

NORTH CAROLINA  
WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR STAGHORN TOWNES  
SUBDIVISION, BOOK OF MAPS 1979, PAGE  
1041, WAKE COUNTY REGISTRY.

THIS DECLARATION, made on the date hereinafter set forth by  
Bern Bullard Industries, Inc., hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in  
Raleigh Township, County of Wake, State of North Carolina, which  
is more particularly described as:

BEGINNING at a stake in the southern right-of-way line of  
Staghorn Lane, said stake being located approximately 356  
feet in a westerly direction from the point where Staghorn  
Lane begins to intersect with Buckhead Drive; runs thence  
along the southern right-of-way line of Staghorn Lane South  
62° 29' 50" East 355.73 feet to a stake; runs thence along  
the right-of-way line of Staghorn Drive as it curves to the  
right in a southeasterly direction on a radius of 23.38  
feet, a distance of 38.29 feet to a stake; runs thence along  
the western right-of-way line of Buckhead Drive, South 31°  
19' 43" West 11.22 feet to a stake; runs thence continuing  
along the western right-of-way line of Buckhead Drive on a  
radius of 223.19 feet, a distance of 182.86 feet to a stake;  
runs thence North 68° 20' 17" West 122.65 feet to a stake;  
runs thence South 24° 21' 47" East 100.05 feet to a stake;  
runs thence North 80° 28' 57" West 414.83 feet to a stake;  
runs thence North 27° 30' 03" East 406.12 feet to a stake on  
the southern right-of-way line of Staghorn Lane, the point  
and place of BEGINNING, according to a map of "Staghorn  
Townhouses" by Bass, Nixon & Kennedy, Inc., Consulting  
Engineers, dated Dec. 14, 1979, as recorded in Book of Maps  
1979, page 1041, Wake County Registry, North Carolina.

AND WHEREAS, Declarant will convey the said properties,  
subject to certain protective covenants, conditions, restric-  
tions, reservations, liens and changes as hereinafter set forth:

NOW THEREFORE, Declarant hereby declares that all of the  
properties described above shall be held, sold and conveyed  
subject to the following easements, restrictions, covenants, and  
conditions, which are for the purpose of protecting the value and  
desirability of, and which shall run with, the real property and  
be binding on all parties having any right, title or interest in  
the described properties 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 Staghorn Townes Homeowners Association, its successors and assigns.

Section 2. "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 part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" 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 at the time of the conveyance of the first lot is described as follows:

All the property described as "Staghorn Townhouses" by Bass, Nixon & Kennedy, Inc., Consulting Engineers, dated December 14, 1979 as recorded in Book of Maps 1979, page 1041, Wake County Registry with the exception of the designated lots 1 - 30 inclusive as shown on said plat.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Bern Bullard Industries, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

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

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the 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 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 right to use of the recreational facilities by an owner for any 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) Upon proper notice to the City of Raleigh's Planning Office 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 individual members to the exclusive use of parking spaces as provided in this Article.

(f) The right of the Association, in accordance with its Articles and By-Laws, 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 mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder.

Section 2. Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family; his tenants, or contract purchasers who reside on the property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot, except utility easements.

Section 4. Parking Rights. Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces, which shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The Association shall permanently assign one vehicular parking space for each dwelling, such space to be as near the dwelling to which it is assigned as is reasonably possible. The Association may regulate the parking of boats, trailers and other such items on the Common Area. No boats or trailers shall be parked within the right of way of any public street in or adjacent to Staghorn Townes Subdivision.

Section 5. TV Antennas and Piped-In Music. The Association may provide one or more central television antennas for the convenience of the members and may supply piped-in music and the cost of these may be included in annual or special assessments. The Association may regulate or prohibit the erection of television antennas on individual lots.

ARTICLE III

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall

have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this Subdivision.

ARTICLE IV

VOTING RIGHTS

Section 1. The Association shall have two classes of voting membership:

Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) On July 1, 1981.

Section 2. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and according to the provisions of Article II, Section 1(b).

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special 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, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties, including but not limited to, the payment of insurance premiums, local taxes and public assessments on the Common Area, the enforcement of these Covenants and the rules of the Association, and in particular for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the Properties.

Section 3. Basis and Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Sixty Dollars (\$360.00) per Lot.

