

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2005 MAR 02 03:58 PM
BK: 18429 PG: 555-561 FEE: \$29.00

INSTRUMENT # 2005038546



2005038546

Prepared by and after recording return to:

Kent Davis Jones, Esquire
The Law Offices of Gary W. Swindell
227 West Trade Street, Suite 2030
Charlotte, North Carolina 28202

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

THIRD SUPPLEMENT TO
DECLARATION AND
AMENDMENT TO
DECLARATION OF
COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
AYRSLEY

THIS THIRD SUPPLEMENT to the Declaration and Amendment to Declaration of Covenants, Conditions and Restrictions for Ayrsey (this "**Supplement**"), dated February 28th 2004, is made by **AYRSLEY DEVELOPMENT CORP.**, a North Carolina corporation (hereinafter referred to as "**Declarant**").

Background Statement

A. The Declarant has previously made, executed and recorded the Declaration of Covenants, Conditions and Restrictions for Ayrsey (hereinafter "**Original Declaration**") on November 21, 2002 in Book 14424, Page 186 in the Mecklenburg County Public Registry, wherein Declarant set out its plans for development of certain real property located in Mecklenburg County, North Carolina, which Declaration was amended by that certain **First Amendment** recorded on June 24, 2003 in Book 15566, Page 419 (the "**First Amendment**") and (i) that **First Supplement to Declaration of Covenants, Conditions and Restrictions for Ayrsey** recorded on April 1, 2004 in Book 16987, Page 31 in the Mecklenburg County Public Registry ("**First Supplement**") and (ii) that **Second Supplement to Declaration of Covenants, Conditions and Restrictions for Ayrsey** recorded on July 16, 2004 in Book 17492, Page 656 in the Mecklenburg County Public Registry ("**Second Supplement**"). (The Original Declaration, First Amendment First Supplement and Second Supplement shall be referred to herein as the "**Declaration**").

B. In Article XI, Section 1: Annexation Without Approval, the Declaration provides that the Declarant shall have the unilateral right, privilege, and option from time to time, to subject to the provisions of this Declaration, as amended from time to time, such portions of the Additional Property described in **Exhibit B** to the Declaration, as amended, as the Declarant may desire in order to accomplish the goals set forth in the Declaration.

C. Pursuant to Article XVIII, Section 2(a) of the Declaration, Declaration may unilaterally amend the Declaration, and desires to amend the Declaration in certain reports, as set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing premises and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby states as follows:

1. **Annexation**. The Additional Property which is more particularly described on Exhibit "A" attached hereto and made a part hereof is now hereby subjected to the provisions and effect of the Declaration, as amended, and the jurisdiction of the Association, as provided for in Article XI of the Declaration.

2. **Exclusive Development Rights**. Declarant hereby agrees that it shall not (i) sell any property subject to the Declaration for; or (ii) permit on any property subject to the Declaration, the construction, marketing, or sale of residential town homes and "live/work" units containing either (a) less than One Thousand Eight Hundred (1,800) gross square feet; or (b) more than Two Thousand Four Hundred (2,400) gross square feet. The foregoing restriction shall continue in effect until the earlier to occur of (i) November 30, 2005; or (ii) the date on which there are less than five units (after the completion of construction of all units contemplated for the subdivision to be constructed on the Additional Property) left for sale (by the developer of such units).

3. **Allocation of Unit Density**. Declarant hereby allocates to Faison-Ayrsley, LLC, and its successors and assigns a Density (as such term is defined in the Declaration) for the Additional Property and certain adjoining property which may hereafter be purchased by Faison-Ayrsley, LLC, its successors and assigns, pursuant to that certain Contract to Purchase Real Estate dated September 26, 2003 between Faison-Ayrsley, LLC (as assignee of FCD-Development, LLC) and Declarant, of seventy-five single family dwellings as allowed under the approved zoning plan for the Town of Ayrsley. The owner of the Additional Property may not assign, sell or otherwise transfer the allocation of density set forth herein without the prior written consent of Declarant. The allocation of any of the units, which are not constructed by Faison-Ayrsley, LLC, or its successors and assigns within five years of the date of this Supplement shall automatically revert to the Declarant to the extent provided in and in accordance with the terms of Article XVII, Section 2, of the Master Declaration.

4. **Assessments**. Declarant agrees that during the Declarant Control Period (as defined in the Master Declaration) the Declarant will not change the method of

calculation or allocation of any assessments called for under the Declaration, without the prior written consent of Faison-Ayrsley, LLC. Thereafter, no such change shall be made without the prior written consent of the Parcel Association for the Additional Property.

5. **Master Declaration Amendments.** The Master Declaration may not hereafter be modified or amended in any way that would impose any additional obligation on the Additional Property or the Owners thereof, or would materially and adversely affect the Additional Property or the Owners thereof.

