6396
0216

BOOK 6396 PAGE 216

41517

CABARRUS COUNTY
FILED
11/30/2005 1:41 PM
LINDA F. MCABEE
Register Of Deeds
By. _____ Deputy/Asst.
EXCISE TAX $0.00

Drawn by and mail to: Horack Talley, 301 S. College Street, #2600, Charlotte NC 28202 [GRT/rd]

STATE OF NORTH CAROLINA

COUNTY OF CABARRUS

DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS FOR TUCKER CHASE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR TUCKER CHASE (this "Declaration") is made as of the 24th day of October, 2005, by Tucker Chase, LLC, a North Carolina Limited Liability Company, referred to in this instrument as "Developer."

STATEMENT OF PURPOSE

Developer is the owner of that certain real property described on Exhibit A attached hereto (the "Submitted Property").

It is in the best interest of Developer, as well as to the benefit, interest and advantage of each person or other entity later acquiring any interest in the Submitted Property or other property subsequently subjected to the provisions of this Declaration (collectively, the "Properties"), that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the same be established, fixed and set forth and declared to be covenants running with the land.

Developer desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the Properties and for the continued maintenance and operation of such recreational and common areas as may be provided.

DECLARATION

In consideration of the premises and for the purposes stated, Developer hereby declares that the Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which shall run with the land and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Properties or any part thereof, and their heirs, successors and assigns.

ARTICLE I: DEFINITIONS

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

(1.1) "Association" shall mean the Tucker Chase Homeowners Association, Inc., a non-profit corporation organized and existing under the laws of the State of North Carolina, and its successors and assigns.

(1.2) "Board of Directors" or "Board" shall mean the board of directors of the Association.

(1.3) "Builder" or "Builders" shall mean any person or entity acquiring a Lot from Developer for the express purpose of constructing a residential dwelling on the Lot within two years of acquiring the Lot and, without at any time permitting use of the dwelling as a residence, selling the improved Lot to a third party.

(1.4) "Bylaws" shall mean the Bylaws of the Association, as the same may be amended, modified, supplemented or restated from time to time.

(1.5) "Common Area" shall mean all easements and/or other real property rights acquired by the Association for the common use and enjoyment of Members of the Association lying within the boundaries of or relating to the Properties. Common Areas, with respect to the Properties subject to this Declaration, shall be shown on the plats of the Properties now or subsequently recorded in the local public registry where such Properties are located and designated thereon as "Common Open Space", "Common Area", "COS", "LSE", or "Landscaping Easement."

Developer reserves the right, in its sole discretion, to convey or cause to be conveyed to the Association from time to time and without the consent of the Association or its Members, additional property to the Association, which property may include any portion of the Properties. The Association shall accept any such conveyance of property and thereafter such property shall be held and maintained by the Association as Common Area.

(1.6) "Developer" shall mean and refer to Tucker Chase, LLC, its successors and assigns.

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

(1.8) "Lot" shall mean any numbered plot of land to be used for residential purposes shown upon any now or subsequently recorded subdivision plat of the Properties subject to this Declaration.

(1.9) "Master Plan" shall mean the plan(s) for the Properties now or hereafter approved by local governmental authorities having jurisdiction over the Properties, as such plan(s) may be from time to time amended and approved.

(1.10) "Owner" shall mean 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, but excluding those having such interest merely as security for the performance of an obligation.

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

(1.12) "Period of Developer Control" shall mean and refer to the period of time commencing on the date this Declaration is recorded in the local public registry and continuing until the earlier of: (i) Developer no longer owns any of the Property; or (ii) Developer terminates the Period of Developer Control by an instrument executed by the Developer and recorded in the public registry where the Declaration was recorded.

(1.13) "Property" or "Properties" shall mean the Submitted Property and such real property as may subsequently be subjected to the provisions of this Declaration.

ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION

(2.1) The Submitted Property shall be held, transferred, sold, conveyed and occupied subject to this Declaration. Only the Submitted Property is hereby made subject to this Declaration; provided, however, that Developer shall have the right to subject other real property to this Declaration as provided in Section 2.2.

(2.2) Without further assent or permit, Developer hereby shall have the right within seven (7) years from the date of this Declaration, exercisable from time to time, to subject other real property within a one mile radius of the Submitted Property in order to extend the scheme of this Declaration to other property to be developed as part of the same subdivision and thereby bring such additional properties within the jurisdiction of the Association (provided that the FHA and the VA determine that the annexation of such area is in accord with Developer's general plan of development as previously approved by them, if such determination and approval are necessary).

(2.3) Any addition of real property shall be made by filing of record one or more Supplemental Declarations in respect to the property to be then made subject to this Declaration, and the jurisdiction of the Association shall thereby then extend to such property and subject such addition to the assessments provided in this instrument for a

just and proportionate share of the Association's expenses. Each Supplemental Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained herein as may be necessary to reflect the different character of the added properties and as are not inconsistent with the provisions of this Declaration.

ARTICLE III: PROPERTY RIGHTS

(3.1) Owner's Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration, including but not limited to the following:

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

(b) The right of the Association to suspend the rights of an Owner for any period during which any assessment against his Lot remains unpaid, or for any infraction of the Association's 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 Association. No such dedication or transfer shall be effective unless recorded and the Members entitled to cast at least eighty percent (80%) of the Association votes agree in writing to that action, provided that this paragraph shall not (i) preclude the Board of Directors from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage utilities and drainage facilities upon, over, under and across the Common Area without the assent of the membership if such easements are deemed appropriate by the Board of Directors or (ii) preclude the Board of Directors from transferring part of the Common Area without the assent of the membership for the purpose of adjusting lot lines in accordance with local zoning and subdivision ordinances provided the transfer does not materially affect the development plan for the Properties on file with any federal agency.

