

Prepared and hold for Burns, Day & Presnell, P. A. #35

Wake County  
North Carolina

Amended Supplementary Declaration of Covenants,  
Conditions and Restrictions of Twisted Creek Townhomes  
(a part of Arbor Creek Subdivision)

THIS SUPPLEMENTARY DECLARATION, is made on the \_\_\_ day of September, 2005 by Darcon of North Carolina, Inc., a North Carolina corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property located in Holly Springs Township, Wake County, North Carolina, which property is more particularly shown and described as:

**BEING all of Lot 2 shown on map entitled “ Plat of Boundary Survey for Arbor Commons Lot 1 & Lot 2”, as recorded in Book of Maps 2005, Page 00903, Wake County Registry; and,**

**Being all of that 2.487 acres as shown on map entitled “Boundary Survey for Darcon of North Carolina, Inc.”, as recorded in Book of Maps 2005, Page 00908, Wake County Registry,**

reference to which is hereby made (“Property”); and,

WHEREAS, Arbor Creek Associates has heretofore executed and caused to be recorded an instrument entitled Master Declaration of Covenants, Conditions and Restrictions of Arbor Creek, having been recorded in Book 6878, Page 297, Wake County Registry, as amended (hereinafter, the "Master Declaration") of which the property above described is subject, and,

WHEREAS, Arbor Creek Associates has the right to create a "Supplementary Declaration" to apply to certain and specific sections or phases of the property owned by Arbor Creek Associates pursuant to the terms of the Master Declaration, and,

WHEREAS, Arbor Creek Associates, has heretofore executed and caused to be recorded an instrument entitled Additional Property Supplementary Declaration of Covenants, Conditions and Restrictions of Twisted Creek Townhomes, having been recorded in Book 11365, Page 01502, Wake County Registry, as amended (hereinafter, the "Additional Property Supplementary Declaration") of which subjects the property above described to the Master Declaration, and in which Arbor Creek Associates grants to Darcon of North Carolina, Inc. the declarant rights under the Master Covenants for the development of the Property; and,

WHEREAS, Declarant has the right to create a Sub-Association to the Master Association to oversee the development and maintenance of portions, sections or phases of Arbor Creek in accordance with the appropriate Supplementary Declaration pursuant to the Master Declaration and that such Sub-Association has the right to effect and collect assessments, among other powers, as set forth in the Master Declaration; and

NOW THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes, Declarant hereby declares that all of the Property described herein shall be held, sold and conveyed subject to the following supplementary easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to the Twisted Creek Homeowners Association, Inc., its successors and assigns. The Association is considered a Sub-Association in the Master Declaration and therefore is subject to all provisions regarding Sub-Associations stated therein.

Section 2. "Master Association" shall mean and refer to Arbor Creek Homeowners Association, Inc., its successors and assigns.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 4. "Properties" shall mean and refer to Property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association,

Section 5. "Common Area" or "Open Space" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is as described in the deed from Declarant to the Association.

Section 6. "Townhome Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, upon which an attached single family dwelling, is or is to be situated, with the exception of the Common Area. An attached single family dwelling is a single-family dwelling that shares a common wall with another single family dwelling.

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

Section 8. "Master Declaration" shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions of Arbor Creek and its amendments.

Section 9. "Supplementary Declaration" shall mean and refer to this Supplementary Declaration of Covenants, Conditions, and Restrictions of Twisted Creek Townhomes, as the same may be amended from time to time as herein provided.

Section 10. "Limited Common Area" shall mean those lands owned by the Association that serve only a limited number of Lots and which may include, but specifically are not limited to, driveways and walkways serving townhouse sites, parking spaces, buildings or other areas serving only specified units and other such similar areas as may be designated by the Declarant. Limited Common Areas shall be maintained at the expense of the Association and not by the Master Association, subject to the rights held by the Master Association as set out in the Master Declaration.

Section 11, "Declarant" shall mean and refer to Darcon of North Carolina, Inc., a North Carolina corporation, as well as its successors and assigns, as assignee of declarant rights from Arbor Creek Associates.