6. **Parcel Declaration.** The Additional Property constitutes a "Parcel" under the Master Declaration. Faison-Ayrsley, LLC, shall impose a Parcel Declaration upon the Additional Property in phases as it is developed. The Parcel Declaration will be recorded prior to the conveyance of the first lot within the Additional Property to the purchaser of a completed townhome dwelling thereon. Declaration consents to the ownership of the Additional Property by more than one person prior to the recording of the Parcel Declaration for the Additional Property, notwithstanding the provisions of Article IV, Section 2 of the Declaration.

7. **Incorporation: Ratification:** The terms and provisions of the Declaration, as amended from time to time, and as supplemented and amended by this supplement, shall continue in fully force and effect and are hereby ratified and affirmed by the Declarant.

8. **Covenants Running with the Land: Binding Nature:** This Supplement and the Declaration, as amended from time to time, and the rights and obligations thereunder, shall run with title to the Initial Property, Annexation Property, and the newly annexed Additional Property and shall be appurtenant thereto, and shall bind and inure to the benefit of the Declarant and subsequent owners of the property, and their respective heirs, successors and assigns.

9. **Governing Law.** This Supplement shall be construed under and enforceable in accordance with the laws of the State of North Carolina.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF, the Declarant has caused this Supplement to be duly executed as of the date set forth above.

DECLARANT:

AYRSLEY DEVELOPMENT CORP.,
a North Carolina corporation

By: *Thomas B. Henson*
Thomas B. Henson, President

STATE OF NORTH CAROLINA

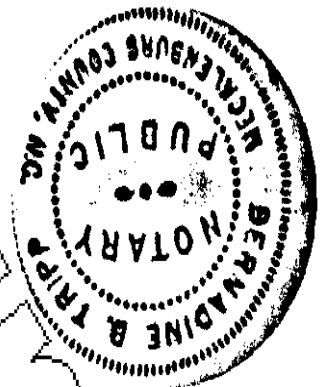
COUNTY OF MECKLENBURG

This 28th day of February, 2005, personally came before me Thomas B. Henson, who, being by me duly sworn, says that he is the President of Ayrley Development Corp., a North Carolina corporation, and that said writing was signed by him, in behalf of said corporation, by its authority duly given. And the said President acknowledged the said writing to be the act and deed of said corporation.

WITNESS my hand and official seal, this the 28th day of February, 2005.

Bernadine B. Tiff
Notary Public

My Commission Expires: 4-9-05



JOINDER OF PROPERTY OWNER

The undersigned joins in the execution of this Supplement solely for the purpose of consenting to the annexation of the Additional Property.

B.W. HOLDINGS, LLC,
a North Carolina limited liability company

By: **NCRP LAND HOLDINGS, LLC, its Manager**

By: **Land Holdings, LLC, its Manager**

By: **Tomlin Family Trust No. 3,**
its Manager

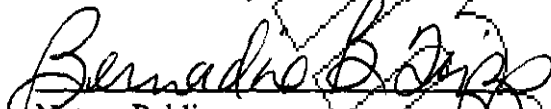
By: 
Thomas B. Henson, Trustee

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 20th day of February, 2005, personally came before me **Thomas B. Henson**, who, being by me duly sworn, says that he is the Trustee of **Tomlin Family Trust No. 3**, an irrevocable trust, which is the manager of **Land Holdings, LLC**, South Carolina limited liability company, which is the manager of **NCRP Land Holdings, LLC**, a North Carolina limited liability company which is the manager of **B.W. Holdings, LLC**, a North Carolina limited liability company (the "Company"), and that said writing was signed by him, on behalf of said Company, by its authority duly given and as the act and deed of said Company.

WITNESS my hand and official seal, this the 20th day of February, 2005.


Notary Public

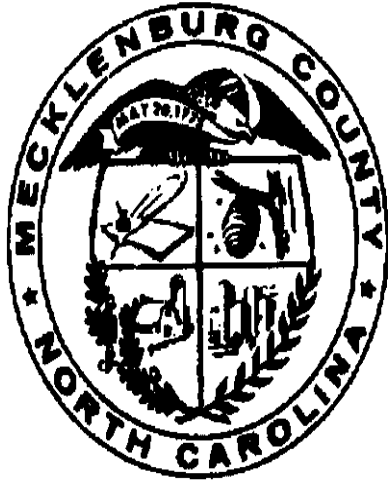
My Commission Expires: 4-9-05



Exhibit "A"

Additional Property

Being all of Lots 1-50, the Common Open Space and the Private Drives and Streets shown on Final Plat of the Town of Ayrley, Faison Townhomes Phase 1, Map 1, recorded in Map Book 42, Page 561 of the Mecklenburg County Public Registry.



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording and/or cancellation.

Filed For Registration: 03/02/2005 03:58 PM
Book: RE 18429 Page: 555-561
Document No.: 2005038546
RESTR 7 PGS \$29.00
Recorder: LINDA CASTLEBERRY

State of North Carolina, County of Mecklenburg

The foregoing certificate of BERNADINE B TRIPP Notary is certified to be correct. This 2 ND of March 2005

JUDITH A. GIBSON, REGISTER OF DEEDS By: 
Deputy/Assistant Register of Deeds



2005038546