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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
TOWN HEIGHTS**

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**DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
TOWN HEIGHTS**

This Declaration is made as of the ___ day of October, 1998, by B. V. BELK, JR. ("Declarant") and CONCEPT DESIGN BUILDERS, INC. and G.D. SMITH DEVELOPMENT GROUP, INC. (hereinafter "Individual Owners") with reference to the following facts:

RECITALS

A. Declarant and Individual Owners own certain real property (the "Property") in Mecklenburg County, North Carolina, which is described on map recorded in Map Book ___ at Page ___ in the Mecklenburg County Public Registry.

Declarant also owns certain other real property in Mecklenburg County, North Carolina, located adjacent to the Property and known as the "Additional Land" as described on Exhibit A attached hereto.

B. Declarant may, pursuant to Article 16, by one or more supplemental filings pursuant to Article 16 hereof, make all or any portion of the Additional Land (as defined in Section 1.01 hereof) subject to this Declaration and part of this Project (as defined in Section 1.32 hereof).

C. Declarant intends to improve the Project as a planned development by dividing the Project into lots appropriate for single-family dwellings. Declarant intends to develop the Project under a common scheme and general plan to insure the attractiveness of the Project, to prevent any future impairment thereof, to prevent nuisances and enhance the values and amenities of all properties in the Project, and to provide for the maintenance and upkeep of all common areas within the Project.

D. For this purpose Declarant and Individual Owners intend to subject the Project to the covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of the Project and the future owners thereof.

E. Declarant deems it desirable for the management and administration of the Project and for the preservation of the values and amenities of the planned development to incorporate the Town Heights Homeowners Association of Mecklenburg, Inc. as a non-profit corporation under the laws of the State of North Carolina for the purposes of administering and enforcing the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, including maintaining certain common areas and collecting and disbursing the assessments and charges imposed in accordance with the provisions

hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws.

NOW, THEREFORE, Declarant and Individual Owner hereby declare as follows:

ARTICLE 1

DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

- 1.01. "Additional Land" means the real property described in Exhibit "A" attached hereto, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article 16 hereof.
- 1.02. "Appraisal" means an appraisal by a member of the Appraisal Institute of the National Association of Real Estate Boards or the Society of Real Estate Appraisers (or, if same are not then in existence, a like organization).
- 1.03. "Architectural Control Committee or A.C.C." means the committee formed pursuant to Article 14 of this Declaration.
- 1.04. "Articles" means the Articles of Incorporation of the Association, including any amendments thereto.
- 1.05. "Association" means the Town Heights Homeowners Association of Mecklenburg, Inc. a North Carolina non-profit corporation, its successors and assigns.
- 1.06. "Board" means the Board of Directors of the Association.
- 1.07. "Builder" means any Person in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale in the Project, so long as any such Builder is in good standing with Declarant.
- 1.08. "Bylaws" means the Bylaws of the Association, including any amendments thereto.
- 1.09. "Class A Member" is defined at Section 8.03 hereof.
- 1.10. "Class B Member" is defined at Section 8.03 hereof.

1.11. "Common Area" means (a) all real property, easements and improvements thereon, owned by or held in trust for the benefit of the Association for the common use and enjoyment of its members; (b) the subdivision Entrance Monument Easements and (c) the subdivision Landscape and Easement Areas. Common Area does not include Future Lot 8 as shown on Map Book 29 at Page 555 which had previously been designated C.O.S. on Map Book 29 at Page 136 in the Iredell County Public Registry.

1.12. "Completion of Sales" means the earlier of (1) conveyance of all Lots in the Project to purchasers other than Builder or a successor Declarant hereunder or (2) the date which is (x) seven (7) years from the closing of the first sale of a Lot or (y) seven (7) years from the closing of the first sale of a Lot in the Phase most recently made subject to this Declaration, whichever occurs later; provided, however, if Declarant is delayed in developing the Project, constructing improvements or selling Lots and dwellings due to strikes or work stoppages; shortages of materials, supplies, fuel, power or energy; moratoria or suspensions on issuance of land use permits and approvals or affecting the availability of water, sewer, power or other utilities or necessary services; inclement weather; civil strife; major disaster or other cause beyond Declarant's reasonable control, said seven (7) year period shall be extended by the period of any such delay.