Section 12. "Lot" shall mean and refer to any separately numbered plot of land shown upon any now or subsequently recorded subdivision map of the Properties with the exception of the Common Area, Limited Common Area and any dedicated public streets upon which Declarant may build a dwelling. Declarant hereby reserves the right to reconfigure from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by Declarant and to thereby create additional Lots, eliminate existing Lots or create additional Common or Limited Common Area. If Declarant elects to exercise its right to revise the boundaries of one or more Lots owned by Declarant, Declarant shall record a revised plat of the affected Lot or Lots. Upon the recording by Declarant of such revised plat, each Lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Lot" as defined in this

Declaration and each newly configured Lot shown on the revised plat shall be a "Lot" as defined in this Declaration

Section 13. "Undeveloped Lot" shall mean and refer to a Lot that does not have a paved street abutting the Lot.

Section 14. "Vacant Lot" shall mean and refer to a Lot that has a paved street abutting the Lot but no Certificate of Occupancy has been issued for the improvements upon the Lot.

Section 15. "Unit" shall mean and refer to any improved property or any property formally classified, in whole or in part, as a Lot for which a Certificate of Occupancy has been issued by the appropriate governmental authorities, which property is located within the Properties.

Section 16. "Entry Features" shall mean and refer to those portions of Common Area upon which permanent identification signs or monuments shall be initially installed and erected by Declarant at various entrances of Twisted Creek and upon conveyance of such portions of the Common Area to the Association, the Entry Features shall be maintained by the Association in accordance with this Declaration.

Section 17. "Landscape Maintenance" by the Association shall mean and refer to the upkeep and care for, including repair and replacement of, trees, shrubs and grass originally planted by either the Declarant or the Association.

Section 18. "Stormwater Facilities" shall include detention ponds, grassy swales drainage areas and other stormwater protection areas.

## ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the private streets, access easements, alleys and Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and the right to use the recreational facilities by an Owner for the period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations:

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or Utility for such purposes and subject to such conditions as may be agreed to by the Members, No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded;

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

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagees in said properties shall be subordinate to the rights of the homeowners hereunder;

(f) the right of the individual Members to the exclusive use of parking spaces as provided in this Article;

(g) easements as provided in Article IX hereof,

(h) dedication of Common Area requires the Department of Housing and Urban Development or Veterans Administration prior approval as long as there is a Class B Membership;

(i) the Common Area cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Lot owners (excluding the developer);

(j) as long as there is a Class B Membership, the Common Area may not be mortgaged without the prior approval of HUD or VA; and

(k) if ingress or egress to any residence is through the Common Area, any conveyance or encumbrances of such area is subject to Lot owner's easement.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area, Limited Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property,

Section 3. Leases of Units. Any Lease Agreement between an Owner and a lessee for the lease of such Owner's Unit shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the lease. All leases of Units shall be in writing. Other than the foregoing and any restrictions set forth in any applicable Declaration, there is no restriction on the right of any Owner to lease his or her Unit. An unimproved Lot may not be leased.

Section 4. Parking and Access Rights. An Owner may park in his garage and driveway. The Association may regulate the parking of boats, campers, trailers, and other such items on the private streets, alleys, and in the Common Area.

Section 5. TV Antennas, Dishes and Cablevision. The Association may regulate the erection of television antennas or dishes on individual Lots.

Section 6. Emergencies and Entrance. Every Lot shall be subject to an easement for entry by the Declarant or the Association for the purposes of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Area or Limited Common Area.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. The voting Members of the Association shall be the Class A Members and the Class B Members defined below.

Section 2. The Association shall have two classes of voting Membership:

Class A: The Class A Members shall be every person or entity who or which is a record Owner of a fee or undivided fee interest in any Lot or Unit which is subject by covenants of record to assessments by the Association, except Declarant during the period Declarant is a Class B Member as defined below, The foregoing is not intended to include persons or entities who hold an interest in a Lot or Unit merely as security for the performance of an obligation. Such Membership shall be appurtenant to and may not be separated from ownership of any Lot or Unit which is subject to assessment by the Association. Class A Members shall be entitled to one (1) vote for each Lot or Unit owned. When more than one person holds an interest in any Lot or Unit, all such persons shall be Members. The vote for such Lot or Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot or Unit.