(a) From and after January 1, 1980, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, plus ten percent (10%) of such rise, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(b) From and after January 1, 1980, the maximum annual assessments may be increased above that established by the Consumer Price Index (or such Index as may succeed the Consumer Price Index) formula by a vote of the members for the next succeeding five years and at the end of each such period of five years, for each succeeding period of five years, provided that any such change 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. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto,

provided that any such assessment shall have the assent of two-third (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 the members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Quorum for any Action Authorized Under Sections 3 and 4. At the first such meeting called, as provided in Sections 3 and 4 hereof, 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 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyances of the Common Area. The first annual assessment 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. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusial evidence of payment of any assessment therein stated to have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of six percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became 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.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; (b) the Common Area; and (c) all

properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI

EXTENDED FIRE AND LIABILITY INSURANCE COVERAGE

The Association shall maintain for one year immediately following the conveyance of the first lot to an Owner a Blanket Special Multi-Peril insurance policy with extended fire and liability coverage on all lots and building units. The Association shall assess each Owner according to their pro-rata share.

After the end of the first year, the Association shall elect to continue the Blanket Special Multi-Peril coverage or to require each Owner to provide adequate individual fire and liability coverage, provided that any such election 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 the members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

ARTICLE VII

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties 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 of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. The owner of any Lot may construct, reconstruct or extend a party wall in any direction (subject to and within the limitations of 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 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 VII, request of the adjoining property owner or property owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining property owner to make such certification immediately upon request and 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.

#### ARTICLE VIII

##### MAINTENANCE OF ACCESS ROUTES

In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police or other public service to such developments or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the developer, homeowners association, or occupants.

The Association shall have the authority to maintain and repair inadequate access routes and to prevent blocking of access routes to and from the Properties.

#### ARTICLE IX

##### 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 Areas.

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the Declarant and/or model townhouses used by Declarant) shall be used except for residential 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.

ARTICLE X

EASEMENTS

All of the Properties, including Lots and 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 lines 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 Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties.

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 and walls.

ARTICLE XI

EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces. Further, the owner of any lot may at his election plant trees, shrubs, flowers and grass in his rear yard and may also maintain portions or all of his rear yard provided that such maintenance by the owner does not hinder the Association in performing its maintenance of the exterior of the house and the remaining yard spaces. 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. The Owner shall not plant any vegetation 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 repairs shall be added to and become a part of the assessment to which such lot is subject.

In no event shall the Association provide interior maintenance of structures not owned by the Association.

ARTICLE XII

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 nowise 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 during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded. Prior to recordation of any Amendment, the Association shall receive approval from the City of Raleigh Attorneys Office unless the City of Raleigh Attorneys Office has failed to comment thirty (30) days after receiving the proposed Amendment.

Section 4. If any amendment to these covenants, conditions and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined);

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS,  
CONDITIONS AND RESTRICTIONS OF STAGHORN TOWNES SUBDIVISION

By authority of its Board of Directors, Staghorn Townes Homeowners Association hereby certifies that the foregoing instrument has been duly executed by the Owners of \_\_\_\_\_ percent of the Lots of Staghorn Townes Subdivision and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Staghorn Townes Subdivision.

STAGHORN TOWNES SUBDIVISION

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

ATTEST:

\_\_\_\_\_  
Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry, provided however, that no such amendment shall be valid until it has been indexed in the name of this Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots in Staghorn Townes Subdivision.

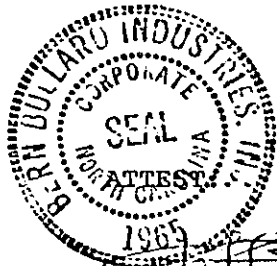


Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 20<sup>th</sup> day of December, 1979.

BERN BULLARD INDUSTRIES, INC.

By: Bernard F. Bullard  
President



B. F. Bullard  
Asst. Secretary

NORTH CAROLINA

WAKE COUNTY

I, Alexander L. Sampson, a Notary Public of Wake County and the aforesaid state certify that B. F. Bullard personally came before me this day and acknowledged that he is Asst. Secretary of Bern Bullard Industries, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Asst. Secretary.

Witness my hand and official seal, this 20<sup>th</sup> day of December, 1979.

Alexander L. Sampson  
NOTARY PUBLIC

My Commission Expires:

3-1-81

NORTH CAROLINA—WAKE COUNTY

The foregoing certificate of Susan L. Sampson

Notary Public is (are) certified to be correct. This instrument was presented for registration and recorded in this office in Book 2796 Page 874  
This 21 day of December, 1979, at 3:33 o'clock P.M.

By George B. Johnson  
Deputy Register of Deeds