



FOR REGISTRATION REGISTER OF DEEDS
Willie L. Covington
DURHAM COUNTY, NC
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INSTRUMENT # 2005041924

Drafted by/Mail to:

D.R. Bryan
PO Box 728
Holly Springs NC 27540

NORTH CAROLINA)

TWENTY-EIGHTH AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND DESIGN GUIDELINES:
TREYBURN I-8 PHASE 2
"GREENVIEW PLACE TOWNHOMES"

DURHAM COUNTY)

THIS AMENDMENT TO DECLARATION AND DESIGN GUIDELINES made this 17
day of AUGUST, 2005, by MOSS CREEK, LLC (Declarant).

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Lebanon Township, Durham County, North Carolina, which is more particularly described on a map entitled TREYBURN I-8 PHASE 2 (hereinafter referred to as "GREENVIEW PLACE TOWNHOMES") as recorded in Plat Book 166, pages 10-22, Durham County Registry, reference to which is hereby made; and,

WHEREAS, Declarant assumed all of Declarant's rights and obligations as appurtenant to the ownership and operation of the property as evidenced by Assignment recorded in Book 4944, page 292, Durham County Registry; and,

WHEREAS, Declarant will convey said property subject to the covenants, conditions, restrictions, reservations, and charges as set forth in that certain Declaration of Covenants, Conditions and Restrictions recorded in Deed Book 1457, page 891, Durham County Registry, together with all amendments thereto, and as further set forth herein, and which shall run with the lots and be binding on all parties having any right, title, or interest therein and their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof; and,

WHEREAS, Declarant desires to insure the most appropriate development and improvement of each lot, to protect the lot owners against such improper use as would depreciate the value of the property to each, to preserve insofar as practicable the natural beauty of each lot, to guard against the erection thereon of poorly designed or proportioned

structures and structures built of sub-standard or unsuitable materials, to secure and maintain proper setbacks with adequate free space between structures, and in general to provide for a high quality of improvements; and,

WHEREAS, Declarant has the right as provided in Article III, Section I of said Declaration to unilaterally subject all or any portion of the real property described in Exhibit B thereto, which Exhibit B includes the property as shown on the recorded plat as referenced hereinabove, to the provisions of said Declaration by filing in the Durham County Registry an amendment to said Declaration annexing such property; and,

WHEREAS, Declarant shall develop the property as "GREENVIEW PLACE TOWNHOMES" and shall create a Subdistrict on the property annexed hereby in accordance with Article 1, Section 18 of said Declaration; and,

WHEREAS, the New Construction Committee as appointed by instrument recorded in Book 4096, page 467, Durham County Registry, is vested under the terms of said Declaration with sole and full authority to amend the Design Guidelines, and has determined that the Design Guidelines shall be amended with respect to the property as set out in the Supplemental Design Guidelines attached hereto.

NOW, THEREFORE, Declarant hereby annexes the property and declares that all of the real property as described hereinabove shall be held, sold, and conveyed subject to that certain Declaration of Covenants, Conditions and Restrictions recorded in Deed Book 1457, page 891, and subject further to the following easements, restrictions, covenants and conditions, and further to the amended Design Guidelines as attached hereto.

1. PARTY WALLS. The lots as shown on the recorded plat referenced hereinabove are intended for use as attached townhomes. Accordingly, each wall which is built as a part of the original construction of the attached homes and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Amended Declaration, the general rules of law regarding party walls and the liability for property damage due to negligent or willful acts or omissions shall apply thereto. The costs of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of such wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any owner who makes use of such wall may undertake its restoration, and each owner having use thereof shall contribute pro-rata to such restoration and repair. Such pro-rata contribution shall not prejudice the right of any owner to call for a larger contribution from one or more owners under the rules of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision herein contained, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole and entire cost of all necessitated repairs and of the furnishing of the necessary protection against such elements. The right of any owner to a contribution from any other owner under these party wall provisions shall be appurtenant to the land and shall pass to his successor in title.

