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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

SUPPLEMENTARY DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE VILLAGE AT AVERY'S CREEK

This Supplementary Declaration of Covenants, Conditions and Restrictions for The Village at Avery's Creek was made and entered into this the 6th day of September, 1991 by and between NAPIER & GUNNELLS CONSTRUCTION COMPANY, INC., hereinafter referred to as "Developer" and all future purchasers and owners of the lots hereinafter described;

W I T N E S S E T H:

THAT WHEREAS, Developer heretofore acquired all the real property described in that deed from Andy M. Johnston and wife, Thelma G. Johnston to Napier & Gunnells Construction Company, Inc. dated May 10, 1990 which deed is duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Deed Book 1606 at Page 720; and

WHEREAS, Developer has heretofore executed that Declaration of Covenants, Conditions and Restrictions for The Village at Avery's Creek dated February 27, 1991 recorded in said Register's Office in Deed Book 1641 at Page 463 (hereinafter referred to as "Declaration"), which Declaration establishes a set of subdivision covenants, conditions and restrictions applicable to all of the lots shown on plat entitled "Section 1, The Village at Avery's Creek" which plat is duly recorded in said Register's Office in Plat Book 58 at Page 32. Said Declaration also reserves certain rights and easements to Developer and the owners of the various lots in the Subdivision; and

WHEREAS, Paragraph 3 of said Declaration provides that Developer may bring within the scope of such covenants, conditions and restrictions additional portions of the real property described in said deed recorded in Deed Book 1606 at Page 720 by the filing of a Supplementary Declaration of Covenants, Conditions and Restrictions. Said Paragraph 3 further provides that any such Supplementary Declaration may contain such complimentary additions to and modifications of the covenants, conditions and restrictions contained in said Declaration as may be necessary or appropriate in the sole judgment of Developer to reflect the different character of the added property; and

WHEREAS, Developer has subdivided an additional portion of the real property described in said deed recorded in Deed Book 1606 at Page 720 into lots as shown on plat entitled "Section 2 The Village at Avery's Creek", which plat is recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 58 at Page 110, reference to which is hereby made for purposes of further description of such lots. Developer is the owner of all the lots shown on said plat of Section 2 of The Village at Avery's Creek recorded in Plat Book 58 at Page 110; and

WHEREAS, Developer proposes to sell and convey the lots shown on said plat recorded in Plat Book 58 at Page 110. Prior to selling and conveying any such lots Developer wishes to add the real property shown on said plat entitled "Section 2 The Village at Avery's Creek" to the Subdivision as that term is defined in said Declaration, and wishes to subject the real property shown on said plat entitled "Section 2 The Village at Avery's Creek" to the covenants, conditions and restrictions contained in said Declaration, as modified herein, for the benefit of all of the lots in the Subdivision, in order to promote the best interests and protect the investments of

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Developer and the future owners of such lots. The Developer's intent is that the real property shown on said plat entitled "Section 2 The Village at Avery's Creek" will be developed, occupied and used according to the common scheme or plan of development set forth in said Declaration, as modified herein.