Class B: The Class B Member shall be the Declarant and Declarant shall be entitled to three (3) votes for each Lot or Unit owned by the Declarant. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier,

(i) when the total votes outstanding in the Class A Membership equal or exceed the total votes outstanding in the Class B Membership; however, the Class B Membership shall be reinstated if thereafter, additions are, made to the Properties sufficient to give the Class B Membership a total number of votes (with the Class B Membership entitled to three votes for each Lot or Unit owned to exceed those of the Class A Membership; or

(ii) Seven (7) years from the date this Declaration is recorded in the Office of the Register of Deeds, Wake County, North Carolina; or

(iii) at such time as the Declarant elects in writing to end the Class B Membership, however, the Class B Membership may be reinstated if additions are made to the Properties sufficient to give the Class B Membership a total number of votes (with the Class B Membership entitled to three (3) votes for each Lot or Unit owned to exceed those of the Class A Membership.

Section 3. Right of Declarant to Representation or Board of Directors or Association  
Notwithstanding anything contained herein to the contrary, until December 31, 2016, or until Declarant shall have conveyed all of the Lots contained within Twisted Creek Townhomes as described as the "Properties" hereinabove, Declarant or its express assignee shall have the right to designate a two thirds (2/3) majority of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person(s) to serve on any Board of Directors, the manner in which such person(s) shall be designated shall be as provided in the appropriate Bylaws for the Association. Declarant shall have the right to remove any person so selected by it and to replace such person so removed with another person selected as herein provided. Any Director designated by Declarant need not be an Owner. Declarant, as a Member of the Association, or any representative of Declarant serving on a Board of Directors, shall not be required to disqualify himself from the vote upon or entrance into any contract or matter between Declarant and the Association in which Declarant may have a pecuniary or other interest.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation Of the Lien and Personal Obligation of Assessments. The Declarant, for each Unit owned within the Properties, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to (a) the Association: (1) annual assessments or charges which may be payable in monthly installments, (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, and (3) individual special assessments levied against individual owners to reimburse the Association for extra costs for maintenance and repairs as set out in Article IV Section 6; (b) the appropriate governmental taxing authority: (1) pro rata share of ad valorem taxes levied against the Common or Limited Common Areas owned by the Association, if any, and (2) a pro rata share of assessments for public improvements to or for the benefit of the Common Area and Limited Common Area if the Association shall default in payment of either or both for a period of six (6) months. The annual, special and individual assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, cost 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 the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Mortgagees are not required to collect assessments.

#### Section 2. Purpose of Assessments.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose

and related to the use and enjoyment of the Common Area and Limited Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of maintenance, repair, and reconstruction of all private streets, alleys and water and sewer lines situated outside public streets and public easements, water and sewer lines located on a Lot; costs of snow and ice removal on the private streets and drives; weekly garbage pickup if not otherwise provided by the Town of Holly Springs; costs of maintenance, repair and services for the exterior maintenance of the Townhomes; the cost of labor, equipment, materials, management and supervision including the bagging of leaves if required by the Town of Holly Springs, to be undertaken by the Association; the payment of taxes assessed against the Common Area; the payment of assessments for public improvements to or for the benefit of the Common Area or Limited Common Area; the maintenance of water and sewer mains in and upon the Common Area and Limited Common Area; the maintenance of open spaces and streets which have not been accepted for dedication to a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way, within the Properties), drives and parking areas within the Common Area; the procurement and maintenance of insurance in accordance with the By-Laws; the maintenance of entrance ways, Entry Features, landscaping and lighting of the Common Area, Limited Common Area, road medians and islands and entrance ways; the maintenance of landscaping on lots as provided in Article VII herein below; the cost of operating, maintaining and repairing any street lights erected by the Association or the Declarant in the rights-of-way of streets (whether public or private) or in any other easement provided therefore within the Properties with the exception of alleys, which shall be maintained by the Association; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area and Limited Common Area; all costs and charges associated with landscape maintenance; the employment of attorneys and other agents to represent the Association when necessary; the provisions of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; the costs to operate and maintain all stormwater facilities, detention ponds located on the Common and Limited Common Areas; and such other needs as may arise. At all times during the term of this Declaration, the Association shall maintain and/or improve the Common Areas and Entry Features in a manner at least comparable to the initial creation and construction thereof,