2. EXTERIOR MAINTENANCE. The Association shall provide exterior maintenance upon each of the lots as shown on the recorded plat referenced hereinabove as follows: repair, replacement and on-going care of roofs, gutters, downspouts, trees, shrubs, grass, exterior building surfaces (including, but not limited to, paint, but specifically excluding glass surfaces), and any other exterior improvements, and sidewalks and alleys, to the extent such are not publically maintained. In the event the need for maintenance, repair or replacement is caused by the negligent or willful act of an owner, his family, guests or invitees, or is caused by those excluded acts or incidents as defined and explained in the NC Standard Fire and Extended Coverage Insurance Policies, the costs of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such lot(s) is/are subject. In order to accomplish the foregoing, there is reserved unto the Association the right to unobstructed

access over, under, and across each lot at all reasonable times to perform the maintenance as herein provided.

3. **COVENANT TO INSURE.** Each owner of a lot as shown on the recorded plat referenced hereinabove, by acceptance of a deed therefor, is deemed to covenant to keep the unit constructed on the lot insured against loss by fire with what is commonly known as "extended coverage" in an amount equal to not less than ninety percent (90%) of the replacement value of the unit; to name the Association as an additional insured "as its interest may appear" in order that the Association will be notified of any lapse in coverage; to apply the full amount of insurance proceeds to the repair or rebuilding of the unit; to repair or restore the unit in the event of damage thereto substantially in accordance with this Amended Declaration and the original plans and specs for same; and, to keep the unit in good repair as herein provided. In the event of non-payment by an owner of any insurance premium as required hereunder, the Association is authorized to make such payment and to assess the subject lot with the sums so paid as a special assessment.

4. **UTILITY SERVICE ENCROACHMENTS; CROSS ACCESS EASEMENTS.** Each owner of a lot as shown on the plat referenced hereinabove, by acceptance of a deed therefor, is deemed to grant on behalf of himself, his heirs, successors and assigns, a perpetual easement for the construction, operation and maintenance of any utility service lateral(s) which cross said servient owner's lot in order to serve an adjacent lot or unit when such utility service lateral(s) are installed as a part of the initial construction by Declarant of the units located on said lots. Further, each owner of a lot as shown on the plat referenced hereinabove, by acceptance of a deed therefor, is deemed to grant on behalf of himself, his heirs, successors and assigns, a perpetual easement to allow cross access to adjoining unit(s) specifically as such cross access easements are shown on the recorded plat as referenced hereinabove.

5. **SUBDISTRICT DESIGNATION.** Declarant hereby designates GREENVIEW PLACE TOWNHOMES as a Subdistrict in accordance with Article 1, Section 18 of the Declaration.

6. **SUBDISTRICT ASSESSMENT AND INITIAL CONTRIBUTION.** By resolution of the Board of Directors, a copy of which is attached hereto, and in accordance with Article 1, Section 19 of the Declaration, there is hereby levied a Subdistrict Assessment for expenses relating to the exterior structural and grounds maintenance and operation as hereinabove provided. The Subdistrict Assessment shall be levied in addition to the mandatory assessment for common expenses as provided in the Declaration. The Subdistrict Assessment shall commence as to all lots with year 2005, except that all lots owned by Declarant or by a builder-owner who has acquired a lot for the purpose of constructing a dwelling unit thereon for sale shall be assessed at twenty-five percent (25%) of the then-current Subdistrict Assessment. The GREENVIEW PLACE TOWNHOMES Subdistrict Assessment for 2005 is \$125.00 per month (\$1500.00 per year) per lot. Each owner shall, at the closing of the purchase of his lot, pay a prorata Subdistrict Assessment for the remainder of that calendar year. In addition, each owner shall contribute an initial Subdistrict Assessment in an amount equal to 2 months of the then-current Subdistrict Assessment and shall be payable at the closing of the purchase of his lot, which initial contribution shall be used by the Association solely to fund a reserve account for the benefit of GREENVIEW PLACE TOWNHOMES, except that such initial contributions shall not be due from Declarant or from builder-owners who purchase a lot on which to construct a dwelling unit for sale. Initial contributions shall not be considered to be advance payment of annual assessments, special assessments, special individual assessments, or Subdistrict Assessments.