NOW, THEREFORE, in consideration of the premises and for the advantages which the Developer will receive from the sale of such lots in a residential subdivision, Developer, for itself, its successors and assigns in title, covenant and agree that the real property shown on said plat entitled "Section 2 The Village at Avery's Creek" which plat is duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Plat Book 58 at Page 110 are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions set forth in said Declaration of Covenants, Conditions and Restrictions For the Village at Avery's Creek recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Deed Book 1641 at Page 463, as modified herein. All the real property shown on said plat entitled "Section 2 The Village at Avery's Creek" shall be held, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the covenants, conditions and restrictions set forth in paragraphs 1 through 39 inclusive of said Declaration of Covenants, Conditions and Restrictions for The Village at Avery's Creek recorded in Deed Book 1641 at Page 463, which paragraphs are incorporated herein by reference to the same extent as if set forth herein in their entirety, as hereinafter modified by this Supplementary Declaration of Covenants, Conditions and Restrictions for The Village at Avery's Creek. Any reference in paragraphs 1 through 39 of said Declaration incorporated herein by reference to any plat (whether that reference shall be expressed as "a plat", "said plat", "the above referred to plat" or any other language) shall mean and include both that plat of Section 1 of The Village at Avery's Creek recorded in said Register's Office in Plat Book 58 at Page 32 and that plat of Section 2 of The Village at Avery's Creek recorded in said Register's Office in Plat Book 58 at Page 110. Any reference in paragraphs 1 through 39 of said Declaration incorporated herein by reference to a lot or lots shall mean and include all separately numbered parcels of land depicted on said plat of Section 1 of The Village at Avery's Creek recorded in said Register's Office in Plat Book 58 at Page 32 and all separately numbered parcels of land depicted on said plat of Section 2 of The Village at Avery's Creek recorded in said Register's Office in Plat Book 58 at Page 110. All definitions contained in paragraph 1 of said Declaration are incorporated herein by reference and shall be applicable to this document.

In addition to subjecting the real property shown on said plat entitled "Section 2 The Village at Avery's Creek" to the covenants, conditions and restrictions set forth in said Declaration, as modified herein, the Developer hereby reserves unto itself, its successors and assigns all rights and easements reserved to Developer in said Declaration as such rights and easements pertain to said real property shown on said plat of Section 2 of The Village at Avery's Creek.

It is further provided as follows:

1. Modification of Rear Set Back Line for Lots 25 and 30 of Section 2 of The Village at Avery's Creek. Notwithstanding the provisions of paragraph 10 of said Declaration of Covenants, Conditions and Restrictions For The Village at Avery's Creek recorded in said Register's Office in Deed Book 1641 at Page 463, because of problems with topography the rear set back line on Lots 25 and 30 of Section 2 of The Village at Avery's Creek shown on plat thereof recorded in Plat Book 58 at Page 110 shall be ten (10) feet instead of twenty (20) feet. In the opinion of the Developer this change is required because of the different character of this property. All other set back lines shall be

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the same as originally set forth in paragraph 10 of said Declaration as the same are shown on said plat of Section 2 of The Village at Avery's Creek. As provided in paragraph 10 of said Declaration, Developer reserves the right to waive unintentional violations of all setback lines.

2. Modification of Paragraph 4 of Said Declaration.

Paragraph 4 of said Declaration is hereby modified and amended to provide that in addition to the buildings and structures authorized under the provisions of said Paragraph 4 of said Declaration, it also shall be permissible to construct and maintain a separate, detached carport on any lot shown on said plat of Section 2 of The Village at Avery's Creek recorded in Plat Book 58 at Page 110 if there is no garage or carport attached to the dwelling located on such lot. Under the terms of paragraph 4 of said Declaration it has always been permissible to have a carport attached to the dwelling. This new provision simply authorizes the construction of a detached carport in certain circumstances. Any such carport would have to be constructed in accordance with the provisions of paragraph 30 of said Declaration requiring approval of the buildings and structures by Developer, its successors and assigns or by the duly appointed Architectural Committee. This modification is necessary in the judgment of the Developer because of the different character of this property.

3. Orientation of Certain Lots in Section 2 of The Village at Avery's Creek. As noted in paragraph 10 of said Declaration of Covenants, Conditions and Restrictions For The Village at Avery's Creek recorded in Deed Book 1641 at Page 463, it is sometimes difficult to determine which is the front, side or rear lot line of some lots. All set back lines for the various lots in Section 2 of The Village at Avery's Creek are as shown and designated on said plat of Section 2 of The Village at Avery's Creek recorded in said Register's Office in Plat Book 58 at Page 110. As shown on said plat entitled "Section 2 The Village at Avery's Creek":

A. Lot 25 as shown on said plat of Section 2 of The Village at Avery's Creek has a front lot line along Pine Ridge Trail and its cul-de-sac (not that portion of Pine Ridge Trail designated on said plat as private road). Said Lot 25 has a side line running along Bramble Court.

