

BK 7471 PG 0179

PRESENTED
FOR
REGISTRATION

97 MAY 21 AM 9:42

LAUREN R. DICK
REGISTER OF DEEDS
WAKE COUNTY

Prepared by and held for:
William H. Weatherspoon, Jr.
BROWN & BUNCH
4900 Falls of Neuse Road, Suite 210
Raleigh, North Carolina 27609

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**SUPPLEMENTAL DECLARATION
FOR CLUSTER HOME COMMUNITY
AT DOGWOOD RIDGE**

THIS SUPPLEMENTAL DECLARATION is made on the date hereinafter set forth by MJK Developments, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant".

WITNESSETH THAT:

WHEREAS, Declarant executed and caused to be recorded that certain Declaration of Covenants, Conditions and Restrictions for Dogwood Ridge recorded in Book 6811, Page 274, Wake County Registry ("the Declaration"); and

WHEREAS, unless expressly amended hereinafter, all capitalized terms defined in the Declaration shall have the same meanings when used in this Supplemental Declaration as defined in the Declaration; and

WHEREAS, the Property subject to the Declaration includes a portion thereof designed and defined as the Cluster Home Community, which is described on Exhibit C attached to the Declaration and is the same property described on Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, due to differences in the plan of development for the Cluster Home Community from the plan of development for other portions of the Property, including the development thereof at a higher density than the remainder of the Property, the Declaration contemplated the imposition of this Supplemental Declaration relative to the Cluster Home Community; and

WHEREAS, Declarant desires to impose certain specific and separate easements, covenants, conditions and restrictions relating solely to the Cluster Home Community, which are in addition to those set forth in the Declaration, as expressly set forth hereinafter;

NOW, THEREFORE, Declarant hereby declares that all of the Cluster Home Community shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Cluster Home Community and be binding on all parties having any right, title or interest in the Cluster Home Community or any part thereof, their heirs, successors and

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assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I AMENDED AND ADDITIONAL DEFINITIONS

Section 1. "Common Area" in addition to the definition of Common Area set forth in the Declaration, the Common Area as it pertains to the Cluster Home Community shall mean that certain portion of the Cluster Home Community (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including any parking areas created outside Lots within the Cluster Home Community, landscaping, storm water impoundment, parks or trails.

Section 2. "Lot" within the Cluster Home Community shall mean and refer to any numbered or lettered plot of land shown upon any recorded subdivision map of the Cluster Home Community which is intended for attached or detached residential purposes. Such Lots will consist of a mixture of townhouse pads ("Townhouse Pads") and duplex lots ("Duplex Lots"). Townhouse Pads are those Lots intended for construction of attached dwelling structures thereon or upon which attached dwelling structures have been constructed and which are configured such that more than two (2) adjoining attached dwelling structures share party walls. Duplex Lots are those Lots intended for construction of attached or detached dwelling structures thereon or upon which attached or detached dwelling structures have been constructed and which are configured such that no more than two (2) adjoining attached dwelling structures share a party wall.

Section 3. "Garages" shall mean those certain garages which may be constructed within the Cluster Home Community in the area or areas thereof as may be shown for such purpose on any recorded subdivision map of the Cluster Home Community, which Garages are intended for separate acquisition and ownership by Owners within the Cluster Home Community desiring ownership thereof and, are intended to be utilized for customary garage purposes, subject to rules and regulations therefor as may be adopted by the Association from time to time.

ARTICLE II MEMBERSHIP IN ASSOCIATION AND COVENANT FOR ASSESSMENTS

Section 1. Membership in Association. As set forth in the Declaration, all Owners within the Cluster Home Community, with the exception of the Declarant, shall be Class B Members of the Association.

Section 2. Purpose of Assessments within Cluster Home Community. In addition to the purposes of Assessments set forth in Article V, Section 2 of the Declaration, the Assessments levied by the Association for Lots created within the Cluster Home Community shall be used for the maintenance of any parking areas created within the Cluster Home Community, whether located within the Common Area or within a Lot, yard maintenance of each Lot, landscape maintenance of each Lot, the unpaved portion of the public street rights-of-way in the Cluster Home Community

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and the Common Area, maintenance of sidewalks and driveways which may be located upon any Lot, payment of assessments for public and private capital improvements made to or for the benefit of the Common Area within the Cluster Home Community and for the payment of any charges due a public utility for services provided to the Common Area within the Cluster Home Community.

Section 3. Maximum Annual Assessment and Commencement Thereof. Until January 1 of the year immediately following the conveyance of the first Lot within the Cluster Home Community to an Owner, the maximum annual assessment shall be Seven Hundred Ninety Two and N0/100 Dollars (\$792.00) per Lot created within the Cluster Home Community. The portion of such annual assessment attributable to an Owner's membership in the Club Association shall commence and shall be due and payable on the first day of the month following the platting of record of such Lot. The remaining portion of such annual assessment shall commence and shall be due and payable upon such Lot becoming a Lot in Use.