(b) The Association shall establish and maintain a reserve fund which in its sole judgment is sufficient for the periodic maintenance, repair and replacement of improvements to the Common Area, Limited Common Area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expenses.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of the proper undertaking of all acts and duties imposed upon it by virtue of this Supplementary Declaration, and the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his Membership interest therein, except as an appurtenance to his Lot or Unit. When any Owner shall cease to be a Member of the Association by reason of his divestment of ownership to his Lot or Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the undertaking of the duties of the Association.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be Eighty Five Dollars (\$85.00 ) per month.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of Membership by up to twelve percent (12%) of the previous years maximum annual assessment.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 3(a) above by a vote of the Members, provided that any such charge shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual 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, upon the Common Area or Limited Common Area, in the private streets or alleys and in connection, with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

Section 5. Individual Special Assessments. The Association may levy special assessments against individual Owners for reimbursement to the Association for repairs to their respective Common Areas, Limited Common Areas, Landscape Easements or Maintenance Easements or any improvements thereto which are occasioned by the willful or negligent acts of such Owners(s) and not the result of ordinary wear and tear, or for payment of fines, penalties, or other charges imposed against an Owner relative to such Owner's failure to comply with the terms of this Supplementary Declaration or the Association Articles of Incorporation and/or Bylaws, including without limitation, reimbursement to the Association for expenses incurred in connection with the enforcement of the provisions of Articles V and VI of this Declaration.

Section 6. Notice and Quorum for Any Action Authorized under Section 3 or 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Membership 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Working Capital Fund. At the time of closing of the sale of each Unit from the Declarant to a third party Owner, a sum equal to at least two (2) months assessment for each Unit (based on the monthly portion of the maximum annual assessment in effect at the time of the sale) shall be collected from the third party Owner and transferred to the Association to be held as a working capital fund. The purpose of said Fund is to insure that the Board of Directors of the Association will have adequate cash available to erect unforeseen expenses and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the Fund shall not be considered advance payment of regular Association assessments.

Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for Units and may be collected on a monthly basis. Notwithstanding any provision in this Declaration, the Articles of Incorporation and Bylaws to the contrary, no Undeveloped Lot or Vacant Lot shall be subject to the assessment.

Section 9. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to a Unit on the first day of the month following the conveyance of the Unit from the Declarant to any third party Owner. The first annual assessment for each Unit shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates 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 and what amount is due, if any.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment or installment thereof, not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 8 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. Any and all costs of the action taken by the Association to obtain payment of any past-due assessment, including reasonable attorneys' fees, shall be paid by the Owner. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, Limited Common Area or abandonment of his Unit, or by performing the maintenance under the Association's responsibility and for which it collects assessments, nor shall any damage to or destruction of any improvements on any Lot by fire or other casualty result in the abatement or diminution of the assessments provided for herein.

Section 11. Effect of Default in Payment of Ad Valorem Taxes or Assessments for Public Improvements by Association. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area or Limited Common Area, which default shall continue for a period of six (6) months, each Owner of a Unit shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Units, Vacant Lots and Undeveloped within the Properties. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot and/or Unit of the Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot and/or Unit of the Owner.

Section 12. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 13. Exempt Property. All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein; provided, however, no land or improvements devoted to dwelling use shall be exempt from said assessments.



Section 14. Responsibility for Maintenance of Private Streets, Alleys, and Driveways. The maintenance responsibility for the private streets, alleys, and driveways as shown on the aforesaid recorded map shall rest with the Association, In addition, the Association shall be responsible for the landscape maintenance and care of all trees planted along side or within the private streets, alleys and driveways.