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

ARTICLE IV: MEMBERSHIP AND VOTING RIGHTS

(4.1) Membership. 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.

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

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

(b) Class B. The Class B Member shall be Developer and shall be entitled to three (3) votes (*i*) for each Lot owned by Developer and (*ii*) for each other proposed building lot shown on the Master Plan as developed or to be developed which has not been conveyed by Developer to a Class A Member. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever first occurs:

(1) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in Class B membership; or

(2) Seven (7) years from the date of recording of this Declaration; or

(3) When the Developer voluntarily relinquishes majority control of the Association by a duly recorded instrument.

(4.3) Suspension of Rights. During any period in which a Member shall be in default for more than thirty (30) days in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights of such Member may be suspended by the Board of Directors after a hearing until such assessment is paid. In the event of violation by a Member of any provision of this Declaration, the Bylaws of the Association, or any rules or regulations established by the Board of Directors, such Member's voting rights may be suspended without further hearing until the violation or delinquency is cured. Such hearings shall only be held by the Board or a committee thereof after giving a Member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of the violation shall be made by a majority vote of the Board or the committee thereof.

(4.4) Developer Right To Representation on the Board of Directors of the Association. During the Period of Developer Control, Developer shall have the right to appoint directors of the Board and the right to remove by written notice to the Board of Directors any director or any officer of the Association. Developer also shall have the

right to replace such person removed with another person to act and serve in the place of any person so removed for the remainder of the unexpired term of any person so removed. Any director or officer designated and selected by Developer need not be a Member of the Association. Except as otherwise provided in the Bylaws with respect to the filling of vacancies, any directors which Developer is not entitled to designate or select shall be elected by the Members of the Association.

ARTICLE V: COVENANT FOR MAINTENANCE ASSESSMENTS

(5.1) Purpose of Assessment. The assessments levied by the Association shall be used: (a) to provide funds for maintenance, upkeep, landscaping and beautification of the Common Area; (b) to provide services for the Association Members to promote the health, safety and welfare of the residents of the Properties, and in particular for the acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area, including but not limited to the cost of repair, replacement and additions thereto; (c) for the payment of taxes assessed against the Common Area, for appropriate types of insurance related to the Common Area, for the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful, the employment of security personnel; (d) the provision of any service which is not readily available from any governmental authority related to the use, occupancy and enjoyment of the properties and which the Association shall decide to provide; and (e) for the payment of monthly electric and water bills and other expenses resulting from the maintenance or beautification of entrance monuments, signs, and landscaping.

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

(a) Annual assessments ("Annual Assessments") for the purposes specified in Section 5.1 in the amount hereinafter set forth; and

(b) Special assessments ("Special Assessments") for the purposes specified in Section 5.1 as may be established and collected as provided herein.

In order to secure payment of the Annual Assessments and Special Assessments, such charges as may be levied by the Association against any Lot, together with interest, costs of collection and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment, together with interest, late charges, costs of collection and reasonable attorneys' fees shall also be the personal obligation of the person who is the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successor in title unless

expressly assumed by them. Such assumption shall not relieve an Owner of his obligation.

(5.3) Exempt Property. The assessments, charges and liens created under this Article shall not apply to the Common Area. Any Lot which Developer may hereafter designate for common use as part of the Common Areas shall also be exempt and all land granted to or used by a utility company shall be exempt from the assessments created herein.

(5.4) Capital Contribution. Upon the sale of a Lot by Developer or any Builder to a purchaser who is not the Developer or a Builder, the purchaser shall pay to the Association at closing the sum of $200.00 (see Exhibit B hereto attached), such sum which shall be a non-refundable, one time "Capital Contribution" to the "Working Capital Fund" of the Association, the purpose of which Working Capital Fund shall be to help insure that the Association will have sufficient funds available to meet its initial operational needs, unforeseen expenditures or long-term capital improvements and repairs to the Common Areas. No such payment made into the Working Capital Fund shall be considered an advance or current payment of any Annual Assessment. In addition, upon the sale of a Lot by Developer or any Builder to a purchaser who is not the Developer or a Builder, the purchaser shall pay to the Association at the closing of the sale that amount of money that is equal to that portion of the Annual Assessment attributable to the balance of the period in which the closing takes place. After receipt of said payment, any amounts prepaid by the Developer or Builder shall be refunded by the Association. Any Special Assessment made before, but falling due after, the date of closing of the sale of a Lot by Developer or Builder shall be paid in full to the Association by the purchaser at the closing of the sale.

(5.5) Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall be Three Hundred Fifty Dollars ($350.00) on each Lot (see Exhibit B attached).

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, in a given year the maximum Annual Assessment may be increased by not more than ten percent (10%) from the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, in a given year the maximum Annual Assessment may be increased by more than ten percent (10%) from the previous year only upon a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

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

(5.6) Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the Association Members who are voting in person or by proxy at a meeting duly called for this purpose.