ARTICLE III EXTERIOR MAINTENANCE AND INSURANCE

Section 1. Exterior Maintenance. In addition to the maintenance provided pursuant to Article V, Section 2 of the Declaration, as supplemented by Article II, Section 2 of this Supplemental Declaration, the Association shall be responsible for exterior maintenance of the dwelling structures constructed upon each Lot within the Cluster Home Community and the Garages.

Section 2. Ownership of Policies. In addition to the coverages to be maintained by the Association pursuant to Article VI of the Declaration, contracts of insurance upon the dwelling structures constructed upon Lots within the Cluster Home Community and the Garages shall be purchased by the Association for the benefit of the Association, Owners therein and their mortgagees, if any, as their interest may appear. The Board of Directors of the Association, in its sole and absolute discretion, may elect to provide the coverage set forth in Section 3 of this Article III in the form of separate policies of insurance with respect to the Duplex Lots, the Townhouse Pads and the Garages.

Section 3. Coverage. All dwelling structures constructed upon Lots within the Cluster Home Community and the Garages shall be insured in an amount equal to one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect thereto. Such coverage may include deductibles in amounts determined by the Association, for which each Owner shall be responsible in the event of an insurable loss. Each Owner within the Cluster Home Community and not the Association shall be responsible for obtaining such other insurance as such Owner may desire, including but not limited to, contents coverage for personal property located within such Owner's dwelling structure or Garage as well as insurance of any betterments or

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improvements made by such Owner to the interior of such dwelling structure or Garage after the initial construction thereof.

Section 4. Creation of the Lien and Personal Obligation for Exterior Maintenance and Insurance Assessment. The Declarant, for each Lot owned within the Cluster Home Community, hereby covenants, and each Owner of any Lot within the Cluster Home Community by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association an assessment for exterior maintenance and insurance coverage in accordance with Sections 1 and 3 of this Article III, such assessments to be established and collected as hereinafter provided. The foregoing exterior maintenance and insurance assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments hereunder shall not pass to his successors in title unless expressly assumed by them. The exterior maintenance and insurance assessment provided for in this Article III shall be in addition to the assessment provided for in Article II of this Supplemental Declaration.

Section 5. Amount of Exterior Maintenance and Insurance Assessment. The assessment for exterior maintenance and insurance hereunder shall vary for each Lot and the Owner thereof depending upon whether the Lot is a Duplex Lot or Townhouse Pad and whether or not the Owner owns a Garage in addition to the ownership of a Lot. The initial assessment hereunder for a Duplex Lot, Townhouse Pad or Garage, which initial assessment shall remain in effect until January 1 of the year immediately following the conveyance of the first Lot within the Cluster Home Community to an Owner shall be as follows: Duplex Lot - Three Hundred Forty Eight and N0/100 Dollars (\$348.00); Townhouse Pad - Three Hundred Forty Eight and N0/100 Dollars - (\$348.00); and, Garage - Eighty Four and N0/100 Dollars (\$84.00). From and after January 1 of the year immediately following the conveyance of the first Lot in the Cluster Home Community to an Owner, the maximum annual assessment for exterior maintenance may be increased by the Association each year not more than ten percent (10%) above the maximum assessment for exterior maintenance for the previous year without a vote of the Class B Members of the Association. The portion of such assessment due to the insurance coverage provided in accordance with this Article III shall be determined based on such Owner's prorata share of the annual premium for the insurance coverage to be provided hereunder and increases thereto shall be based on increases in the amount of such premium from time to time. From and after January 1 of the year immediately following the conveyance of the first Lot in the Cluster Home Community to an Owner, the maximum assessment for exterior maintenance may be increased above ten percent (10%), by a vote of two thirds (2/3) of the Class B Members who are voting in person or by proxy, at a meeting duly called for this purpose. The Board of Directors of the Association may fix the annual assessment hereunder at an amount not in excess of the maximum.

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Section 6. Special Assessments. In addition to the exterior maintenance and insurance assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement relative to the exterior maintenance of any dwelling structures constructed upon Lots within the Cluster Home Community or the Garages; provided, however, any such assessment shall have the assent of two thirds (2/3) of the votes of the Class B Members who are voting in person or by proxy at a meeting duly called for this purpose. The notice and quorum requirements set forth in Article V, Section 5 of the Declaration shall also apply to any action authorized by Section 5 or 6 of this Article III.

Section 7. Uniform Rate of Assessment. The annual and special assessments hereunder for exterior maintenance and insurance must be fixed at a uniform rate for the (i) Duplex Lots, (ii) Townhouse Pads and (iii) Garages, and annual assessments hereunder may be collected on a monthly basis.