#### ARTICLE V PARTY WALLS

Section 1. General Rules of how to Apply. Each wall which is built as a part of the original construction of the Townhomes and placed on the dividing line between the 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-ground 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 or reasonable and customary repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

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 contributions from others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Construction. The Owner of any Townhome may construct, reconstruct, repair, or extend a party wall in any direction (subject to and within the limitation or architectural control and other limitations of these Covenants) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon the completion of such construction, such Owner shall restore the adjoining Lot to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5. Weatherproofing. Notwithstanding any other provision of this Article, an 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.

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 property, he may, in order to assure a prospective purchaser that no adjoining Property Owner has a right of contribution as provided in this Article V, request of the adjoining Property Owner or Property Owners a certificate that no contribution is due, whereupon it shall be the duty of each adjoining Property Owner to make such certification immediately upon request without charge; provided, however, that where the adjoining Property 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 laws of North Carolina, relating to arbitration as then existing.

Section 9. Each Owner of an Attached Planned Unit shall be responsible and liable for any and all damages to other Attached Planned Units or Common Area or Limited Common Area caused by an

occurrence, event, or accident in his Unit, including the payment of any homeowner's or building insurance deductibles covering the damage.

#### ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Purpose. The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. In order to implement the purposes of these Covenants, the Declarant may establish and amend from time to time objective standards and guidelines, including, but not limited to, Architectural Standards and Construction Specifications, Uniform Sign Regulations, Uniform Mailbox Regulations and Landscape Guidelines, and which shall be binding on all Owners within the Properties.

Section 2. Review Board. The Architectural Review Board shall be composed of at least three (3) but not more than eleven (11) Members, all of whom shall be appointed by the Board of Directors. At least one (1) Member of the Association other than the Declarant shall be a Member of the Architectural Review Board at all times. The Architectural Review Board will be formed at such time as architectural approval authority is delegated to the Association by the Declarant. The Declarant shall delegate the approval authority to the Architectural Review Board no later than the time at which the Declarant conveys all of its interest in all of the Lots within the Properties. The Declarant, the Review Board and/or Association shall have the specific, nonexclusive right (but not obligation) to enforce the provisions contained in this Article of the Supplementary Declaration and/or to prevent any violation of the provisions contained in this Article of the Supplementary Declaration by proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article of the Supplementary Declaration.

Section 3. No building, signs, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant or by the Review Board if the Declarant has delegated such review responsibility to the Association. In the event the Declarant, or where applicable, the Review Board fails to approve or disapprove said design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Neither the Review Board nor the Members thereof nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence (except for gross negligence), nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

Section 4. This Article does not eliminate the need to comply with the requirements of the Master Association Architectural Review Board as set forth in the Master Declaration, if required.

#### ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Association Maintenance. In addition to the maintenance of the Common Area and Limited Common Areas, the Association shall provide exterior building and landscape maintenance upon each Townhome which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, front porch rails and columns, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefore), and other exterior improvements. Such exterior maintenance shall not include glass surfaces, screens, awnings, or the repair or reconstruction of any improvements on any Lot, the cost of which repair or reconstruction would be covered by casualty insurance, whether or not a policy of casualty insurance is in effect.

Owner shall have the responsibility to water the lawn, trees, bushes and shrubs on his Lot, maintain his decks and maintain his driveway , including keeping it free of grease and oil.

The Association shall also provide landscape maintenance for the Lots subject to assessment hereunder as follows: Maintain, repair or replace all trees, shrubs and grass planted either by the Declarant or the Association. The Association is **not** required to plant any flowers, trees, shrubs, grass or other vegetation for any Lot Owner. Any trees, shrubs, grass or other vegetation planted by the Lot Owner, other than the Declarant, in accordance with the provisions of this Declaration and the Master Declaration, are to be maintained, repaired and replaced by the Lot Owner and the Association is not responsible for their maintenance, repair or replacement. The Association is not responsible or liable for any damage to flowers, trees, shrubs, grass or other vegetation planted by any Lot Owner, other than the Declarant, which is not directly caused by the negligence or intentional acts of the Association or its agents.

Further, the Owner of any Lot may at his election plant trees, shrubs, flowers, and grass in his rear yard provided that planting and maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior building or landscaping of the Lot and the remaining yard spaces and as long as such actions are in compliance with the Master Declaration.

