

PREPARED BY: STEPHEN F. HORNE II

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DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF SHERATON VILLAGE PHASE III

THIS DECLARATION, made on the date hereinafter set forth by VANRACK, 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 or near the City of Greenville, North Carolina, which is more particularly described as follows:

Lying and being in Winterville Township, Pitt County, North Carolina and being all of Lots 29 and 30, Block C, Section 6, Whichport Development as appears in Map Book 31, Page 237, Pitt County Public Registry.

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 Sheraton Village Townhomes Phase III Association, Inc., 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 a 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 (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. the Common Area to be reserved to the Association at the time of the conveyance of the first lot is described as follows:

Lying and being in Winterville Township, Pitt County, North Carolina and being the same property as shown on that map entitled "Sheraton Village Townhomes Phase III" prepared by Rivers and Associates, Inc., and appearing of record in Map Book 34, Page 17, of the Pitt County Public Registry.

THERE IS EXCEPTED FROM THE FOREGOING the unit ownership area shown on the map entitled "Sheraton Village Townhomes Phase III" hereinabove referred to and designated as Lots 1-8, Block A, Lots 1-5, Block B, Lots 1-8, Block C, and Lots 1-8, Block D.

The aforesaid property is subject to all easements, set back lines, and restrictions as shown on the recorded maps hereinabove referred to.

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 Vanrack, 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.

## ARTICLE II

### PROPERTY RIGHTS

Section 1: Owner's Easement of Enjoyment. Every owner 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 of 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) 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 agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

(d) the right of individual owners to the exclusive use of parking spaces as provided in this article.

Section 2: Declaration of Use. Any owner 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: Parking Rights. Ownership of each lot shall entitle the owner of 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 an upon said parking area. The Association shall permanently assign two vehicle parking spaces for each dwelling.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1: Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to any map not be separated from ownership of any Lot which is subject to assessment.

Section 2: The Association shall have two classes of voting membership.

Class A. Class A membership shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for such Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as then determined, 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, and notwithstanding any other provisions herein, shall be assessed at a rate of not more than twenty-five (25) per cent of the Class A membership rate. Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, and in all events no later than January 1, 1990.

#### ARTICLE IV

##### 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 assessment shall not pass to his successors in title unless expressly assumed by them.

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Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the exterior maintenance of homes situated upon Townhouse Lots or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the payment of charges for common television antenna service to Townhouse Lots, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3: Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be, \$25.00 per lot, prorated for the remainder of said year.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, 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, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) from the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for the next succeeding two (2) years may be increased above that established by the Consumer Price Index formula by a vote of the members, and for each succeeding period of two (2) years thereafter, provided that any such change shall have the assent of two-thirds

(2/3rds) 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 thirty (30) days nor more than sixty (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 and 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 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-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at the meeting duly called for this purpose.

Section 5: Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) per cent 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 requirements, 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 sixty (60) days following the preceding meeting.

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Section 6: Uniform Rate of Assessment. Except as provided for Class B members, 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 conveyance 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 assessments 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 property executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8: Effect of Nonpayment of Assessment. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight per cent per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape or deny 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. All property dedicated to and accepted by, a local authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

#### ARTICLE V

#### 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 shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and 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.



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Section 4: Weatherproofing. Notwithstanding any other provisions 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 protections against such elements.

Section 5: 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 6: Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators, and binding on the parties

#### ARTICLE VI

##### EXTERIOR MAINTENANCE

Section 1: Types of Maintenance. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Townhouse Lot which is subject to assessment hereunder, as follows: Paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon such Lot at all reasonable times to perform maintenance as provided in this Article.

Section 2: Costs Subject to Assessments. In the event that the need for maintenance, repair, or replacement is caused through the willful or negligent act of the Owner, his family, guests, or invitees, or tenants, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in North Carolina

Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. For the purpose of this Article, storm windows and a storm door on the rear entrance may be placed and maintained on townhouses without need for approval of the architectural committee; but a storm door placed and maintained at the entrance, or front door, to a townhouse must be approved by the architectural committee in accordance with the provisions of this Article.

ARTICLE VIII

USE RESTRICTIONS

Section 1: Land Use and Building Type. No Lot shall be used except for residential purposes.

Section 2: Nuisance. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

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Section 3: Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes.

Section 4: Outside Antennas. No outside radio or television antennas shall be erected on any Townhouse unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

#### ARTICLE IX

##### EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

All Lots and Common Areas 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, stoops, chimneys, bay windows, gutters and downspouts, misaligned common walls, foundation footings and walls. Declarant shall have a reasonable construction easement across the Common Area for the purpose of constructing improvements on the lots.

#### ARTICLE X

##### 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 restrictions 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 no wise 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 (90) per cent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75) percent of the Lot Owners. Any amendment must be recorded.

Section 4: Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class members.

Section 5: FHA/VA Approval.

(a) 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, VANRACK, INC., the Declarant, has caused this instrument to be executed in its name by its duly authorized officers, this the 7th day of November, 1986.

VANRACK, INC.

BY: Charles B. Vandyord



Charles B. Vandyord

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NORTH CAROLINA  
COUNTY OF PITT

I, David F. Cooley, a Notary Public of the aforesaid County and State, do hereby certify that Mary B. Vandilard personally appeared before me this day and acknowledged the she is Secretary of VANRACK, INC., a corporation, and that by authority duly given by its Board of Directors and as an act of the corporation, the foregoing instrument was signed in its name by its President, Charles E. Vandilard, sealed with its corporate seal, and attested by herself as its Secretary.

Witness my hand and Notarial Seal, this the 7th day of November, 1986.



David F. Cooley  
NOTARY PUBLIC

My commission expires: June 27, 1989

NORTH CAROLINA  
COUNTY OF PITT

The foregoing certificate of David F. Cooley, a Notary Public of Pitt Co. NC is certified to be correct. Filed for registration at 3:22 o'clock P.M. this 10 day of November, 1986.

Elvira J. Allred  
REGISTER OF DEEDS  
PITT COUNTY, NORTH CAROLINA