

ATTEST:  
BY: ROBERT C. RHEIN INTERESTS, INC. (SEAL)  
Manager

ATTEST:  
*M. Sted*  
ASST. Secretary

BY: *James J. Huber*  
VICE President

FILED	
FILED FOR	DOC. #
DATE 3-6-00	TIME 10:11
BOOK 11129	PAGE 3/5
STAMPS	REC. FEE
JUDITH A. GIBSON REGISTERED CLERK MECKLENBURG COUNTY, NC	

DRAWN BY AND PLEASE MAIL TO:  
WALLACE & PITTMAN, PLLC  
1901 ROXBOROUGH ROAD, SUITE 100  
CHARLOTTE N.C. 28211 (BOX 241)

THE RYLAND GROUP, INC.

ATTEST:

AKS Secretary

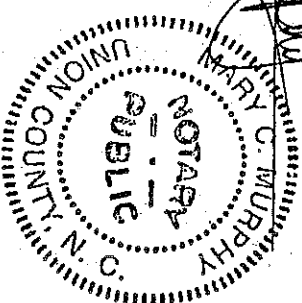
By: Jan S. Hardy  
Vice President of Operations

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

This 29<sup>th</sup> day of February, 2000, personally appeared before me James T. Tucker who being by me duly sworn says that he is Vice President of ROBERT C. RHEIN INTERESTS, INC., Manager of Summerfield Limited, LLC, a North Carolina limited liability company, that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation as Manager, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given acting as Manager of Summerfield Limited, LLC. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager.

My Commission Expires: 2-2-2004

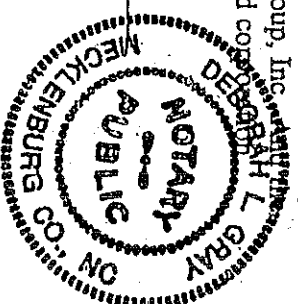
Mary C. Murphy  
Notary Public



STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

This 28<sup>th</sup> day of February, 2000, personally appeared before me Jan S. Hardy who being duly sworn says that he ~~she~~ is Vice President of THE RYLAND GROUP, INC., a North Carolina corporation, that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him/her on behalf of said corporation by its authority duly given of The Ryland Group, Inc. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager.

William A. Gray  
Notary Public



My Commission Expires: \_\_\_\_\_

My commission expires December 21, 2002

330.rfs 2/22/00

*Drawn By: Mail To: Wallace; Pittman (Box 241)*

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

PARTIAL RELEASE

THIS RELEASE is made this 8th day of February, 2000, by THE PROVIDENT BANK ("Beneficiary"), and BRYAN W. PITTMAN, Trustee under that certain Deed of Trust recorded in Book 10407 at page 940 in the Mecklenburg County Public Registry ("Deed of Trust") and by THE PROVIDENT BANK ("Secured Party") under that certain UCC Financing Statement bearing File No. 199904259 in said Registry and corresponding UCC Financing Statement bearing file No. FS 19990040456 filed in the Office of the Secretary of State of North Carolina.

In and for the consideration of the sum of Ten and No/100 (\$10.00) Dollars and other valuable considerations, receipt of which is hereby acknowledged, the Trustee hereby releases unto Summerfield Limited, LLC, its successors and assigns, the following-described property from the lien and/or obligations of the Deed of Trust and the UCC Financing Statements:

PARCEL I:

BEING all of that certain parcel of land designated as "COS" (Common Open Space) and containing 3.147 acres, said parcel being located west of the right-of-way of Summerfield Ridge Lane, south of Margaret Wallace Road and immediately adjacent to Tracts 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of Summerfield, Phase 1, Map 1 subdivision as same is shown on map thereof recorded in Map Book 32 at page 122 in the Mecklenburg County Public Registry.

PARCEL II:

BEING all of that certain parcel of land designated as "COS" (Common Open Space) and containing 1.321 acres, said parcel being located east of the right-of-way of Summerfield Ridge Lane and immediately adjacent to Tracts 1, 2 and 3 of Summerfield, Phase 1, Map 1 subdivision as same is shown on map thereof recorded in Map Book 32 at page 122 in the Mecklenburg County Public Registry.