The Owner has the responsibility for maintaining, repairing or replacing any trees, shrubs, flowers or grass planted by him or anyone other than the Association or the Declarant, in his rear yard unless the Association expressly takes over such responsibility. No such maintenance by a Lot Owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one year and the Association will assume the Owner's maintenance responsibilities and will require an individual special assessment against the Owner in the amount of cost of maintenance plus an additional Fifty Percent (50%) of such cost as a penalty. The Owner shall not plant any vegetation, trees or shrubs, or in any way alter the appearance in the front yard except with the prior written approval of the Association.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repair shall be added to and become a part of the next assessment to which such Lot is subject.

Section 2. Maintenance by Owner. Except as already provided for herein, in cases where maintenance or repair is required in this Declaration to be done or made by an Owner, and the Owner has failed to maintain or repair any matter, the Association may make or complete such maintenance or repairs, and the cost plus fifty percent (50%) thereof shall be an additional assessment applicable only to such Lot and Owner, and shall be payable as determined by the Board of Directors.

## ARTICLE VIII USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and the Common and Limited Common Areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for the temporary offices of the Declarant and/or model homes used by the Declarant) shall be used except for residential, utility and street purposes and for purposes incidental or accessory thereto.

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

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. Such pets shall be kept inside between the hours of 8:00 pm and 6:00 am.

Section 5. Occupancy. No planned unit shall be rented to or used by more than four unrelated individuals without prior approval of the Association. For the purpose of this Agreement, "unrelated individuals" shall mean individuals who are neither within the same immediate family (i.e. grandparents, parents, children, and grandchildren) nor who are legal guardian and ward; provided, however, siblings shall be considered unrelated individuals unless a parent also uses the same planned unit as his or her principal residence. In those situations where related individuals reside with unrelated individuals, the related individuals will be considered as one individual under this Section.

Section 6. Variances. The Declarant or the Board of Directors of the Association in their discretion may allow reasonable variances and adjustments of the restrictions set forth in this Article VIII in order to alleviate practical difficulties and hardship in the enforcement and operation of these restrictions Any such variances shall not violate the spirit or the intent of this Declaration to create a subdivision of Lots owned in fee by various persons with each such Owner having an easement upon Common Areas owned by the Association. To be effective, a variance hereunder shall be recorded in the Wake County Register of Deeds office, shall be executed on behalf of the Association or Declarant, as applicable, and shall refer specifically to this Declaration.

Section 7. Fire and Liability Insurance. Each Owner must purchase fire and liability insurance before their purchase of the Lot unless otherwise agreed to by the Association.

Section 8. Miscellaneous Prohibitions. Owners shall not perform repairs and maintenance on motor vehicles on their Lot nor the Property; no fences shall be erected on their Lot; and, screen doors may not be installed on the Townhomes.

#### ARTICLE IX EASEMENTS

Section 1. All of the Properties, including Lots, Common Areas and Limited Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power line and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration; and, the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area or Limited Common Area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

An easement is hereby established over the Common Areas and Limited Common Areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing, and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection,, postal delivery, emergency and rescue activities and law enforcement activities.

All Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts, fences, decks and walls.

All Lots shall be further subject to an easement for the maintenance of landscaping described in this Supplementary Declaration on said Lots by the Association and/or its agents.

If any dwelling is located closer than five (5) feet from its side or rear Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his Townhome. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 2. Easement Reserved by Declarant. Declarant hereby reserves such easements on, across and over the Common Area, Limited Common Area and alleys as shall be reasonably necessary for the exercise by Declarant of any rights herein reserved, including, without limitation, Declarant's right, should Declarant elect, to annex Additional Property, as hereinafter defined.

#### ARTICLE X GENERAL PROVISIONS

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

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.. This Declaration may be amended prior to December 31, 2016 by an instrument approved by the Board of Directors of the Association and not less than sixty-seven percent (67%) of the Lot Owners, and thereafter by an instrument approved by not less than sixty-seven percent (67%) of the Lot Owners.

