

County Tax Map No. 125-(A)-115 (portion)

AMENDED AND RESTATED
DECLARATION of PROTECTIVE COVENANTS,
for
Taylor Spring, Phase 3

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS is made the 5~~7~~ day of October 2004 by **ASSOCIATED DEVELOPERS, L.L.C.**, a Virginia limited liability company ("Declarant"), as grantor, **RUSSELL HENRY, JR.**, Trustee (index as grantor) and **FNB SOUTHEAST**, a North Carolina banking corporation ("Beneficiary")(index as grantor).

P R E A M B L E

A. Declarant is the developer of certain real estate located at the southeastern intersection of Boyers Road (State Route 704) and Taylor Spring Road (State Route 688) in Central District, Rockingham County, Virginia, part of which has been previously designated as Taylor Spring, Phase One and Phase II on plats recorded in the Clerk's Office of the Circuit Court of Rockingham County in Deed Book 2060 at page 672 and Deed Book, 2447 at page 528, respectively. An additional part of the property is designated as Taylor Spring, Phase III on a plat made by Lotts, Austin and Associates, P.C., dated July 27, 2004, to be recorded immediately prior to the recordation hereof (the "Phase III Plat").

B. The Declarant recorded a Declaration of Protective Covenants for Phase One in the Clerk's Office in Deed Book 2060 at page 677 (the "Declaration"). Declarant recorded a Supplemental Declaration for Phase II, dated December 9, 2003, in the Clerk's Office in Deed Book 2407, page 185. The Declarant also amended the Declaration and the Supplemental Declaration, pursuant to the provisions thereof, by instrument dated March 10, 2004 recorded in the Clerk's Office in Deed Book 2447 at page 534.

C. Declarant conveyed the property within Taylor Spring, Phase III to the Trustee by deed of trust dated November 25, 2003 and recorded in the Clerk's Office in Deed Book 2400 at page 525 to secure a loan from the Beneficiary to Declarant.

D. Section 8.5 of the Declaration, as amended, permits Declarant to subject additional property to the provisions of the Declaration. Declarant wishes to subject the property in Taylor Spring, Phase III to the Declaration. Declarant also wishes to restate the existing covenants, as supplemented and amended, in one instrument.

NOW THEREFORE, Declarant declares that all the Lots in Taylor Spring, Phase III (Lots 60 – 70, 143 – 163, and 183 – 185) shall be held, transferred, sold, conveyed and occupied subject to the following limitations, restrictions and uses which shall run with the real estate and shall be binding on and inure to the benefit of all present and future Owners thereof. This amended and restated declaration shall not, however, apply to any other "phases" or sections of **Taylor Spring** or any other land owned by Declarant, except such land as may be added under § 8.5 hereof.

ARTICLE 1

Definitions

§ 1.1 "**Association**" shall mean and refer to Taylor Spring Property Owners Association, and its successors and assigns.

§ 1.2 "**Common Areas**" shall mean and refer to all portions of the Property and all interest therein, including easements and improvements therein, owned or leased by the Association for the use and enjoyment of the Owners.

§ 1.3 "**Declarant**" shall mean Associated Developers, L.L.C. and its successors and assigns, but shall not include the purchaser of any Lot.

§ 1.4 "**Lot**" shall mean and refer to the individually numbered plots of land shown upon the recorded subdivision plat of the Property.

§ 1.5 "**Owner**" shall mean or refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, whether acquired by purchase, gift, foreclosure or otherwise, but excluding those persons or entities having such interest merely as a security for the performance of an obligation. The address of an Owner (or Owners in case a Lot is owned by more than one person) for the purpose of notices required herein shall be the address as

indicated on the tax records for the current year maintained by Rockingham County, Virginia, unless an Owner notifies the Association of a different address.

§ 1.6 "**Property**" shall mean and refer to all of the real estate dedicated to **Taylor Spring, Phase III** and subsequent sections added to this Declaration pursuant to § 8.5 hereof.

ARTICLE 2
Association

§ 2.1 Every Owner shall be a member of the Association. The membership shall be appurtenant with and may not be separated from ownership of any Lot.

§ 2.2 The Association shall have two (2) classes of members:

Class A. Class A members shall include all Owners except the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When a Lot is owned by more than one person or entity, the one (1) vote for such Lot may be cast by any Owner thereof unless an objection or protest by another co-owner is made prior to the completion of a vote. Upon such objection or protest, the one (1) vote shall be cast according to the majority vote (based on each Owner's percentage ownership interest) of the Owners of such Lot, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Lot it owns.