B. Lot 33 as shown on said plat of Section 2 of The Village at Avery's Creek has a front lot line along Pine Ridge Trail and a side lot line along Bramble Court.

C. Lots 83 and 70 as shown on said plat of Section 2 of The Village at Avery's Creek have a front lot line along Pine Ridge Trail and a side lot line along Holly Ridge Court.

D. Lot 49 as shown on said plat of Section 2 of The Village at Avery's Creek has no rear lot line.

E. Lot 1 as shown on said plat of Section 2 of The Village at Avery's Creek has a front lot line along Pine Ridge Trail and a side lot line along Avery's Creek Lane.

4. Easements. As provided in Paragraph 11 of said Declaration, which paragraph has been incorporated herein by reference, easements for installation and maintenance of utilities and drainage facilities are reserved five (5) feet in width along the side lot lines of each lot and ten (10) feet in width along the front and rear lot lines of each lot and within the roads and road rights-of-way shown on said plat of Section 2 of The Village at Avery's Creek recorded in Plat Book 58 at Page 110, just as such easements for the installation and maintenance of utilities and drainage facilities were reserved over the lots, roads and road rights-of-way shown on said plat of Section 1 of The Village at Avery's Creek recorded in said Register's Office in Plat Book 58 at Page 32 by the terms of said Paragraph

11 of said Declaration. These easements for installation and maintenance of utilities and drainage facilities so reserved along the side, front and rear lot lines of all lots and within the roads and road rights-of-way shown on said plats of Sections 1 and 2 of The Village at Avery's Creek are for the benefit of Developer, its successors and assigns, which shall include the owners of all lots in the Subdivision, as defined in paragraph 1(g) of said Declaration.

As is also provided in said Paragraph 11 of said Declaration, which paragraph has been incorporated herein by reference, additional easements for water and/or sewer lines and other utilities are reserved for the benefit of Developer, its successors and assigns, which shall include the owners of all lots in the Subdivision (as defined in Paragraph 1(g) of said Declaration), which easements are more particularly shown on said plats of Section 1 and 2 of The Village at Avery's Creek recorded in Plat Book 58 at Page 32 and Plat Book 58 at Page 110, respectively. Such easements were also reserved as shown on said plat of Section 1 of The Village at Avery's Creek by the terms of paragraph 11 of said Declaration. These easements shown on said plats of Section 1 and 2 of The Village at Avery's Creek recorded in said Register's Office in Plat Book 58 at Page 32 and Plat Book 58 at Page 110, respectively, are reserved for the benefit of Developer, its successors and assigns, which shall include the owners of all lots in the Subdivision, as defined in Paragraph 1(g) of said Declaration.

As is also provided in paragraph 11 of said Declaration, which paragraph has been incorporated herein by reference in its entirety, each owner of a lot in the Subdivision, including the owners of those lots shown on said plat entitled "Section 2 The Village at Avery's Creek", as an appurtenance to such lot, shall have an easement over and upon the Common Areas of the Subdivision as defined in the Declaration and as shown and depicted on said plat of Section 1 The Village at Avery's Creek recorded in said Register's Office in Plat Book 58 at Page 32 and as shown and designated on said plat entitled "Section 2 The Village at Avery's Creek" recorded in Plat Book 58 at Page 110 and as shown on any plat hereafter recorded adding land to the Subdivision, for each and every purpose or use to which such Common Areas were intended as determined by their type or for which such Common Areas are generally used, subject to the rules and regulations governing use of such Common Areas established by the Homeowners Association. Such easement shall be appurtenant to and shall pass with the title to each lot in the Subdivision whether or not specifically included in a deed thereto.