7. **STORMWATER FACILITY AGREEMENT.** The City of Durham requires that stormwater facilities be constructed on portions of GREENVIEW PLACE TOWNHOMES as evidenced by that Stormwater Facility Agreement recorded in Book 4585, page 26, Durham County Registry, all terms and conditions of which are hereby incorporated. As required, Declarant hereby certifies and acknowledges on behalf of itself and the Subdistrict as follows:

- (a) the stormwater facilities are deemed Common Area as are or will be shown on the recorded plat(s) of GREENVIEW PLACE TOWNHOMES;
- (b) maintenance and operation of the facilities shall receive the highest priority for Subdistrict expenditures;
- (c) Subdistrict shall at all times maintain a segregated account to fund the reconstruction and repair of the facilities, which fund shall at all times contain an amount reasonably determined from time to time by the Director of Public Works for the City of Durham to be adequate to pay for the probable reconstruction and repair costs for a three-year period, with contributions to the fund being listed as a Subdistrict budget line item;
- (d) in the event the account fails to contain sufficient funds as herein provided, the Subdistrict shall be permitted to charge a special assessment against each owner;
- (e) the Subdistrict agrees that it shall not enter into a voluntary dissolution unless and until the facilities are transferred to an entity who has executed Stormwater Facility Agreements with the City of Durham.

8. **WETLANDS; STREAM BUFFERS.** Any wetlands and/or stream buffer areas located on any lot shall be subject to regulations promulgated by the NC Division of Water Quality and/or other jurisdictional authorities. If any portion of any lot has been determined to meet the requirements for designation as regulatory wetlands, any subsequent fill or alteration of such wetlands shall conform to the requirements of the wetlands rules adopted by the State of North Carolina in force at the time of the proposed alteration. Because the intent of such provision is to prevent additional wetland fill, no owner should assume that any future application for fill would be approved. This covenant is intended to ensure continued compliance with wetlands rules adopted and enforceable by the State of North Carolina, and shall run with the land and be binding on Owner, his heirs, successors and assigns.

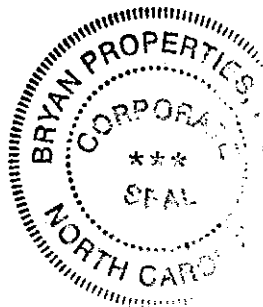
9. **TERM.** These restrictions shall run with the land and be binding on all parties and persons claiming under them for a period of forty (40) years from the date of recordation hereof, after which time said restrictions shall be automatically extended for successive ten (10) year periods unless an instrument agreeing to a change in said restrictions, in whole or in part, and executed by a majority of the then owners of the lots has been recorded in the Durham County Registry.

10. **ENFORCEMENT.** Enforcement of this Amended Declaration shall be by proceedings at law or in equity against any person or persons attempting to violate any of the restrictions contained herein, either to restrain violation or to cover damages.

11. **ASSIGNMENT BY DECLARANT.** Declarant shall have the right to assign its rights under this Amended Declaration, in whole or in part, to any person or entity by an express transfer of such rights.

12. **SEVERABILITY.** Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions contained herein, which shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has hereunto set its hand and seal, the day and year first above written.



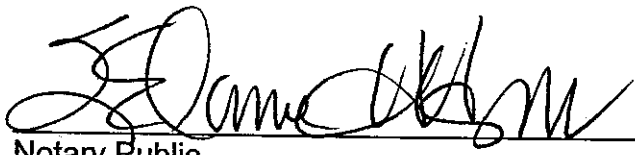
MOSS CREEK, LLC
 by: B PROP, LLC, MANAGER
 by: BRYAN PROPERTIES, INC., MANAGER

by: *D. R. Bryan* President

NORTH CAROLINA, WAKE COUNTY

I, Notary Public, do hereby certify that D.R. BRYANT JR personally appeared before me this day and acknowledged that he is _____ President of BRYAN PROPERTIES, INC., MANAGER OF B PROP, LLC, MANAGER OF MOSS CREEK, LLC, and that he, being so authorized as _____ President, executed the foregoing instrument on behalf of the company. Witness my hand and official seal, this the 17 day of AUGUST, 2005.