§ 2.3 The Association may be an unincorporated association or a non-stock corporation organized under the laws of the Commonwealth of Virginia. The Association is charged with the duties and vested with the powers prescribed by law and set forth in its organizational documents, as such may be amended from time to time, provided no such organizational documents shall be amended for any reason or otherwise changed or interpreted so as to be inconsistent with this declaration.

§ 2.4 The Association shall be governed by a board of directors consisting of at least three (3) members elected by plurality vote of the members.

§ 2.5 By way of example, and without limiting the generality thereof, the Association shall have the power and obligation to perform the following duties:

(a) *Real and Personal Property.* To acquire, own, hold, improve, maintain, manage, lease, pledge, convey, transfer, mortgage, create a lien on or dedicate real or personal property for the benefit of the Association; and

(b) *Rule Making.* To establish rules and regulations for the use of the Common Areas; and

(c) *Assessments.* To fix, levy and collect assessments as provided in Article 4; and

(d) *Easements.* To grant and convey easements over and across the Common Areas as may become necessary.

ARTICLE 3

Architectural Control

§ 3.1 Except for the original dwellings constructed by Declarant, no building, fence, or other improvements shall be erected or placed on any Lot and no exterior addition, change or alteration to any improvements on any Lot shall be made until the plans and specifications showing the nature, color, kind, shape, height and materials and a plat showing the location of the same shall have been submitted to and approved in writing as to the harmony of external design and location in relation to surrounding structures and topography by an Architectural Control Committee ("ACC"). The ACC shall be composed of three members. The three members shall be appointed by the Declarant until the earlier of the following:

- (a) The date on which the last Lot in the Property is sold by the Declarant, or
- (b) The Declarant's release of its appointment and removal power as evidenced by an instrument recorded in the Clerk's Office.

After such time, the Association shall appoint the three (3) members who shall hold office until removed or until their successors are elected.

§ 3.2 The ACC shall have full and complete discretion to approve or disapprove proposed buildings, fences, and other improvements and alterations on the Lots except for original dwellings constructed by Declarant, and in the exercise of its discretion, the committee shall not be bound to approve any proposed buildings and improvements solely because they comply with the other restrictions and covenants or are equal in cost or value to buildings and improvements on other Lots. In the event the ACC fails to approve or disapprove the plans and specifications within thirty (30) days after submission, the plans and specifications shall be deemed to be

approved, but the failure of the ACC to act shall not be construed to waive any violation of these covenants.

§ 3.3 The ACC may base its approval or rejection of plans or specifications upon any grounds, including purely aesthetic considerations, which in the sole discretion of the committee shall seem sufficient. Representatives of the ACC shall have the right to inspect the building during construction to insure that it complies with the approved plans and specifications. Where discrepancies exist, the ACC may require corrective work, or, where warranted in its opinion, it may issue a notice to cease construction until compliance is assured to its satisfaction. Failure to heed such a notice from the ACC shall operate as a default under this covenant and shall give the ACC, in addition to any rights under general law, all of the rights and powers set out in this declaration.

§ 3.4 The exterior of any dwelling or building constructed on any Lot shall be completed within nine (9) months after the commencement of construction.

§ 3.5 Except as later provided in this paragraph, the ACC shall have the power to approve any proposed buildings or improvements on any of the Lots even though the buildings or improvements do not meet the requirements of this instrument, if, in the discretion of the committee, such deviations are not harmful to the value of the adjoining property. The ACC shall be under no duty to exercise this power, however. The ACC shall have no power to permit a deviation from § 6.1 of this instrument.

§ 3.6 The plans and specifications of any improvements shall be deemed approved under § 3.1 if the ACC has not notified the Owner of a violation of this Article within six (6) months after issuance of an occupancy permit or final inspection in case of improvements to an existing structure.