(5.7) Notice and Quorum for Any Action Authorized Under Sections 5.5 and 5.6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.5 and 5.6 shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, the general nature of any proposed amendment to this Declaration or to the Bylaws, any budget changes or proposal to remove a director or officer of the Association. At the first such meeting called, the presence in person or by proxy of Members entitled to cast twenty percent (20%) of all the votes of each class 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 of the required quorum applicable to the meeting adjourned for lack of a quorum. The quorum requirement shall continue to be reduced by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

(5.8) Date of Commencement of Annual Assessments; Due Dates; Certificate of Payment. Annual Assessments shall commence as to a Lot subject to this Declaration as of the date such Lot is conveyed by Developer to an Owner. Notwithstanding the foregoing, Builder shall not be liable for Annual Assessments on any Lot owned by Builder unless Builder fails to either (i) commence construction of a residence on said Lot within six (6) calendar months after such Lot is conveyed to Builder, or (ii) complete construction of a residence on said Lot within two years after such Lot is conveyed to Builder, in which case Builder shall be liable for the full rate of Annual Assessments thereafter. 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 fix such assessment amount as herein provided, the amount of the prior year's Annual Assessment shall be the fixed amount. Written notice of any change in assessment amount shall be sent to every owner. The Annual Assessments shall be due and payable in advance on January 1 of each year unless the Board of Directors votes to collect such assessments on a monthly basis and the due dates for the payment of 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 to date.

(5.9) Effect of Non-Payment of Assessment: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be assessed a late charge as determined by the Board of Directors and bear interest from the due date at an annual rate of eighteen percent (18%) but in no event above the then maximum legal rate, and to the extent allowed by law. 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 against the Lot to which the assessment relates, and interest, costs and reasonable attorney's fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

(5.10) Subordination of the Lien to First Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed of trust or first mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any first deed of trust or first mortgage pursuant to a foreclosure thereof or under a power of sale or any proceeding or deed in lieu of foreclosure thereof (including any sale or transfer to the Secretary of Housing and Urban Development or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan) shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer, and the purchaser or transferee in such case shall not be liable for said assessments. No sale or transfer shall relieve such Lot or the Owner thereof from liability for any assessment thereafter becoming due or from the lien thereof.

ARTICLE VI: ARCHITECTURAL, MAINTENANCE AND USE RESTRICTIONS

The architectural, maintenance and use restrictions set forth in this Article shall apply to each and every Lot now or hereafter subject to this Declaration.

(6.1) Architectural Control Committee. Prior to the formation of an Architectural Control Committee, Developer shall have the sole right to enforce the restrictions set forth herein and any additional rules and regulations adopted by a majority of the Board of Directors, and reference herein to the "Architectural Control Committee" shall mean the Developer until such committee is formed. Developer shall have the right to appoint an Architectural Control Committee to exercise such enforcement powers at any time prior to the later to occur of: (i) the date Developer voluntarily relinquishes control of the Architectural Control Committee or (ii) seven (7) years following the date of recording of this Declaration, after which time the members of the Architectural Control Committee shall be appointed by the Board of Directors.

The Architectural Control Committee shall consist of no fewer than three (3) Members of the Association. Neither Developer nor any member of the Architectural Control Committee shall be liable for any claims, causes of action or damages (except

where occasioned by willful misconduct) arising out of or in connection with services performed hereunder, including but not limited to any claims for failure to enforce the architectural, maintenance and use restrictions set forth in this Article.

(6.2) Approval of Plans and Architectural Control Committee. No construction, reconstruction, remodeling, alteration, roofing or addition to any structure, building, fence, wall, drive or walkway, or exterior color change, shall be commenced or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein be made after completion of construction of said dwelling, unless and until the plans and specifications showing the nature, kind, shape, height, color, material and location of the same shall have been mailed to the Architectural Control Committee by certified mail with return receipt requested and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee. If the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications shall have been submitted to it, further approval will not be required and this Article will be deemed to have been fully complied with. Upon giving approval to such plans and specifications, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans as have been previously approved by the Architectural Control Committee. The Architectural Control Committee or the Board of Directors shall be entitled to stop any construction in violation of these restrictions.

The approval of plans and specifications by the Architectural Control Committee or Developer shall not be deemed or construed as a representation or warranty of the Architectural Control Committee or Developer, or any officer, director, member, employee, agent or affiliate of either of them (i) that improvements constructed in accordance with such plans or specifications will comply with the terms of any applicable building permits, zoning ordinances, building codes or other governmental or quasi-governmental laws, ordinances, rules and regulations, or (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of improvements constructed in accordance with plans and specifications, it being understood that (i) and (ii) shall be the responsibility of the Owners and not the Architectural Control Committee or Developer.

(6.3) Residential Use. All Lots shall be used for single-family residential purposes only.

(6.4) Building Line Requirements. No building shall be located nearer to the front property line than the front building setback line as shown on the recorded maps of the Property, and no building shall be located nearer to the side street line than the side street setback line shown on the recorded maps of the Property. It is provided, however, that eaves, steps, stoops, porches and chimneys shall not be considered a part of the building for purposes of interpreting this paragraph of this Declaration. Minimum setback lines which may be shown on any recorded plat of the Properties are not necessarily intended to create uniformity of setbacks; they are meant primarily to

avoid overcrowding and monotony. It is intended that setbacks may be staggered where appropriate so as to preserve the trees and other natural vegetation, and to insure each Owner the greatest benefit and enjoyment of his/her Lot. Any deviation from the building line requirements not in excess of ten (10) percent thereof shall not be construed as a violation of the building line requirements.

