

When Recorded, Return To:  
Andrew R. Devin  
Hyatt & Stubblefield, P.C.  
1200 Peachtree Center, South Tower  
225 Peachtree Street, N.E.  
Atlanta, GA 30303

STATE OF NORTH CAROLINA

Cross Reference: Book 2088  
Page 553

COUNTY OF JOHNSTON

**AMENDMENT TO DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
RIVERWOOD ATHLETIC CLUB**

THIS AMENDMENT to the Declaration of Covenants, Conditions, and Restrictions for Riverwood Athletic Club is made this 23<sup>rd</sup> day of August, 2001, by Riverwood on the Neuse, LLC and RWAC, LLC ("Declarant").

**WITNESSETH:**

WHEREAS, on July 18, 2001, Declarant filed that certain Declaration of Covenants, Conditions, and Restrictions for Riverwood Athletic Club, recorded in Book 2088, Page 553, *et seq.*, in the Office of the Register of Deeds of Johnston County, North Carolina ("Declaration"); and

WHEREAS, pursuant to the terms of Section 17.1 of the Declaration, Declarant may unilaterally amend the Declaration for any purpose so long as the Declarant owns any property described on Exhibit "A" or "B" to the Declaration provided the amendment has no material adverse effect upon the right of any owner; and

WHEREAS, the Declarant owns property described on Exhibits "A" and "B" of the Declaration and the proposed amendment does not have a material adverse effect on the rights of any owner.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration as follows:

1. Article XIII of the Declaration is hereby amended, replaced, and superseded in its entirety and the following is substituted in its place:

Article XIII

THE CLUB

13.1. General

Access to the Club facilities will be limited to members of the Club. Each Owner may apply for membership in the Club. Such membership in the Club shall be granted in the sole discretion of the Owner of the Club and subject to such terms and conditions as determined by the Owner of the Club. The fee for such membership shall be set by the Owner of the Club. Owners that violate the terms or conditions of their memberships in the Club, or violate the rules and regulations of the Club, may have their memberships suspended or terminated at the discretion of the Owner of the Club.

13.2. Ownership and Control of the Club.

Membership in the Association, membership in the Club or occupancy of a Unit shall not confer any ownership interest in the Club. Rights to use the Club will be granted subject to such terms and conditions as may be determined by the Owner of the Club. The Owner of the Club shall have the right to grant use rights to Persons that do not reside in Riverwood.

13.3. Conveyance of the Club.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by the Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Club, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record Owner of the Club. Further, the ownership or operation of the Club may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of the Club by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Club or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Club; or (c) the conveyance of the Club to one or more affiliates, shareholders, employees, or independent contractors of the Declarant. No consent of the Association, Neighborhood Association, Neighborhood Representative or any Owner shall be required to effectuate any change in ownership or operation of the Club, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

13.4. View Impairment.

Neither the Declarant, the Association, nor the Owner of the Club, guarantees or represents that any view over and across the Club from Units adjacent to the Club will be preserved without impairment. The Owner of the Club, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add improvements, structures, trees and other landscaping to the Club from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

13.5. Architectural Control.

Neither the Declarant, the Association, any committee, or any Owner shall initiate or approve any construction, addition, alteration, change, or installation on or to any portion of the Properties which is adjacent to, or otherwise in the direct line of sight of, the Club. Any such construction, addition, alteration, change, or installation shall be subject to the approval of the Owner of the Club.

13.6. Limitations on Amendments.

In recognition of the fact that the provisions of this Article are for the benefit of the Club, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting the Club, may be made without the written approval of the Owner of the Club. The foregoing shall not apply, however, to amendments made by the Declarant.

13.7. Jurisdiction and Cooperation.

It is Declarant's intention that the Association and the Club shall cooperate to the maximum extent possible in the operation of the Properties and the Club. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate Use Restrictions or Rules other than those set forth on Exhibit "C" affecting activities on or use of the Club without the prior written consent of the Owner of the Club.