ARTICLE 4

Covenant for Maintenance Assessment

§ 4.1 Each Owner (except for the Declarant as provided in § 4.2 below) by acceptance of any Lot, whether or not it shall be so expressed in any document conveying title to the Lot, shall be deemed to covenant and agree to pay to the Association:

- a. Regular assessments or charges;
- b. Special assessments for capital improvements;

which may be fixed, established and collected from time to time. Each type of assessment shall be a uniform rate. The regular and special assessments, together with such interest thereon as determined by the Association and costs of collection thereof, including attorney's fees, shall be a charge on each Lot and shall be a continuing lien upon each Lot until payment. Each such assessment, together with such interest thereon and costs of collection thereof, also shall be the personal obligation of the Owner (jointly and severally in the case of multiple Owners) of each Lot at the time when the assessment fell due and shall not pass as a personal obligation to his successors in title unless expressly assumed by such successor.

§ 4.2 No assessment shall be due or payable for any Lot owned by the Declarant which is held for sale. This exemption shall not apply to any Lot which has been initially sold by Declarant and subsequently reacquired.

§ 4.3 The regular and special assessments levied by the Association shall be used exclusively for a) the purpose of promoting the permitted uses of the Property in a safe and orderly manner; b) the improvement, management, care and maintenance of services and facilities related to the use and enjoyment of the Common Areas; and c) exterior maintenance of any building or Lot as provided in § 4.6 and § 7.3.

§ 4.4 Until the first day of the fiscal year following commencement of assessments, the maximum regular assessment shall be fifty dollars (\$50) per month. The levy of a regular assessment less than the maximum in any month shall not affect the Association's right to levy a regular assessment equal to the maximum assessment in subsequent months.

Change in Maximum. From and after the first day of the fiscal year immediately following the commencement of assessments, the Association may increase the maximum assessment each year by the greater of: (1) a factor of not more than ten percent (10%) of the maximum regular assessment for the previous fiscal year; or (2) the percentage increase, if any, over the twelve (12) month period ending five (5) months prior to the start of the fiscal year, in the Consumer Price Index, U.S. City Average, all items (1982-84 = 100), or equivalent, as published by the U.S. Labor Department; such increase shall become effective the first day of the new fiscal year.

From and after the first day of the fiscal year immediately following the commencement of assessments, the maximum regular assessment may be increased above the amount which can be set by the Association with the affirmative vote of at least sixty-seven percent (67%) of the members who are present and voting, in person or by proxy, at a meeting at which a quorum of members is present.

§ 4.5 In the event that any maintenance or repair is caused by the willful or negligent act of any Lot Owner or the employees, agents, guests or invitees of any Lot Owner, the cost of such maintenance and repair shall be paid for by such Lot Owner. Every Owner shall maintain his or her Lot and the buildings thereon in a neat and structurally sound condition. The exterior of all buildings shall be routinely painted. If any building is totally or partially damaged by fire, wind or other hazard, the Owner shall within a period of nine months after the damage a) repair the damage or b) tear the building down and remove the debris from the Lot.

§ 4.6 If any Owner fails to make any required repairs or maintenance after notice from the Association, the Association may make such repairs on behalf of the Owner, and the cost thereof shall be deemed a special assessment as to such Lot. Each Owner authorizes the Association and its agents to enter the Lot at reasonable hours to perform any required repair or maintenance on behalf of the Owner.

§ 4.7 The assessments may be collected for any time period the Association desires, including but not limited to monthly, quarter-annually or annually.

§ 4.8 The Association shall furnish to any Owner, upon request, a certificate in writing signed by an officer of the Association, setting forth whether the assessment for his Lot has been paid, and if not, the amount of the unpaid assessment. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

§ 4.9 The provisions of the Property Owner's Association Act (§ 55-508, *et seq.* of the Code of Virginia, 1950) shall apply to the extent not inconsistent herewith.

§ 4.10 The regular assessments shall commence when the first Lot is sold by the Declarant. The first assessment on any Lot shall be collected at the time of conveyance of the Lot and shall be prorated based on the number of days remaining in the month or fiscal year as appropriate.

ARTICLE 5

Common Areas

§ 5.1 The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control for the benefit of the Owners of the Common Areas conveyed to it.

§ 5.2 **Easement of Enjoyment.** Subject to the provisions herein, every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Areas, which shall be

appurtenant to and shall pass with the title to every Lot, and every member shall have a right of enjoyment to the Common Areas.

A member's spouse, parents and children who reside with such member shall have the same easement of enjoyment hereunder as a member.

§ 5.3 Extent of Members' Easement. The members' easement of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to establish reasonable admission and other fees for the use of the Common Areas, including any recreational center or facility.