Section 8. Date of Commencement of Exterior Maintenance and Insurance Assessment. The annual exterior maintenance and insurance assessment provided for herein shall commence and shall be due and payable as to all Lots within the Cluster Home Community upon the issuance of a certificate of occupancy for the dwelling structure constructed upon each such Lot or, with respect to the Garages, upon the conveyance thereof to an Owner for ownership thereof in conjunction with such Owner's ownership of a Lot.

Section 9. Miscellaneous. The effect of non-payment of the exterior maintenance and insurance assessment hereunder and the remedies of the Association therefor shall be the same as set forth in Article V, Section 8 of the Declaration. The lien of the assessments provided for herein shall be subject to all of the subordination and other provisions therefor in the same manner as set forth in Article V, Section 9 of the Declaration.

Section 10. Proceeds and Distribution. All proceeds of insurance purchased by the Association pursuant to this Article III and distributions thereof shall be in accordance with the procedures therefor set forth in the Declaration.

Section 11. Excluded Damages. All damages to the dwelling structures constructed upon Lots within the Cluster Home Community and to the Garages which are not covered or insured by the insurance coverage provided pursuant to Section 3 of this Article III shall be the responsibility of the Owner of the Lot or Garage upon which such damages may have occurred.

ARTICLE IV PARTY WALLS

Due to the fact that the dwelling structures constructed on Lots created within the Cluster Home Community are intended to be attached, it is necessary that certain provisions be made with respect to the party walls between such attached dwelling structures.

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Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of a dwelling structure on a Lot within the Cluster Home Community and placed on the dividing lines between two (2) adjoining Lots, and all reconstruction or extensions of such walls, shall constitute party walls, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support in below-grade construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall or benefit therefrom in proportion to such use and benefit.

Section 3. Destruction by Fire or Other Casualty. 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 Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Reconstruction of Party Wall. The Owner of any Lot may construct or reconstruct (subject to and within the limitation of architectural control and other limitations of the Declaration) with the right to go upon the adjoining Lot to the extent necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Lot to as near the same condition as prevailed before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article IV, an Owner who, by his negligence 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.

Section 6. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Certification by Adjoining Property Owner that No Contribution is Due. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article IV, request of the adjoining Owner a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charges; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration as provided by the law of

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North Carolina then in effect relating to arbitration.

Section 2. Insurance Proceeds. To the extent insurance proceeds are available from the insurance maintained by the Association pursuant to Article III of this Supplemental Declaration for the repair or reconstruction of the party walls addressed hereinbefore, such insurance proceeds shall be paid and distributed in the manner set forth in such Article III.

ARTICLE V GENERAL PROVISIONS

Section 1. Utility Charges. As consideration for the conveyance of the Common Area within the Cluster Home Community and as consideration for the rights, entitlements and benefits granted to and conferred upon the Association under and by virtue of this Supplemental Declaration, the Association covenants and agrees to accept the responsibility for payment of any and all fees, charges and expenses arising by virtue of the use and operation of the irrigation and electrical systems, street lights and any other utilities installed and erected within the Common Area in the Cluster Home Community from and after the date of such acceptance. Such cost of fees, charges and expenses paid by the Association shall be charged ratably to the Owners as an Assessment according to the provisions of Article II above.

Section 2. Parking Rights. Ownership of each Townhouse Pad within the Cluster Home Community shall entitle the Owner thereof, and those to whom such Owner may choose to delegate, to the use of the equivalent of one and one half (1 1/2) automobile parking spaces created within the Common Area located in the Cluster Home Community for each such Townhouse Pad, together with the right of ingress and egress in, to and upon said parking spaces and areas. Such parking spaces shall be as near and convenient to each Townhouse Pad as reasonably possible. The Association shall have the right to establish limits on the number of vehicles which each Owner may park within the Cluster Home Community. The Association shall have the authority to assign parking spaces in accordance with the foregoing. No boats, trailers, campers or recreational vehicles shall be parked within the Common Area, or right-of-way of any road or street within the Cluster Home Community, except in areas which may be designated for such use by the Association. Parking for Owners of Duplex Lots is intended to be contained and provided for within the parking area constructed upon each Duplex Lot.

Section 3. Maintenance Guidelines. The Association shall have the right to maintain and periodically establish and publish specific guidelines relating to the care and maintenance of the Lots and Common Area within the Cluster Home Community. Such guidelines may set forth the specific responsibilities of the Association and the Owners with respect to certain matters, including yard and dwelling structure maintenance. Such guidelines shall be enforced by the Association in accordance with Article III, Section 1(b), Article VIII, Section 1 and Article IX, Section 1 of the Declaration. Such guidelines as may be in effect from time to time shall be available upon request to all Owners,

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their mortgagees and prospective Lot purchasers within the Cluster Home Community.