OFFICIAL SEAL
S. ELAINE HUDSPETH
NOTARY PUBLIC
WAKE COUNTY NC
My Commission Expires 11-3-06



Notary Public
My commission expires: 11-3-06

**CONSENT OF DIRECTORS OF
TREYBURN RESIDENTIAL OWNERS ASSOCIATION, INC.
TO ACTION WITHOUT MEETING**


We, the undersigned, being all of the Directors of Treyburn Residential Owners Association, Inc. do hereby adopt the following resolution by signing our written consent thereto:

WHEREAS, Moss Creek, LLC has designated a certain parcel to be known as GREENVIEW PLACE TOWNHOMES, a portion of which is more particularly described on a map entitled TREYBURN I-8 PHASE 2, as recorded in Plat Book 166, pages 10-22, Durham County Registry, reference to which is hereby made, which parcel is deemed to be a Subdistrict as defined in the Declaration of Covenants, Conditions and Restrictions as recorded in Book 1457, page 1891, Durham County Registry (the "Declaration"); and,

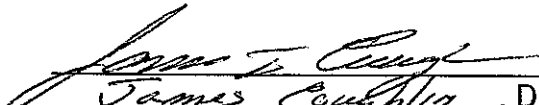
WHEREAS, Declarant has caused to be prepared an Amended Declaration of Covenants, Conditions and Restrictions evidencing the annexation of the property and the creation of the Subdistrict to be known as "GREENVIEW PLACE TOWNHOMES" (the "Amended Declaration").

NOW, THEREFORE, BE IT RESOLVED that there is hereby established a Subdistrict Assessment and Initial Contribution for maintenance and operation of the units, grounds and all Common Area as provided in the Amended Declaration, with said Assessment being initially established as \$125.00 per month per lot and said Initial Contribution being initially established as \$250.00 per lot.


This action is effective this 1 day of September, 2005.




DAVID J. DECKER, Director




James Coughlin, Director



Patricia A. Shipman, Director



ELAINE D. MURLEY, Director



Sarah A. Kerr, Director

TREYBURN SUPPLEMENTAL DESIGN GUIDELINES
FOR
GREENVIEW PLACE TOWNHOMES

THIS ADDENDUM is in addition to and not in lieu of the general requirements of the Design Guidelines. Specific areas where variances are allowed are set forth below. Except as herein amended or modified specifically for the neighborhood identified hereinabove, the Design Guidelines shall control.

1. ARCHITECTURAL GUIDELINES

- A. Minimum Square Footage: Minimum home size shall be 1800 square feet.
- B. Exterior Detailing: Wood louvered foundation vents not required; no specific size required.
- C. Shutters: No variance.
- D. Windows: Permanent true divided light or simulated divided light windows not required. Windows may be vinyl-clad.
- E. Roofs: 25-year, 30-year and 40-year architectural fiberglass shingles and metal roofing are approved.
- F. Roof Vents: No variance.
- G. Exterior Materials: Cement-fiber siding is approved. Metal roofing is approved. Vinyl windows are approved.
- H. Garages: No variance.
- I. Garage Doors: 2 doors required on front-entry garage.
- J. Drives: No variance.
- K. Doors: No variance.
- L. Chimneys: No variance.

- M. Decks: Deck floor staining not required.
- N. Walkways & Patios: No minimum sidewalk width required.
- O. Roof Windows: No variance.
- P. Front Entrances: No specific approach to main entry required.
- Q. Exterior Colors: No specific color restriction.
- R. Utilities: Vegetative screening not required to provide full coverage at installation.
- S. Downspouts: Underground drainage plan not required.

2. MAINTENANCE

- A. Lawn Maintenance: No schedule required to be submitted.

3. SITE REQUIREMENTS

- A. Impervious Surface Limits: Per Durham City/County Ordinance

- B. Setbacks:

<u>front</u> -	8 feet minimum
<u>side</u> -	8 feet minimum
<u>side corner</u> -	10 feet minimum
<u>rear</u> -	8 feet minimum

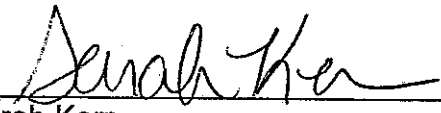
Dated this 17 day of August, 2005.



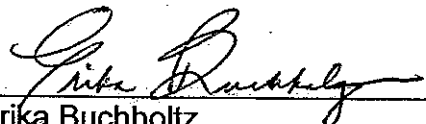
 D.R. Bryan, Jr.



 James M. Earnhardt



 Sarah Kerr



 Erika Buchholtz