As is also provided in paragraph 11 of said Declaration Developer reserves the right to create and impose additional easements or rights-of-way over any road or road right-of-way as shown on said plat of Section 2 of The Village at Avery's Creek and over any lot or lots it owns on said plat for street, drainage, and/or utility installation and maintenance purposes by the recording of appropriate instruments in the Office of the Register of Deeds for Buncombe County, North Carolina and such shall not be construed to invalidate or be in violation of any of the covenants contained in said Declaration, or this Supplementary Declaration. As is also provided in paragraph 11 of said Declaration, Developer reserves unto itself, its successors and assigns an easement and right-of-way over, across and upon all roads and road rights-of-way shown on said plat entitled "Section 2 The Village at Avery's Creek" for access to all real property in the Development Area it being understood that it is the intention of Developer to expand the Subdivision by adding additional property to the Subdivision and that the roads shown on said plat will be extended further to provide access to such additional property. Developer further reserves unto itself, its successors and assigns an easement and right-of-way over, across and upon all roads and road rights-of-way shown on said plat of Section 2 The Village at Avery's Creek for

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purposes of providing access to and from all portions of the Development Area for any and all purposes, including, but not limited to, construction of and access to any additional improvements subsequently located thereon.

5. Homeowners Association. As provided in paragraph 28 of said Declaration, which paragraph has been incorporated herein by reference, each owner of a lot in the Subdivision, including the owners of all lots shown on said plat entitled "Section 2 The Village at Avery's Creek", shall automatically be a member of the Homeowners Association as is more fully provided in the Articles of Incorporation and the Bylaws for said corporation and in said Declaration. By acceptance of a deed for a lot in the Subdivision, including a lot in Section 2 of The Village at Avery's Creek, the grantee(s) agrees to membership in the Homeowners Association and agrees to abide by all applicable rules, regulations and Bylaws of said corporation, including but not limited to, the obligation to pay all assessments properly levied by the Homeowners Association. The Bylaws for the Homeowners Association are recorded in the Office of the Register of Deeds for Buncombe County, North Carolina in Deed Book 1641 at Page 476 and are hereby incorporated herein by reference to the same extent as is set forth herein in their entirety.

6. Roads. Paragraph 29 of said Declaration, which paragraph has been hereinabove incorporated herein by reference, is modified to provide that all roads shown on said plat entitled "Section 2 The Village at Avery's Creek" except that portion of Pine Ridge Trail which begins at the cul-de-sac and terminates at the northern line of Lot 47 as shown on said plat of Section 2 of The Village at Avery's Creek have been constructed in accordance with the requirements of the North Carolina Department of Transportation in order that they be eligible for the North Carolina Department of Transportation Division of Highways to assume responsibility for maintenance of such roads. That portion of Pine Ridge Trail shown on said plat of Section 2 of The Village at Avery's Creek which begins at the cul-de-sac and runs southwesterly to the northern line of Lot 47 shall remain a private road maintained by all lot owners in the Subdivision on an equal, pro-rata basis. As provided in said paragraph 29 of said Declaration, by the acceptance of a deed for a lot in the Subdivision, including a lot in Section 2 of The Village at Avery's Creek, the grantee(s) shall take title subject to the obligation to contribute on an equal, pro-rata basis toward the proper maintenance of all roads in the Subdivision, each lot contributing one share of the overall expense of maintaining all roads in the Subdivision not maintained by the State of North Carolina.

As further provided in paragraph 29 of said Declaration when and if all or any portion of the roads in the Subdivision shall be accepted for maintenance and taken over by the North Carolina Department of Transportation, no permission or agreement shall be required of Developer or any lot owners, it being understood that Developer and the lot owners for themselves, their heirs, successors and assigns agree that all or any portion of such roads shown on said plats of Section 1 and Section 2 of The Village at Avery's Creek or any plat hereafter recorded showing any portion of the Subdivision shall become part of the State Road System at such time as the Department of Transportation assumes responsibility for the maintenance and upkeep thereof. Each and every lot owner, by acceptance of a deed in the Subdivision hereby appoints Developer as his, her or its agent and attorney-in-fact, coupled with an interest, to execute in their name, place and stead any and all documents necessary to transfer all or any portion of the roads shown on said plats to the North Carolina Department of Transportation.