(6.5) Building Requirements. All Lots shall have a minimum area as approved by the Cabarrus County Planning Commission. No dwelling shall be erected or placed on any Lot having a heated living area (exclusive of uncovered porches, stoops, terraces, attached garages or carports) of less than 1,700 square feet. All homes shall have a minimum roof pitch of 6/12. Any house built on a slab foundation shall have a minimum eight (8) course brick masonry veneer skirt extending up the face of the slab. Homes shall be required to have articulated design elements on the front elevation as approved by the Architectural Control Committee. These elements may include dormer windows, stoops, porches, bay windows, turned gables and garages.

(6.6) Walls, Fences, Berms and Hedges. No fence, hedge or wall of any type or kind shall be erected or maintained on a Lot except such approved fences, hedges or walls as may be installed, constructed or erected with the initial construction of the main dwelling located on said Lot, or as may later be approved by the Architectural Control Committee as described in Section 6.2 above. No metal fences, except for a 2 x 4 wire mesh inside of an approved wooden fence to contain pets, are allowed on a Lot. No solid fence is allowed on the perimeter of any Lot. All perimeter fences on a Lot must be rail type or picket fences with at least fifty percent (50%) of surface area open. Privacy fences are permitted around pools or patios with a maximum height of six (6) feet. Fences shall be no closer to the right-of-way of any street than the front corner of the house upon any such Lot. Berms located within the area of a Lot line shall be maintained by the Lot Owner. The Architectural Control Committee shall have the authority to grant exceptions to the above-referenced fence and wall guidelines.

(6.7) Sidewalks and Driveways. Sidewalks and driveways constructed on any Lot within the subdivision, including the flooring surfaces of garages as required herein, shall be constructed solely of concrete. Gravels, asphalt or other similar paving materials are prohibited.

(6.8) Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, shed, tent, garage, carport, or any other structure of a similar nature shall be used as a residence either temporarily or permanently. Provided, however, this paragraph shall not be construed to prevent the Developer or Builder from using sheds or other temporary structures during construction for such purposes as Developer or Builder deems necessary or later approved by the Association. No television satellite dishes shall be erected on any Lot, except that a television satellite dish not exceeding eighteen (18) inches in diameter which is attached to the house and is not visible from the street shall be permitted. No radio or television antenna shall be allowed on the roof of any house or structure located on a Lot and no separate towers for antenna shall be erected on

any Lot. Only one (1) accessory building no greater than twenty percent (20%) of the house's heated square feet shall be allowed upon any Lot (exclusive of pools and associated buildings). Any accessory buildings must be constructed using similar materials and must conform both structurally and architecturally to the primary residence. No metal storage buildings, metal sheds, metal carport, metal trailers or metal garages shall be permitted on any Lot. No other types of storage buildings, sheds, trailers or garages shall be allowed on a Lot unless approved by the Architectural Control Committee as described in Section 6.2 above.

(6.9) Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred, pastured, maintained, or otherwise permitted on any Lot, except common household pets which may be kept thereon in reasonable numbers as determined by the Board. All such pets shall be for the sole pleasure and use of the occupants and not for any commercial use or purpose. All pets shall be kept under the Owner's control so as not to be a nuisance to other Owners. Birds shall be confined in cages. No pets shall be permitted to remain on any Lot if the activities or existence of the pets are in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Any pet which, in the sole discretion of the Board, endangers the health, barks loudly or constantly, makes noise in violation of any applicable noise ordinance, makes other objectionable noise, or constitutes a nuisance or inconvenience to the Owner of any Lot or to the owner of any property located adjacent to or in the vicinity of the Properties may be removed by the Board. No structure for the care, housing or confinement of any pet shall be constructed, altered, or placed on any Lot unless plans and specifications for such structure have been approved by the Architectural Control Committee in accordance with Section 6.2.

(6.10) Signs. No advertising signs of any type or kind shall be erected, placed or permitted to remain upon or above any Lot or Common Area with the exception of a single "For Rent" or "For Sale" sign, which sign shall not exceed two feet by two feet in dimension and shall refer only to the premises on which displayed, there being only one sign to a Lot. Notwithstanding the above, the Developer or Builder may erect and place permanent and temporary signs on or above any Lot owned by Developer or Builder. Developer or Builder shall also have the right of ingress, egress and regress over the aforesaid Lots in order to maintain and replace any such signs until one hundred percent (100%) of the Lots have been sold.

(6.11) Nuisances. No noxious, offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereof which is or may become an annoyance, nuisance, discomfort or embarrassment to any other Owner as determined by the Association. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unkempt, disorderly, untidy or unsightly condition on the Owner's or occupant's Lot. Without limiting the generality of the foregoing, no Lot shall be used in whole or in part for storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in any unclean, unkempt, untidy, or unsightly condition; nor shall any

substance, thing or material be kept upon any Lot that will emit a foul or obnoxious odor or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding Lots. No trash, rubbish, stored materials, wrecked, unlicensed or inoperable vehicles, boats and/or trailers, recreational vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pick up by governmental and other similar garbage and trash collection and removal service units. In the event any Owner fails or refuses to comply with any provision of this Section in a manner satisfactory to a majority of the Board of Directors, the Association may, through its agent or representative, five (5) days after posting a notice on such Lot or mailing a notice to the Owner thereof at his Lot address requesting the Owner to comply with the requirements of this Section without subsequent cure, enter and remove all unsightly objects or debris or perform other work necessary to bring the Lot into compliance with this Section at Owner's expense and Owner, by acquiring any Lot subject to this Declaration, agrees to pay such costs incurred by the Association in the enforcement of this Section promptly upon demand. The Association or its agent or representative may impose fines and bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot and interest, costs and reasonable attorney's fees for such action or foreclosure shall be added to the amount due to the extent allowed by law. No such entry as provided herein shall be deemed a trespass. The foregoing provisions shall not apply to the Developer while constructing residences upon any Lots.