(b) The right of the Association to suspend the right of a member to use the Common Areas other than private streets for any period during which any assessment against his Lot remains unpaid for more than thirty (30) days after notice until such default has been remedied; the right of the Association to suspend the right of a member to use the Common Areas for a period not to exceed sixty (60) days for any other infraction.

(c) The right of the Association to mortgage any or all of the Common Areas with the prior assent of at least sixty-seven percent (67%) of the Class A members.

(d) The right of the Association to convey, or transfer, all or any part of the Common Areas, other than the private streets subject to the prior assent of at least sixty-seven percent (67%) of the Class A members.

(e) The right of the Association to license portions of the Common Areas to members on a uniform, preferential basis;

(f) The right of the Association to regulate the use of the Common Areas for the benefit of members;

(g) The right of the Association to establish rules and regulations for the use of the Common Areas, including use of any recreational facilities by members and nonmembers, regulation of parking areas and assignment of parking spaces.

(h) No Owner or member shall obstruct any common driveway, parking area or sidewalks, and no act shall be done which would affect the free and continuous use and enjoyment thereof by the other Owners.

§ 5.4 Delegation of Use. Any member may delegate to the members of his family and to his guests his right of enjoyment to the Common Areas and facilities subject to such general regulations as may be established from time to time by the Association.

§ 5.5 Title to Common Areas. The Declarant hereby covenants that areas designated as open space, or Common Areas which the Declarant conveys to the Association as Common Areas shall be free and clear of all liens and financial encumbrances at the time of conveyance. In the event a lien or encumbrance shall attach to all or a portion of the Common Areas, one or more of the lien holders and/or mortgagees shall have the right to discharge said lien or encumbrance after reasonable notice to the Association and to seek reimbursement for amounts paid to discharge the lien or encumbrance.

ARTICLE 6

General Use Restrictions

§ 6.1 No Lot shall be used except for residential purposes. No mobile home, double-wide manufactured home or house trailer shall be constructed or placed on any Lot.

§ 6.2 No dwelling exceeding two and one-half stories in height above ground and only a private garage for not more than three vehicles and such other outbuildings as may be approved by the ACC shall be erected on any Lot.

§ 6.3 The minimum above ground square footage (excluding porches, decks and garages) shall be 1,200 finished square feet. Carports are not permitted on any Lot. The maximum square footage for all decks on a Lot is 168 square feet.

§ 6.4 No dwelling having a flat roof comprising more than 25% of the total roof area shall be constructed upon any Lot. All roofing material must have an expected life of at least 25 years.

§ 6.5 Outside storage units shall be permitted at the discretion of the ACC. Size, exterior finishes and location shall further be at the discretion of the ACC.

§ 6.6 No dwelling shall be permitted on any Lot with any type of exterior finish except brick, stone, faux stucco, wood siding, Mastic Barkwood, Brentwood or equivalent vinyl siding, a sample of which shall be submitted to the ACC for approval prior to construction, provided, however, that aluminum soffits, guttering, and fascia boards are permitted. Chimneys and exposed foundations shall be constructed or veneered with brick, stone or faux stucco.

§ 6.7 No antennae or satellite receiving devices of any kind larger than 18 inches in diameter, except as approved by the ACC, shall be erected on any Lot or on any structure located thereon and the location of any such device shall be approved by the ACC.

§ 6.8 Chain link fences are prohibited on Lots including, but not limited to, dog pens. Vinyl fencing shall be permitted on the Lots in Phase III, subject to approval as to color, height and location as provided in § 3.1.

§ 6.9 Swimming pools (which shall not include hot tubs, jacuzzis and portable pools) are prohibited.

§ 6.10 Each Lot shall have an all-weather surface driveway within one (1) year after issuance of the certificate of occupancy for the dwelling erected on such Lot. After such one (1) year period dirt and gravel driveways are prohibited on any Lot.

§ 6.11 No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than five square feet advertising the property for sale or rent, or signs used by the builder to advertise the property during construction. Nevertheless, one sign not exceeding one-half square foot displaying the name of the Owner or occupant of the property shall be permitted on any Lot. This covenant shall not prohibit the erection of an appropriate sign at the entrance(s) to the development, which sign shall comply with all Rockingham County ordinances and regulations.

§ 6.12 No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose. In any event, there is a limit of two dogs per Lot and two (2) cats per Lot.