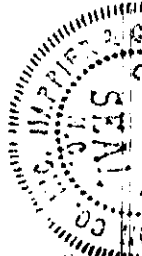
7. Term. As provided in paragraph 36 of said Declaration, hereinabove incorporated herein by reference, the covenants,

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conditions and restrictions contained in said Declaration, made applicable to the real property shown on said plat entitled "Section 2 The Village at Avery's Creek" by this instrument, are covenants running with the land and shall be binding on all the real property in the Subdivision (including that real property shown on said plat of Section 2 of the Village at Avery's Creek) and all parties, and all persons claiming under them until the first day of August, 2020, at which time the covenants shall be automatically extended for successive periods of ten (10) years unless by a vote of those persons then owning a majority of the lots in the Subdivision it is agreed to change the covenants in whole or in part.

Asheville Federal Bank - A Federal Savings Bank (formerly Asheville Federal Savings and Loan Association) joins in the execution hereof solely for the purpose of consenting to the terms of this Supplementary Declaration of Covenants, Conditions and Restrictions as it pertains to the real property shown on said plat entitled "Section 2 The Village at Avery's Creek" and no more.

IN WITNESS WHEREOF, Developer has caused this instrument to be executed by its duly authorized officers with its corporate seal hereunto affixed all pursuant to proper authority from its Board of Directors on the date first above written.

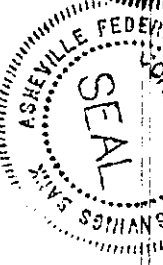


ATTEST:

NAPPIER & GUNNELLS CONSTRUCTION COMPANY, INC.

Renee B. Mace
SECRETARY

BY: [Signature]
PRESIDENT



ATTEST:

ASHEVILLE FEDERAL BANK - A FEDERAL SAVINGS BANK

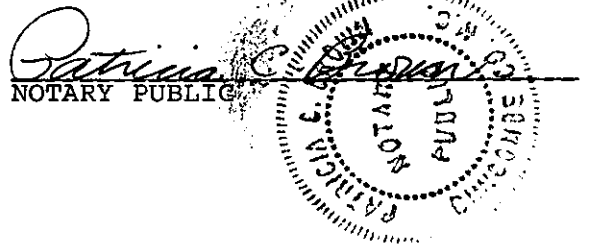
Deborah Z. Sick
SECRETARY

BY: John B. Dick
PRESIDENT

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Renee B. Mace, personally came before me this day and acknowledged that she is Secretary of Nappier & Gunnells Construction Company, 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 herself as its Secretary.

Witness my hand and official stamp or seal this the 10th day of September, 1991.




My Commission Expires:
1/20/96

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STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public of the County and State aforesaid, certify that Barbara Z. Sisk, personally came before me this day and acknowledged that she is Secretary of Asheville Federal Bank - A Federal Savings Bank, a corporation organized and existing under the laws of the United States of America, 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 herself as its Secretary.

Witness my hand and official stamp or seal this the 10th day of September, 1991.

Patricia C. Brown
NOTARY PUBLIC


My Commission Expires:
1/20/96

State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of Patricia C. Brown

a notary or Notaries public of the State and County designated is certified to be correct.

This 10th day of September, 19 91

OTTO W. DeBRUHL
Register of Deeds, Buncombe County
By: Angela C. Underwood, Deputy

Filed for registration on the 10th day of September, 19 91 at 4:01 P. M.

OTTO W. DeBRUHL
Register of Deeds, Buncombe County
By: Angela C. Underwood, Deputy