(6.12) Clotheslines, Garbage Cans, Etc. All garbage cans, lawnmowers and similar equipment shall be kept in an enclosed structure or screened by adequate planting or fencing so as to conceal same from the view of the streets and neighboring Owners. Incinerators for garbage, trash or other refuse shall not be used nor permitted to be erected or placed on any Lot. The use of clotheslines is not permitted.

(6.13) Use of Common Areas. No planting or gardening by individual Owners shall be done upon any Common Area without approval of the Board of Directors. Except for the right of easement of enjoyment in and to the Common Areas herein given to each Owner, Owners are hereby prohibited and restricted from using any of the Common Area except as may be allowed and prescribed by the Board of Directors or as expressly provided for herein. It is Developer's intent that this paragraph inure to the mutual benefit of all Owners within the Properties.

(6.14) Maintenance and Upkeep.

(a) The Owner of each Lot shall be solely responsibility for maintaining and keeping the Lot, the exterior of all improvements located thereon, and all grounds and landscaping in a clean, neat and attractive condition, subject to such reasonable requirements as may from time to time be established by the Architectural Control Committee to insure the continuity and harmony of the exterior design of the Properties. Such maintenance and upkeep shall include, but shall not be limited to, (i) painting,

repairing, replacing, cleaning, sweeping and otherwise caring for roofs, gutters, downspouts, building surfaces, windows, doors, decks, porches, steps, fences, and walks; (ii) cutting, edging, raking and otherwise caring for all lawns; (iii) pruning, trimming, removing dead or diseased limbs from and otherwise caring for all trees, hedges, and shrubs; and (iv) weeding and otherwise caring for any flower or plant beds.

(b) In the event an Owner shall fail to comply with the provisions of this Section in a manner satisfactory to the Board of Directors, the Association may, through its agent or representative, ten (10) days after posting a notice on such Lot or mailing a notice to the Owner thereof at his Lot address requesting the Owner to comply with the requirements of this Section without subsequent cure, enter upon said Lot and perform the maintenance and upkeep work at Owner's expense. The cost of such maintenance and upkeep work shall be added to and become part of the assessment to which such Lot is subject, the Owner shall be personally liable to the Association for such cost, and the cost, until paid, shall be a permanent charge and lien upon such Lot, enforceable to the same extent and collectible as provided for in Article V. Such entry as provided herein shall not be a trespass, nor shall the Association be liable for doing anything reasonably necessary or appropriate in connection with carrying out those provisions, provided such entry shall be at reasonable times and places so as not to interfere with the right of quiet enjoyment of the individual Lot Owner.

(6.15) Above Ground Swimming Pools-Wells. No above-ground swimming pools, except for temporary small wading pools, are permitted on any Lot. Irrigation wells are permitted as approved by the Department of Environmental Health.

(6.16) Decorative Structures. No decorative statues, birdbaths, fountains, ornaments, figurines, or any other decorative structures are permitted on any Lot in an area visible from the streets unless approved by the Architectural Review Committee.

(6.17) Boats, Commercial Vehicles and Recreational Vehicles. No boats, boat trailers, commercial vehicles larger than a full-size pickup truck or full-size van, or recreational vehicles shall be permitted on any Lot except in an enclosed garage or screened area approved by the Architectural Control Committee. All vehicles with *commercial lettering* are prohibited from parking on the streets or Lots except in an enclosed garage or screened area approved by the Architectural Control Committee.

(6.18) Mailboxes. Mailboxes on each Lot shall conform to specifics set forth by the Architectural Control Committee, including regulations imposed by the NCDOT against any brick, block, rock or other permanent structure/support/column to be located within the street right of way.

ARTICLE VII: EASEMENTS

(7.1) General. Each Lot now or hereafter subjected to this Declaration shall be subject to all easements shown or set forth on the recorded plat or plats of survey upon

which such Lot is shown. No structure of any type shall be erected or placed upon any part of a Lot or the Common Area which will interfere with rights and use of any and all easements shown on said recorded plat.