1.13. "County" means Mecklenburg County in the State of North Carolina.

1.14. "Declarant" means B. V. Belk, Jr., any successor or assign to whom B. V. Belk, Jr., assigns his interest as Declarant hereunder in whole or in part by instrument recorded in the official records of the County, or any mortgagee of Declarant which takes control of the Project by foreclosure or trustee's deed.

1.15. "Declaration" means this Declaration and all amendments or supplements hereto.

1.16. "Entrance Monument Easements" means the appurtenant easements hereby reserved and granted by Declarant to the Association over the areas designated on the Map as "20' landscape easement" or otherwise in accordance with Section 7.17, together with the stone monument(s), entrance sign(s) located on such monument(s), lighting, irrigation system, landscaping and other improvements which may be constructed thereon, to be used for entryways to the Project.

1.17. "Insurance Trustee" means a national banking association or title company licensed to do business in North Carolina as may be designated by the Association to hold and disburse funds as trustee for the Association and the Owners, as provided in this Declaration.

1.18. "Landscape and Easement Areas" means the appurtenant easements hereby reserved and granted by Declarant to the Association over the areas designated

on the Map as "20' Landscape Easement", 30' x 30' Landscape Easement or otherwise in accordance with Section 7.18, together with the lighting, irrigation system, landscaping and other improvements which may be constructed thereon.

1.19. "Lot" means any numbered lot or plot of land, together with any improvements thereon, as shown on the Map, which is not a dedicated street or Common Area.

1.20. "Map" means the maps of Town Heights recorded in Map Book 29 at Pages 237 and 555 in the Mecklenburg County Public Registry, and any re-recordings thereof, as well as any additional recorded maps of Additional Land made subject to the provisions of this Declaration pursuant to Article 16 hereof. Note: The map recorded in Map Book 29 at Page 55 is a revision of Map Book 29 at Page 139.

1.21. "Member" means a member of the Association.

1.22. "Mortgage" means a mortgage or deed of trust which constitutes a first lien upon a Lot given to a bank, savings and loan association or other institutional lender or individual for the purpose of securing indebtedness incurred to purchase or improve a Lot.

1.23. "Mortgagee" means the holder of the beneficial interest in any Mortgage.

1.24. "Notice and Opportunity for Hearing" means giving at least fifteen (15) days prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

1.25. "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant and shall include Builder as to any Lot owned by or any Builder. "Owner" shall not include any person or entity who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

1.26. "Person" means an individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

1.27. "Phase" means any portion of the Project shown on a Map.

1.28. "Project" means the planned development known as Town Heights which shall be developed and constructed on the Property, and any Additional Land made subject to this Declaration by recordation of a Supplemental Declaration pursuant to Section 16.02 of this Declaration.

1.29. "Property" means the property shown on the Map, exclusive of the public rights of way shown on the Map, which Property includes the Lots and the Common Area.

1.30. "Public Roads" means all roads and cul-de-sacs in the Project and shown on the Map, all to be maintained by the Declarant until accepted for dedication and public maintenance by the State of North Carolina or other governmental entity.

1.31. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Declaration.

1.32. "Structure" means (a) any thing or object the placement or construction of which upon any Lot may affect the appearance of such Lot, including but not limited to, any building, garage, porch, shed, gazebo, patio cover, pool, statuary, fence, paving, driveway, wall, all forms of landscaping, signs, temporary or permanent living quarters and tent, antennae and satellite dishes; (b) any excavation, grading, fill, ditch, berm, or other thing or device which affects or alters the flow of surface waters from, upon or across any Lot as originally graded by Declarant or Builder, or which affects or alters the flow of any water in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot.

1.33. "Supplemental Declaration" means a supplemental declaration of covenants, conditions and restrictions which shall be recorded for the purposes of annexing additional property, including all or any portion of the Additional Land, to the Project and causing such property to be subject to the scheme of covenants, conditions and restrictions contained in this Declaration.