§ 6.13 Whenever animals are permitted outside a building or other enclosed area approved by the ACC for the maintenance and confinement of animals, they must be secured by a leash or lead. All permitted animals must be confined to an approved area by the ACC in the rear of the Lot. No animals are allowed to be kept on a chain/run nor are such animals allowed to be kept outside on a permanent basis. All animals must be basically inside house pets and maintained as such.

§ 6.14 All Lots shall be kept at all times in a sanitary, healthful, attractive and safe condition, and the Owner and occupants of all Lots shall keep all weeds, grass, and dead trees thereon cut. All dwellings, decks, fences, etc. must be well maintained in an attractive condition.

§ 6.15 None of the Lots shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall be kept in sanitary enclosed containers. All containers shall be appropriately screened from view and kept in the rear except during days for trash collection.

§ 6.16 No motor vehicle shall be kept on any lot or parking area unless it bears a valid state license plate and current inspection sticker with a limitation of two (2) vehicles per household unless otherwise approved by the Association.

§ 6.17 No individual sewage disposal system shall be constructed, maintained, or used on any Lot.

§ 6.18 No dwelling shall be permitted on any Lot unless adequate off-street parking for at least two vehicles is provided on the Lot. No trailer, basement, tent, shack, barn, or other outbuilding erected on any Lot shall be used at any time as a residence, temporarily or permanently, nor shall any residence of a temporary character be permitted.

§ 6.19 No trailer, bus, camper, motor home, truck larger than three-quarter ton, commercial equipment, commercial vehicle (including, but not limited to, any tractor trailer, or combination of tractor and trailer), or disabled or unlicensed vehicle, or any portion thereof may be parked or stored within **Taylor Spring** except for commercial equipment and vehicles temporarily located therein for the purpose of performing necessary construction or repairs. No stripped down or junk vehicles (licensed or unlicensed) or any sizable parts thereof shall be permitted to be parked on any street or Lot.

§ 6.20 No more than two unrelated persons may occupy any dwelling on any Lot. As used herein, "unrelated persons" shall mean persons unrelated by either blood or marriage.

§ 6.21 No noxious or offensive use or activity shall be carried on upon any Lot, nor shall any practice be engaged in by the Owners of the Lots, their tenants, agents, guests, or assigns, that shall become an annoyance or nuisance to the neighborhood including, but not limited to, excessive dog barking and loud music.

§ 6.22 No improvement which has been partially or totally destroyed by fire or other casualty shall remain in such condition for more than three months from the date of such destruction.

§ 6.23 The drying of clothes in public view is prohibited, and the Owner or occupants of any Lot at the intersection of streets where the rear yard or a portion of the Lot is visible to the public shall construct and/or maintain a drying yard or other suitable enclosure to screen drying clothes from public view.

§ 6.24 No skateboard or rollerblade ramps or structures of any kind shall be constructed, placed, or used on any Lot, street or parking area.

§ 6.25 No exterior watch light shall be erected on any Lot without the prior approval by the ACC. For the purposes of this section, a watch light is an exterior light of a type typically mounted on a telephone pole, utility pole, or street light pole, or any other light which the ACC determines casts an unacceptable level of light on neighboring Lots.

§ 6.26 No dirt bikes, ATVs, three or four wheelers or other non-licensed vehicles shall be operated on any Lot, common area, street or driveway.

§ 6.27 No incinerator or other device for the burning of trash shall be permitted on any Lot, common area, street or driveway within Taylor Spring.

§ 6.28 No propane, oil or other storage tank or cylinder shall be permitted on any Lot, common area, street or driveway within Taylor Spring unless it is buried or enclosed within the residential dwelling.

§ 6.29 No Lot or any portion of any Lot shall be used as an access way or right-of-way for ingress or egress to any Lot, piece or parcel of land in the Property, or any other Lot, piece or parcel of land, without the prior written consent of the ACC. No lawn ornaments, wood structures or similar items shall be constructed, placed or used in any front yards and must be approved by the ACC for use in the back yards.

§ 6.30. All children's toys, lawn maintenance equipment, motor bikes, mopeds, scooters, barbecue grills, trash receptacles, rubbish and other unsightly objects and equipment shall be stored inside or in the rear yard overnight. Storage of such items in the front or side yards is expressly prohibited. "Children's toys" includes without limitation bicycles, tricycles, wagons, sandboxes, baby carriages, sliding boards, basketball goals, sleds and snow related toys, and sports related equipment.