(7.2) Utility, Landscape and Drainage. An easement on each Lot is hereby reserved by Developer for itself, the Association, their successors and assigns along, over, under and upon a strip of land twenty feet (20') in width parallel and contiguous to the rear or back Lot line of each Lot and easements ten feet (10') in width over, under and along the side lot lines of each Lot, in addition to such other easements as may appear on any recorded plat of the Properties. The purpose of these easements shall be to provide, install, maintain, construct and operate drainage facilities now or in the future and utility service lines to, from or for each of the Lots. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements without approval of the Architectural Control Committee. The easement area of each and all improvements in it shall be maintained continuously by Owner, except for those improvements for which a public authority or utility company is responsible. With ten (10) days prior written notice to Owner, Developer may exercise the right to remove obstructions in such easements upon Owner's failure to do so. For the purpose of this covenant, Developer reserves the right to modify or extinguish the herein reserved easements along any Lot lines when in its sole discretion adequate reserved easements are otherwise available for the installation of drainage facilities and/or utility service lines. For the duration of this Declaration, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining the prior written consent of Developer or its successor; provided, however, that local service from utilities within easement areas to residences constructed upon any such Lots may be established without first obtaining separate consents therefor from Developer or its successor. The Association may likewise reserve and grant easements for the installation and maintenance of sewerage, utility and drainage facilities in, across, under and over the Common Area.

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

(7.4) Entry Monuments, Signs and Landscaping Easements. Developer hereby grants the Association perpetual easements over the portions of those Lots which are designated "LSE" or "Landscape Easement" or "Common Open Space" or "COS" on any recorded map of the Properties as well as over the real property described on Exhibit B attached hereto. Easements over these areas shall be for the purpose of the installation, maintenance and repair of all entry monuments, walls, signs and landscaping, and the Association is also granted a perpetual easement for ingress,

egress and regress over these areas to fulfill these purposes. Developer also hereby grants perpetual easements over all entrance islands within public rights of way and the easement over these areas shall be for the installation and maintenance of landscaping on the entrance islands.

ARTICLE VIII: RIGHT OF FIRST REFUSAL

(8.1) Right of First Refusal. Before any unimproved Lot may be sold by any Owner other than Developer to any party other than Developer or its successors, the Owner of such Lot shall first offer in writing to sell the Lot to Developer or its successors at a price equal to (1) contract the price paid by such Owner for such Lot (excluding all finance charges related to the purchase) increased by the percentage increase, from the closing date of such Owner's purchase of such Lot to the date of such written offer to sell the Lot to Developer or its successors, in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84=100) issued by the United States Bureau of Labor Statistics (the "CPI"), less (2) the costs of removing all liens and encumbrances on the Lot and customary seller's closing costs. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. For the purposes of this Section, a Lot shall be considered unimproved unless it contains a single-family residence constructed in accordance with plans and specifications approved by the Architectural Control Committee. Upon receipt by an Owner of a bona fide offer to purchase an unimproved Lot, the Owner shall send the Developer a copy of the bona fide offer along with written notification that the Owner is offering the Lot for sale to Developer pursuant to this right of first refusal. If Developer or its successor does not accept or reject the offer of sale in writing within thirty (30) days after receipt of the same, then the Owner shall have the right to sell the Lot to the third party making such bona fide offer. Developer's waiver of its right of first refusal with respect to any sale shall not limit Developer's right of first refusal with respect to any subsequent sale of any unimproved Lot; provided, however, that this right of first refusal (i) shall only be valid and enforceable for a period of 30 years from the date of the first conveyance of such Lot from Developer to an Owner other than Developer, and (ii) shall not be applicable with respect to any foreclosure sale of a first lien deed of trust or first lien mortgage or any deed in lieu of foreclosure which is made and delivered in good faith. Should an Owner fail to comply with the provisions of this Section and sell an unimproved Lot without first offering said Lot to Developer in accordance with the terms hereof, then the purchaser of such unimproved Lot shall purchase such Lot subject to the right of first refusal herein granted, and Developer shall thereafter at any time have the right to purchase such Lot, whether or not it is subsequently improved, from the purchaser thereof at the price as set forth in this Section and shall also be entitled to any other rights and remedies available at law or in equity for a violation of this Section.

(8.2) Transfers to Developer. In the event that Developer exercises its right of first refusal, the closing of the conveyance of such Lot shall occur within sixty (60) days after the receipt by the Owner of written notice from Developer or its successors that it

elects to exercise its right of first refusal with respect to such Lot. At the closing, Developer shall make payment to such Owner of the purchase price, in cash or cash equivalent. The Owner shall deliver to Developer a general warranty deed conveying fee simple marketable title to the Lot free and clear of all exceptions except those that existed at the time of the acquisition of the Lot by such Owner, the lien of ad valorem taxes for the current year and other exceptions which may be approved by Developer.

(8.3) No Further Documentation Required. The right of first refusal reserved by Developer in this Article shall run with the title to each Lot and be binding upon each purchaser of a Lot from Developer and upon any subsequent Owner of a Lot, whether such Owner purchased such Lot from Developer or from a third party. The provisions of this Article shall constitute record notice to all purchasers of Lots of the right of first refusal herein reserved, and no additional language in any deed of conveyance of a Lot and no recording of any additional instrument shall be required to make all Owners of Lots subject to the provisions of this Article.

ARTICLE IX: GENERAL PROVISIONS

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

(9.2) Duration. The covenants, conditions and restrictions of this Declaration shall be binding for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive and additional periods of ten (10) years each, unless terminated in accordance with Section 9.3 below.

(9.3) Amendments and Termination. This Declaration may be terminated at any point in time during the first twenty (20) year period by an instrument signed by the Owners holding not less than ninety percent (90%) of the Association votes, and thereafter may be terminated at any point in time by an instrument signed by the Owners holding not less than eighty percent (80%) of the Association votes. This Declaration may be amended upon the affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the Association votes are allocated; provided, however, that the Developer may amend this Declaration to correct minor and clerical errors, as determined by the Developer, without approval of Owners, and should the FHA, VA, Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC) subsequently delete any of their requirements which necessitate certain provisions of this Declaration or make any such requirements less stringent, the Developer, without approval of Owners, may amend this Declaration to reflect such changes. No such amendment or termination

shall be effective until an instrument evidencing such change has been filed in the local public registry where the Declaration was recorded.