1.34. "Voting Power" means the total number of votes held by Members whose membership at the time the determination of voting power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Project.

ARTICLE 2

SUBMISSION AND TERM

2.01. Submission. The Project shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (i)

in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Project and (ii) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Project. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Project, shall be binding on and inure to the benefit of each and every Person having or acquiring any right, title or interest in the Project, shall be binding upon and inure to the benefit of the successors in interest of such persons, and shall inure to the benefit of the Association, its successors and assigns.

2.02. Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, whether or not the deed makes reference hereto.

2.03. Term. This Declaration shall remain in force for a term of twenty (20) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years, unless sooner terminated by the affirmative vote of seventy-five percent (75%) of the total Voting Power of the Association and the written consent of seventy-five percent (75%) of the Mortgagees.

ARTICLE 3

COMPLIANCE WITH MANAGEMENT DOCUMENTS

3.01. Compliance with Declaration and Other Documents. Each Owner, resident or tenant of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representative, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

3.02. Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Rules and Regulations adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then the provisions of the Declaration shall prevail. In the event that anything shown on a recorded final subdivision map for all or any portion of the Project is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail. If a dispute arises among Owners in regard to the administration of the Project, then the provisions of this Declaration shall prevail.

ARTICLE 4

PROPERTY RIGHTS

4.01. Common Area Easements. All Common Area shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public. Each Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, which rights and easements shall be appurtenant to and shall pass with the title to his Lot and subject to the following rights and restrictions:

(A) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an Owner, to charge reasonable admission and other fees for the use of the Common Area, if any, and to limit the use of said facilities to Owners who occupy a residence in the Project.

(B) The right of the Association to suspend the right of an Owner to use any Common Area (1) for any period during which any fine against a Member or any assessment against such Owner's Lot remains unpaid; and, (2) after Notice and Opportunity for Hearing, for a period not to exceed thirty (30) days beyond the date any infraction of the Rules and Regulations has been fully remedied;

(C) The right of the Association to grant easements and to dedicate or otherwise convey all or any part of the Common Areas as provided in this Declaration, including Section 5.01;

(D) The right of the Association to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes, subject to the approval of Members and Mortgagees as otherwise provided in this Declaration, including Section 5.02;

(E) The right of the Board of the Association to adopt Rules and Regulations governing use and enjoyment of the Common Area; and

(F) Easements for ingress, egress, use and enjoyment over, in, to and throughout the Common Area for the benefit of Builder.

4.02. Delegation. Any Owner may delegate his rights of use and enjoyment of the Common Area and any facilities thereon to the members of his family or household residing on his Lot and to his guests and invitees while he is in possession of his Lot, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Guests and invitees shall not be permitted on the Common Area unless the Owner or household member delegating his rights of use

and enjoyment is physically present to accompany such guests and invitees while they are on such area. Provided the notice required by Section 4.03 of this Declaration has first been given to the Association, a tenant of an Owner, while residing on such Owner's Lot, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his obligations hereunder, including, without limitation, the obligation to pay regular and special assessments.

Upon request, each Owner or tenant shall notify the Secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

4.03. Tenants.

(A) Any Owner who rents or leases his Lot to a tenant shall not be entitled to use and enjoy any recreational or other common facilities on the Common Area during the period the Lot is occupied by such tenant.

(B) No Owner shall lease or rent less than an entire Lot and no more than one family shall live on any one Lot. The Lots shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than sixty (60) days. Subject to the foregoing restrictions, Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations.

(C) In the event an Owner shall rent or lease his Lot such Owner shall immediately give to the Association in writing:

- (1) the name of the tenant and the Lot rented or leased;
- (2) the current address of such Owner;
- (3) a true and complete copy of the lease or rental agreement; and
- (4) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Rules and

Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

(D) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

4.04. Reciprocal Easements. There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater from Lot surfaces, gutters and downspouts; provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Lot. If any Common Area or Lot encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed, reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist to a distance of not more than one (1) foot as measured from any point on the common boundary between the Common Area and the Lot or between Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, that in no event shall such an easement exist for willful encroachments. If any Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, an easement for the encroachment and for its maintenance shall exist so long as it remains.