Any amendment must be properly recorded. So long as the Declarant is entitled to appoint the majority of the Members of the Board of Directors of the Association, no amendment of this Declaration shall be made without the consent of the Declarant. Notwithstanding the foregoing, the Declarant, for so long as it shall retain control of the Board of Directors of the Association, and, thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, to correct obvious errors and omissions herein, or to make any amendments requested by the Veterans Administration ("VA"), the Department of Housing and Urban Development ("HUD"), the Federal National Mortgage Association ("FNMA") and the **Town of Holly Springs** and further may amend this Declaration with the consent and approval of the VA, HUD or FNMA, in order to qualify the Association for tax exempt status or to meet approval so that loans can be made under VA or HUD. All amendments shall be effective from the date of recordation in the Wake County Registry. Upon such recordation and certification by the Association Board of Directors, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all Lots of the Properties.

No amendment which would change or delete any provision herein required by the Town of Holly Springs or Wake County shall become effective until submitted to and approved by the Town or County Attorney or his designee; provided, however, if the Town or County Attorney or his designee fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with. Any amendment must be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

Section 4. Annexation.

(a) Except as provided in Subsection (b) of this Section 4, Article X, additional real property and Common Area may be annexed to the Properties only with the consent of (a) the Board of Directors so long as Class B Membership is in existence and (b) the Members entitled to cast two-thirds (2/3) of the votes, after Class B Membership is terminated.

(b) Additional land which is located within a five (5) mile radius of the boundary of the Properties (the "Additional Property") may be annexed by the Declarant within ten (10) years from the date of this instrument without the consent of Members or the Board of Directors. Declarant shall have no obligation of any kind to annex any Additional Property and, should Declarant elect to annex any Additional Property, Declarant shall have no obligation of any kind to annex Additional Property in any particular sequential order. The addition of property authorized under this paragraph may increase the cumulative maximum number of Lots authorized in the Properties, and, therefore, may alter the relative maximum potential voting strength of the various types of Membership of the Association.

The addition authorized under this Section 4(b) and under Section 4(a) may be made by recording an Additional Property Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the Additional Property which shall extend the operation and effect of this Declaration to such Additional Property. Such Additional Property Supplementary Declarations may contain such complementary additions and/or modifications as may be necessary or convenient, in the sole judgment of the Declarant, to reflect the difference in character, if any, of the Additional Property and as are not inconsistent with the plan of this Declaration, but such modification shall have no effect upon the Properties described herein.

#### ARTICLE XI RIGHTS OF INSTITUTIONAL LENDERS

Section 1. Entities Constituting Institutional Lenders. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, buildings or other improvements and eligible insurers and governmental guarantors.

Section 2. Obligation of the Association to Institutional Lenders. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such institutional Lender shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by April 15 of each calendar year,

(b) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(c) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

Section 3. Requirements of Institutional Lender. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

ARTICLE XII RELATION TO MASTER DECLARATION

All Members, Lots, Properties and Owners subject to this Supplementary Declaration remain subject to the Master Declaration and any amendments thereto, and all other applicable recorded documents.

The Association is referred to and called a Sub-Association in the Master Declaration. Any right or duty imposed upon a Sub-Association or its Members in the Master Declaration is imposed upon this Association and its Members whether or not this Supplementary Declaration provides for such rights or duties.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its name and its seal hereto affixed as of the date set above.

Darcon of North Carolina, Inc.

By: \_\_\_\_\_  
\_\_\_\_\_ President

NORTH CAROLINA  
WAKE COUNTY

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he/she is \_\_\_\_\_ of Darcon of North Carolina, Inc., a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_, sealed with its corporate seal, and attested by him/herself as its \_\_\_\_\_.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

[Official Seal]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

LENDER HEREBY CONSENTS TO THE ABOVE DECLARATION AND EVIDENCES ITS  
SUBORDINATION OF ITS DEED OF TRUST

SUNTRUST BANK

By: \_\_\_\_\_  
\_\_\_\_\_ President

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said state and county, do hereby certify that  
\_\_\_\_\_ personally came before me and acknowledged that she/he is the \_\_\_\_\_ President  
of SUNTRUST BANK, and that said document was signed by its \_\_\_\_\_ President and attested to by  
him/herself on behalf of said corporation.



Witness my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Seal