(9.4) FHA/VA Approval. In the event the Developer has arranged for and provided purchasers of Lots with FHA insured or VA mortgage loans, then as long as any Class B lot exists, as provided in Article IV hereof, the following actions will require the prior approval of the FHA or VA if so required by the FHA or VA: annexation of additional properties other than as provided in Article II hereof, deeding, mortgaging or dedication of Common Area to persons other than the Association except as provided herein and dissolution or amendment of this Declaration.

(9.5) Enforcement. If any Owner shall violate or attempt to violate any of these restrictions, failure to comply with any of the same shall be grounds for the imposition of fines and penalties and an action to recover sums due, for damages or injunctive relief, or both, maintainable by the Board of Directors on behalf of the Association, or, in proper case, by an aggrieved Owner. The court may also award reasonable attorneys' fees to the prevailing party. Any failure by Association or any other Owner to enforce any of the foregoing restrictions or other provisions shall in no event be deemed a waiver of their right to do so thereafter. All rights, remedies and privileges of the Association and the Owners contained herein or in the Bylaws or any rules and regulations of the Association shall be cumulative, and the exercise of any one or more of the same shall not constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such additional rights, remedies and privileges as may be available to such party at law or in equity.

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

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

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

6396
0234

BOOK 6396 PAGE 234

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed as of the day and year first above written.

DEVELOPER:

TUCKER CHASE, LLC

By: _____

Print Name: Charles A. Stevens

Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF Union

I, Patricia G. Stevens, a Notary Public in and for the County and State aforesaid, do hereby certify that Charles A. Stevens, personally came before me this day and acknowledged that he is Manager of Tucker Chase, LLC, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of Tucker Chase, LLC.

WITNESS my hand and notarial stamp or seal, this 28th day of October, 2005

_____

Notary Public

My Commission Expires:

_____ 10-6-09

(Notarial Stamp or Seal)

PATRICIA G. STEVENS NOTARY PUBLIC UNION COUNTY, N.C.

HTPL: 270139.1

EXHIBIT A

FIRST TRACT:

Lying and being in Number 10 Township, Cabarrus County, North Carolina and containing 62.940 acres and being that certain portion of the property described in Deed Book 1747, page 325 lying on the west side of U.S. Highway 601 and further described as follows:

BEGINNING at a mag nail set within the paved portion of U.S. Highway 601 with coordinates of N:552,322.961, E:1,552,089.807 and CSF:0.9998726 and runs thence from said point of Beginning and with U.S. Highway 601, S 08-02-03 E 762.92 feet to a set mag nail, thence again with U.S. Highway 601, a curve with a chord of S 01-05-22 W, a R=1456.11', a L=489.10' and a CL=486.80' to a set mag nail, thence turning and running with the old north line of the McManus Family Trust property described in Deed Book 4612, page 31, N 71-37-42 W 2069.02 feet (passing over a set ½" rebar at 738.92 feet) to an existing ¾" iron pipe, a corner of the David E. Matheson property (Deed Book 592, page 861), thence another line of Matheson, S 54-44-17 W 804.20 feet to a nail at an existing ¾" iron pipe, thence with the line of Rachel M. Nance (Deed Book 496, page 502), N 68-08-47 W 643.71 feet to an existing ¾" iron pipe at a stump, thence again with the Rachel M. Nance line, N 19-05-33 E 487.93 feet to an existing disturbed ¾" iron pipe, thence another line of Nance, N 75-46-10 E 802.05 feet to an existing stone with ¾ " iron pipe witness, thence another line of Nance, N 08-22-37 W 490.03 feet to an existing ¾" iron pipe in the line of Grady J. Kiker (Deed Book 557, page 732), thence with the Kiker line 4 calls as follows: S 69-37-02 E 113.67 feet to an existing ¾" iron pipe, thence N 84-04-34 E 666.26 feet to an existing ¾" iron pipe, thence S 03-33-52 W 459.72 feet to an existing ¾" iron pipe, and N 86-10-20 E 1517.36 feet (passing over an existing ¾" iron pipe at 122.86 feet) to the point and place of BEGINNING, and containing 62.940 acres by survey of AccuTech Surveying & Mapping, LLP, Job Number 04062 on April 9, 2004.

EXCEPTED FROM THE ABOVE DESCRIBED 62.940 acres tract is the following 11.3921 acres tract described as follows:

BEGINNING at a mag nail set in the center of U.S. Highway 601, said point of beginning being the northeast corner of the McManus Family Trust property described in Deed Book 4612, page 31, and runs thence with the old north line of the McManus Family Trust property N 71-37-42 W 738.92 feet to a set ½" rebar (said rebar marking a corner in the division of the McManus Family Trust property into a 5.821 acres parcel and a 3.586 acres parcel), and runs thence a new line N 18-04-04 E 9.53 feet to a new iron rod, thence a curve with a chord bearing of N 87-13-48 E 26.30 feet with a radius of 206.31 and a length of 26.32 to a new iron rod, thence S 89-05-31 E 13.02 feet to a new iron rod, thence N 00-