Section 4. Status of Supplemental Declaration. As set forth hereinbefore, this Supplemental Declaration shall supplement and amend the Declaration. All of the terms and provisions set forth in the Declaration which are not expressly modified or amended by this Supplemental Declaration are hereby incorporated into this Supplemental Declaration by reference and shall continue to govern and control with respect to Lots created within the Cluster Home Community and the Owners thereof, just as if such terms and provisions were set forth herein in full. By virtue of the foregoing, all references in the Declaration to the Declaration shall also mean and apply to this Supplemental Declaration with respect to the Cluster Home Community.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this the 14 day of May, 1997.

MJK Developments, LLC,
a North Carolina limited liability company
(SEAL)

By: [Signature] (SEAL)
Milton E. Petty, Manager

State of North Carolina
County of Wake

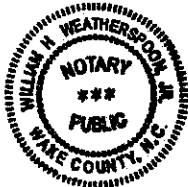
I, a Notary Public of the County and State aforesaid, certify that Milton E. Petty, Manager of MJK Developments, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and seal, this the 14 day of May, 1997.

My commission expires: 1-29-2001

[Signature]
Notary Public

(SEAL)

Supplement 1



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of _____

William H. Weatherspoon Jr.

Notary (ies) Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

LAURA M. FIDLOCK, Register of Deeds

By P. Anne Ridd
Asst./Deputy Register of Deeds

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EXHIBIT ACLUSTER HOME COMMUNITY

All that certain tract or parcel of land located in the Town of Apex, White Oak Township, Wake County, North Carolina, and being more particularly described as follows:

BEGINNING at a point located South 02 degrees 30 minutes 16 seconds East 382.66 feet from a tie, which tie is located South 02 degrees 30 minutes 16 seconds East 65.22 feet from a point located in the southern margin of the right-of-way of Olive Chapel Road, which point is located South 87 degrees 48 minutes 44 seconds East 140.64 feet from a point located in the southern margin of the right-of-way of Olive Chapel Road, which point is located South 88 degrees 07 minutes 37 seconds East 286.32 feet from a point located in the southern margin of the right-of-way of Olive Chapel Road, which point is located South 88 degrees 37 minutes 54 seconds East 381.79 feet from a point located in the southern margin of the right-of-way of Olive Chapel Road, which point is located South 88 degrees 36 minutes 21 seconds East 208.44 feet from a point located in the southern margin of the right-of-way of Olive Chapel Road, which point is located South 88 degrees 29 minutes 14 seconds East 101.43 feet from a point located in the southern margin of the right-of-way of Olive Chapel Road, which point is located South 87 degrees 43 minutes 02 seconds East 33.21 feet from a point located in the southern margin of the right-of-way of Olive Chapel Road, which point is located South 87 degrees 43 minutes 02 seconds East 82.36 feet from a point located in the southern margin of the right-of-way of Olive Chapel Road, which point is located South 86 degrees 35 minutes 21 seconds East 80.28 feet from an existing iron pipe located in the southern margin of the right-of-way of Olive Chapel Road and designated as the control corner and having N.C. Grid N.A.D. 1983 Coordinates N=723,244.51 and E=2,037,139.73; running thence from such point of BEGINNING, South 02 degrees 30 minutes 16 seconds East 43.63 feet to a point; thence South 00 degrees 44 minutes 31 seconds West 439.37 feet to an existing iron pipe; thence South 45 degrees 59 minutes 50 seconds West 183.77 feet to a point; thence South 43 degrees 57 minutes 08 seconds East 59.57 feet to a point; thence South 48 degrees 27 minutes 31 seconds East 315.07 feet to a point; thence along a curve to the right having a radius of 390.00 feet and a chord bearing and distance of North 47 degrees 14 minutes 20 seconds East 270.95 feet to a point; thence North 67 degrees 33 minutes 56 seconds East 336.15 feet to a point; thence along a curve to the left having a radius of 330.00 feet and a chord bearing and distance of North 13 degrees 08 minutes 05 seconds East 536.85 feet to a point; thence North 41 degrees 17 minutes 46 seconds West 197.60 feet to a point; thence along a curve to the right having a radius of 300.00 feet and a chord bearing and distance of North 38 degrees 05 minutes 20 seconds West 33.57 feet to a point; thence South 60 degrees 21 minutes 28 seconds West 274.05 feet to a point; thence South 88

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degrees 12 minutes 46 seconds West 383.72 feet to a point, being the point and place of BEGINNING, and being all of TRACT 3, containing 13.50 acres, as shown on that certain unrecorded plat of survey entitled "Tract Map, Dogwood Ridge Subdivision" dated January 9, 1996, prepared by Michael E. Dickerson, RLS L-3639, to which unrecorded plat of survey reference is hereby made for a more accurate description of the metes, bounds, courses and distances of such property.

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