ARTICLE 7

Townhome Lots

In addition to the other covenants, conditions and restrictions provided in the other Articles herein, each Lot on which a dwelling is erected which has a common wall with a dwelling on the adjacent Lot (herein called "townhome Lot") shall be held, sold and conveyed subject to the following:

Easements

§ 7.1 Easements are reserved and created across and under each townhome Lot (except as to that portion covered by buildings) for the installation, maintenance and repair of normal utilities and drainage facilities.

§ 7.2 Each townhome Lot shall be subject to an easement for encroachments (and repairs thereto) created by normal overhangs of structures. In the event that a dwelling on one or more townhome Lots should be partially or totally destroyed, and then rebuilt, the Owner of the townhome Lot affected agrees that minor encroachments on parts of the adjacent dwelling due to construction shall be permitted and that a valid easement for such encroachment and the maintenance thereof shall exist. Every portion of a building contributing to the support of an abutting building shall be burdened with an easement of support for the benefit of such abutting building.

§ 7.3 The Association shall provide grass cutting and normal shrubbery maintenance for all common area, snow removal (after a reasonable accumulation as determined by the Association) of driveways, trash removal and electricity for all street lights. Each Owner of a townhome Lot shall be deemed to have granted to the Association and its agents an easement of access to such townhome Lot for such purposes.

Party Walls

§ 7.4 Each wall which is built as a part of the original construction of the improvements upon townhome Lots, and placed on the dividing line between the townhome 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 of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

§ 7.5 The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

§ 7.6 If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

§ 7.7 Notwithstanding any other provision of this Article, any Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

§ 7.8 The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to each Owner's successors in title.

§ 7.9 In the event of any dispute arising concerning a party wall, or the provisions of this Article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision of the majority of all the arbitrators shall be final and binding upon all parties.

ARTICLE 8

Miscellaneous Provisions

§ 8.1 No Lot shall be re-subdivided into smaller Lots, nor shall any portion of any Lot be sold or conveyed by the Owner thereof without the prior approval of the ACC.

§ 8.2 All drainage, access and utility easements shown on the subdivision plat are hereby reserved to Declarant. A release by Declarant to any Lot Owner of any easement so reserved shall operate as a complete release to such Lot and no other party shall be entitled to assert any claim or right to the use of such easement. Declarant may convey to the Association title to the property included in such drainage, access and utility easements. Declarant further reserves and retains the rights otherwise delegated to the Association in § 5.3(a), (b), (e), (f) and (g) until the earlier of the dates in § 3.1 (the date the Declarant's ACC appointment and removal power ends).

§ 8.3 The Declarant reserves the right to amend this Declaration at any time within two (2) years after recordation of this Declaration without the consent of any other Owner. Otherwise, these restrictions, conditions, covenants, and limitations shall continue in force until June 1, 2018, at which time they will expire. Nevertheless, upon the expiration of this term and any subsequent term, they shall be automatically renewed for ten (10) year periods unless terminated or amended by the Owners (with each Lot having one (1) vote) of at least 75% of the Lots.

§ 8.4 Any water drainage or detention system traversing or abutting any Lot shall be maintained by the Owner of the Lot.

§ 8.5 The Declarant shall have the absolute and unqualified right (but shall not be obligated) to bring within the terms of this declaration additional property, so long as the property is adjacent to the property shown on the subdivision plat or on later plats brought within the declaration.

Such additions shall be made by recording a supplemental declaration in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, indicating the additional property which shall be subject to this declaration. Property added to this declaration shall be treated for all purposes as if it had been shown on the original subdivision plat, but the added property may be subject to other restrictions in addition to this declaration.

§ 8.6 The Declarant may appoint a successor Declarant by an instrument recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia. The sale of Lots to a successor Declarant shall not be deemed a sale for purposes of § 3.1 (a).

§ 8.7 The Declarant, the ACC and the Association shall not be liable to any Owner or other person on account of any claim, liability, damage, or expense suffered or incurred by or threatened against an Owner or other person arising out of or in any way related to the subject matter of any reviews, acceptances, inspections, permissions, consents, or required approvals which must be obtained from the Declarant, the ACC or the Association, whether given, granted, or withheld.

§ 8.8 If any part of any provision of this Declaration shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions of this declaration.

§ 8.9 The Trustee and Beneficiary join herein to evidence their consents to this Declaration and to the Owners Consent and Dedication described in paragraph A of the Preamble.