4.05. Utility Easements. Any easements for installation, maintenance, use or repair of public utilities or drainage facilities which are dedicated on any final subdivision map of the Project or created in some other way shall be kept free of buildings, and within such easements no structure shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public utilities or drainage facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. All such easements at all times shall be accessible to Declarant until the Project is completed and at all times shall be accessible to all persons installing, repairing, using or maintaining such utilities and drainage facilities.

4.06. No Time-Sharing. There shall be no time-sharing or other co-ownership which allows multiple Owners sequential possessory interests in a Lot.

4.07. Sale of Common Area. Except as otherwise provided in this Declaration (such as Sections 4.01 and 5.01), no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall occur or be valid, whether by act or omission of the Association, without (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of each class of Members of the Association, or (ii) if a two-class voting

structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association and the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association residing in Members other than Declarant.

4.08. Rules and Regulations. The Board of the Association shall have the right to adopt, amend, publish and enforce Rules and Regulations governing the Project, the use and enjoyment of the Common Area and any facilities thereon, and the personal conduct thereon of the Owners, their guests, invitees, members of their families or households and tenants. The Members may amend any such Rules and Regulations adopted by the Board at any regular or special meeting of Members called for such purpose by (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws.

4.09. Enforcement. The Board shall have the right to levy fines for infraction of the provisions of this Declaration or the Rules and Regulations, provided (i) the Member shall have Notice and Opportunity for Hearing, and (ii) the fine conforms to the provisions of Section 9.11.

ARTICLE 5

COMMON AREA EASEMENTS AND RIGHTS-OF-WAY ENCUMBRANCES

5.01. Dedications. The Association shall have the power to grant easements in, on, over, through and across the Common Area for any public or quasi-public improvements of facilities and their appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (i) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Lot, (ii) the prior written consent of Declarant shall be obtained so long as Declarant owns any Lot, and (iii) as long as there are two classes of Membership in the Association prior approval of the Federal Housing Administration shall be obtained. Each Owner, by accepting a deed to a Lot, expressly grants to the Association an irrevocable power of attorney for the purpose of granting such easements in, on, over, through and across the Common Area. The President or other duly designated officer of the Association may execute, acknowledge and record in the official records of the County a certificate stating that the Board is the attorney in fact for the Owners for the purpose of such grant and that such power of attorney is properly exercisable in accordance with this Declaration. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. The power of attorney herein granted shall include authority to do such acts incidental to such grant and to incur such expenses as may be necessary or convenient in connection therewith. The Board, by resolution, shall instruct the appropriate

officers of the Association to make, execute and deliver on behalf of any Owner, as his interest may appear, any and all instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02. Encumbrances. The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes (i) if a two-class voting structure is in effect, upon the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Association, or (ii) if a two-class voting structure is not in effect, upon the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Association and the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association residing in Members other than Declarant. As long as there are two classes of Membership in the Association, any mortgaging of the Common Area shall require the approval of the Federal Housing Administration.

ARTICLE 6

COMMON AREA AND LOT MAINTENANCE

6.01. Maintenance by Association. The Association shall repair and maintain the Common Area and all improvements, utilities and facilities located on the Common Area. The Association's maintenance obligation shall arise upon the filing with the Association by Declarant of a notice of completion of Common Area improvements, or any portion thereof, and the commencement of annual assessments against the Owners.

6.02. Maintenance by Owners. Each Owner, at all times, shall maintain, repair and otherwise be responsible for his Lot and the improvements thereon. Without limiting the generality of the foregoing, and subject to the requirements of Section 14.02 of this Declaration, an Owner shall be responsible for replacement and reconstruction of improvements on his Lot required because of damage or destruction by fire or other casualty. Each Owner shall maintain, repair and replace the surface and subsurface drainage facilities, swales and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the County or other governmental entity. If any Owner, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such drainage facilities, swales and appurtenances as required herein, the Association, at the expense of such Owner, shall maintain, repair and replace such drainage facilities, swales and appurtenances at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Owner to obtain reimbursement therefor as provided in Section 9.07.