EXHIBIT A (continued)

54-29 E 50.00 feet to a new iron rod, thence N 08-02-03 W 91.98 feet to a new iron rod, thence N 08-02-03 W 70.00 feet to a new iron rod, thence N 08-02-03 W 140.0 feet to a new iron rod, thence N 10-08-00 E 25.32 feet to a new iron rod, thence N 40-54-07 E 120.34 feet to a new iron rod, thence N 26-40-54 E 108.01 feet to a new iron rod, thence N 38-40-01 E 61.40 feet to a new iron rod, thence N 86-10-20 E 44.32 feet to a new iron rod, thence N 86-10-20 E 71.04 feet to a new iron rod, thence N 86-10-20 E 246.00 feet to a new iron rod, thence N 86-10-20 E 72.98 feet to a new iron rod in the right of way line of U.S. Highway 601, thence the same course continued 50.14 feet to point in the center U.S. Highway 601, thence with said highway, S 08-02-03 E 510.19 feet to a point, thence again with said highway a curve with a chord of S 00-48-17 W 486.80 feet, a R=1456.11 and a L=489.10 to the point and place of BEGINNING and containing 11.3921 acres (1.0116 acres subject to right of way of U.S. Highway 601) by survey of James Mauney & Associates, P.A., Professional Surveyors on October 20, 2004.

SECOND TRACT:

Lying and being in Number 10 Township, Cabarrus County, North Carolina and being a 5.821 acres portion of the McManus Family Trust 9.46 acres tract of land described in Book 4612, page 31, and being further described as follows:

BEGINNING at an existing ½ inch iron rod, the northeast corner of Lot Number 23 of MB 15, page 23 (also the northeast corner of the Donald M. Russell, Jr. lot described in Book 2645, page 87), and runs thence with the old line (and the north line of lots 23 thru 15, MB 15, page 2), N 71-31-27 W 1100.34 feet to an existing ¾" pipe in the line of David E. Matheson (Deed Book 592, page 861), thence with the Matheson line, N 29-38-33 W 310.60 feet to a ¾" existing iron pipe, a corner of the 62.940 Tucker tract, thence the old line S 71-37-42 E 1330.10 feet to a set ½" rebar, thence a new or dividing line in the McManus Family Trust property, S 18-04-04 W 209.78 feet to the point and place of BEGINNING, and containing 5.821 acres by survey of AccuTech Surveying & Mapping, LLP, Job No. 04062 on March 7, 2004.

EXHIBIT B

HOMEOWNERS ASSOCIATION ASSESSMENTS

The Initial Assessments for TUCKER CHASE Homeowners Association for the calendar year 2005 shall be as follows;

A. CAPITAL CONTRIBUTIONS-

All closed Lots shall have a one-time Capital Contribution in the amount of Two Hundred ($200.00) Dollars, such contribution which shall be directed to the General Use Fund of the Association.

B. ANNUAL DUES-

All closed Lots during the first calendar year of operating the association shall have an annual assessment in the amount of Three Hundred Fifty ($350.00) Dollars, such assessment which shall be due and payable at closing, and pro-rated from the date of closing to the end of the calendar year. Annual Assessments shall be directed to the General Use Fund of the Association. All Annual Assessments shall be assessed, due and payable on the first day of each year thereafter.

CONSENT AND SUBORDINATION OF LENDER

Home Savings Bank of Albemarle, SSB ("Home Savings") being the Lender under that certain deed of trust from Tucker Chase LLC to R. Ronald Swanner, Trustee for Home Savings, dated November 23, 2004 and recorded in Book 5669 at Page 237 in the Cabarrus County, North Carolina, Public Registry (the "Home Savings Deed of Trust"), does hereby consent to the recordation of the foregoing Declaration of Covenants, Conditions and Restrictions for Tucker Chase (the "Declaration") and to the terms and provisions thereof; and Home Savings does hereby consent to and does subordinate the lien of the Home Savings Deed of Trust to the provisions of the Declaration. The execution of this Consent and Subordination of Lender shall not be deemed or construed to have the effect of creating between Home Savings and Tucker Chase, LLC, or any other party, the relationship of partnership or of joint venture nor shall anything contained in this Consent and Subordination of Lender be deemed to impose upon Home Savings any of the liabilities, duties or obligations of Tucker Chase, LLC, or any other party under the Declaration. Home Savings executes this Consent and Subordination of Lender solely for the purposes set forth herein. This Consent and Subordination of Lender is executed pursuant to the provisions of N.C.G.S. §39-6.6 and the Trustee is not a necessary party.

This the 29 day of November, 2005.

LENDER:

HOME SAVINGS BANK OF ALBEMARLE, SSB, a corporation organized and existing under the laws of the State of North Carolina

By: _____
Exec Vice President

STATE OF NORTH CAROLINA

COUNTY OF Stanly

I, Brigitte B. Kimmer, a Notary Public certify that Cris D. Turner, personally came before me this day acknowledged that he/she is the Executive Vice President of Home Savings Banks of Albemarle, SSB, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her as its Executive Vice President.

WITNESS my hand and notarial stamp or seal, this 29 day of November, 2005.

_____
Notary Public

My Commission Expires:
Feb 12, 2009

(Notarial Stamp or Seal)

BRIGITTE B. KIMMER NOTARY PUBLIC STANLY COUNTY, NC

HTPL: 270132 v2