PARCEL III:

BEING all of that certain parcel of land designated as "COS" (Common Open Space) and containing 0.931 acres, said parcel being along the easterly margin of the right-of-way of Summerfield Ridge Lane and the southerly margin of the right-of-way of Margaret Wallace Road of Summerfield, Phase 1, Map 1 subdivision as same is shown on map thereof recorded in Map Book 32 at page 122 in the Mecklenburg County Public Registry.

Parcels I, II and III comprise all of the property shown on the Phase 1, Map 1 map of Summerfield recorded in Map Book 32 at page 122 in the Mecklenburg County Public Registry; SAVE AND EXCEPT, the property located in Tracts 1-14, inclusive,

and the property within the public rights-of-way of Summerfield Ridge Lane, Cross Point Circle, the 0.123 acre parcel dedicated to the City of Charlotte as part of Margaret Wallace Road and the 0.243 acre parcel dedicated to the City of Charlotte as public right-of-way for Northeast Parkway.

TO HAVE AND TO HOLD the above-described property unto the said Summerfield Limited, its successors and assigns, forever freed and discharged from the lien of said Deed of Trust recorded in Book 10407 at page 940 in the Mecklenburg County Public Registry and the UCC Financing Statements.

IN WITNESS WHEREOF, the parties hereto have caused this Release to be executed, all pursuant to authority duly given, as of the day and year first above written.

BENEFICIARY:

THE PROVIDENT BANK

ATTEST:

*Julia Anderson*  
ASS'T Secretary

By *Charles G. Steward*  
Vice President

TRUSTEE:

*Bryan W. Pittman*  
Bryan W. Pittman (SEAL)

STATE OF Ohio

COUNTY OF Hamilton

This 8th day of February, 2000, personally came before me, Kathleen E. Stevens, who being by me duly sworn, says that (s)he is Vice President of THE PROVIDENT BANK, that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation.

*Cynthia A. Strathmann*  
Notary Public

My Commission Expires: 5/31/2001



CYNTHIA A. STRATHMANN  
Notary Public, State of Ohio  
My Commission Expires May 31, 2001

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, the undersigned, a Notary Public for the County and State aforesaid, do hereby certify that Bryan W. Pittman personally appeared before me this day and acknowledged the due execution of the foregoing instrument in writing.

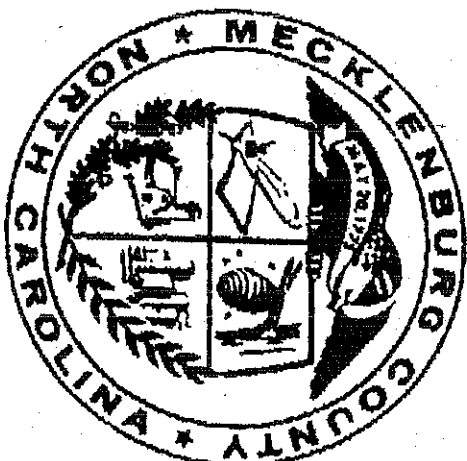
WITNESS my hand and notarial seal this 14<sup>th</sup> day of February, 2000.

My Commission Expires: 2-2-2004

Mary C. Murphy  
Notary Public







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

\*\*\*\*\*  
Filed For Registration: 02/17/2000 02:06 PM

Book: RE 11092 Page: 5-8

Document No.: 2000021161

P/REL 4 PGS \$12.00

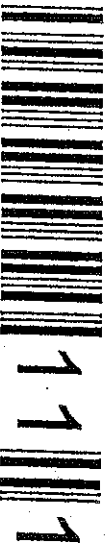
Recorder: SERENA ROSS

\*\*\*\*\*  
State of North Carolina, County of Mecklenburg

The foregoing certificate of MARY C. MURPHY, CYNTHIA A. STRATHMANN Notaries are certified to be correct. This 17TH of February 2000

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

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