§ 8.10. Declarant hereby reserves an easement for the benefit of the Lots in Phase III, the Owners thereof and their family members, over and across the Common Areas shown as "Greenspace" on the Plat and in the "Access & Utility Easement" area shown on the Phase III Plat for the purpose of constructing a mailbox station at which all mailboxes for the Lots in Phase III may be located. Declarant further reserves, for the benefit of the Lots in Phase III, the Owners thereof and their family members, an easement of access to and from the mailbox station. No Owner or the Association shall obstruct these easements or take any action affecting the free and continuous use and enjoyment thereof by the other Owners.

ARTICLE 9

Validity and Enforcement

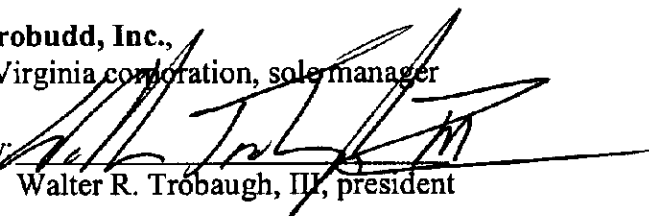
§ 9.1 The failure on the part of the Declarant or any Owner to enforce any restrictions contained in this instrument shall not be deemed a waiver of the right to do so thereafter for the same breach or one occurring prior or subsequent thereto.

§ 9.2 Enforcement of this instrument shall be by proceedings instituted by any Owner at law or in equity against any persons or other entities violating or attempting to violate any covenant, either to restrain violation or to recover damages therefor. In any such proceeding, an Owner found to have breached any covenant contained in this instrument shall be responsible for the cost of the enforcement proceeding, including the prevailing party's attorney's fees.

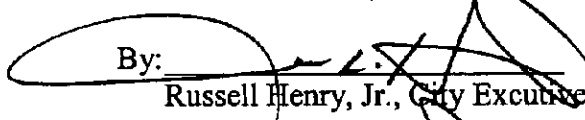
IN WITNESS WHEREOF, the following have caused this Amendment to be signed by its authorized officer.

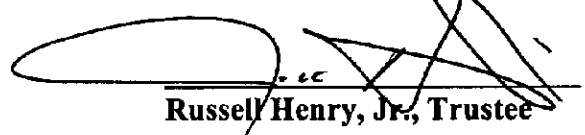
ASSOCIATED DEVELOPERS, L.L.C.

By: **Trobudd, Inc.**,
a Virginia corporation, sole manager

By: 
Walter R. Trobaugh, III, president

FNB Southeast, Noteholder

By: 
Russell Henry, Jr., City Executive

 (SEAL)
Russell Henry, Jr., Trustee

B 2 5 7 6 P 8 1 0

COMMONWEALTH OF VIRGINIA
CITY OF HARRISONBURG

The foregoing instrument was acknowledged before me this 5th day of December 2003, by **Walter R. Trobaugh, III**, President of **TroBudd, Inc.**, a Virginia corporation, manager of **Associated Developers, L.L.C.**, on behalf of the company.

My commission expires: December 31, 2007

[Signature]
Notary Public

COMMONWEALTH OF VIRGINIA
CITY OF HARRISONBURG

The foregoing instrument was acknowledged before me this 5TH day of ~~December~~ OCTOBER 2003, by RUSSELL K. HENRY JR ^{CITY} ~~EXECUTIVE~~ of **FNB Southeast**, on behalf of the bank.
2004 My commission expires: 8-31-2006

[Signature]
Notary Public

COMMONWEALTH OF VIRGINIA
CITY OF HARRISONBURG

The foregoing instrument was acknowledged before me this 5TH day of ~~December~~ OCTOBER 2003, by **Russell Henry, Jr.**, Trustee.
2004 My commission expires: 8-31-2006

[Signature]
Notary Public

036797

VIRGINIA: In the Clerk's Office of the Circuit Court of Rockingham County
The foregoing instrument was this day presented in the office aforesaid, and is
together with the certificate of acknowledgement annexed, admitted to record this
8 day of NOV, 2004 at 3:44P M. I certify that
Fees were paid when applicable:
Sec. 53-4.4 - State _____ County _____ City _____ Transfer _____
Sec. 53-64.1 - State _____ County _____ City _____
Recording 36.02 Copies 8.50 TEST. _____
L. WAYNE HARRER
CLERK 44.50
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