13.8. Maintenance of Common Areas.

The Owner of the Club shall have an easement and the right to enter and maintain all portions of Area of Common Responsibility within Riverwood if the Association fails to do so in accordance with the Community-Wide Standard. The Owner of the Club shall present the Association with written notice of the Association's failure to maintain such portions of Riverwood, including without

limitation, the entrance and landscaping within the community. From time of receipt of such written notice, the Association shall have five business days in which to take appropriate corrective action. If the Association fails to take corrective action, the Owner of the Club may enter the affected portion of the Area of Common Responsibility and bring such portion into compliance with the Community-Wide Standard. The Association shall pay the costs of all actions taken by the Owner of the Club to preserve the Community-Wide Standard, subject to any allocation of such costs pursuant to the Covenant to Share Costs.

13.9. Easements for the Club.

(a) The Declarant grants, for the benefit of the Club and its members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use of the Common Area including, but not limited to, streets, trails, lakes, and bike paths. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from the exercise of this easement: the Declarant or its members; the Association or its Members (in their capacities as such); the Owner of the Club or its successors, successors-in-title to the Club, or assigns; any Builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) The Owner of the Club, its agents, employees, contractors, and designees, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance, repair and replacement of the Club.

IN WITNESS WHEREOF, Riverwood on the Neuse, LLC, a North Carolina limited liability company, through its undersigned managing member, has duly executed this amendment and affixed its corporate seal thereto as of this 23<sup>rd</sup> day of August, 2001.

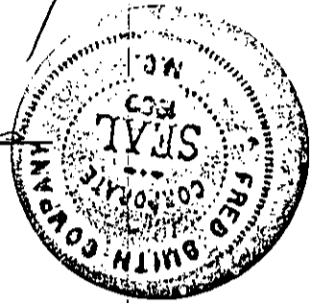
[SIGNATURES ON FOLLOWING PAGE]

DECLARANT: Riverwood on the Nuese, LLC, a North Carolina limited liability company

By: Fred Smith Company, Inc., a North Carolina corporation, its managing member  
[SEAL]

By: [Signature]  
Fred J. Smith, Jr.  
President

Attest: [Signature]  
(Asst.) Secretary  
Corporate Seal (affix)



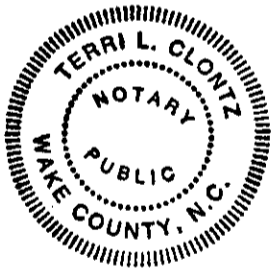
STATE OF NORTH CAROLINA )  
COUNTY OF Wake )

I, the undersigned Notary Public of the aforesaid County and State, do hereby certify that Susan V. Jones, personally came before me this day and acknowledged that he/she is Secretary of Fred Smith Company, Inc., a North Carolina corporation, the foregoing instrument was signed in its name by Fred J. Smith, Jr., its President, sealed with its corporate seal and attested by her as its Secretary.

Witness my hand and official stamp or seal this the 23<sup>rd</sup> day of August, 2001.

[OFFICIAL SEAL]

[Signature]  
Notary Public  
My Commission Expires: 7/25/04



DECLARANT: RWAC, LLC, a North Carolina limited liability company

By: [Signature]  
Fred J. Smith, Jr., Managing Member

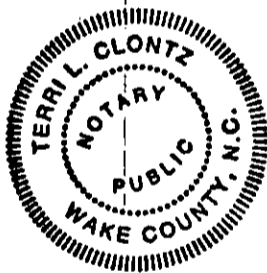
STATE OF NORTH CAROLINA )  
COUNTY OF Wake )

I, the undersigned Notary Public of the County and State aforesaid, certify that Fred J. Smith, Jr. personally came before me this day and acknowledged that he is the managing member of RWAC, LLC, Inc., a North Carolina limited liability company, and that he, as managing member, being authorized to do so, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and official stamp or seal this the 23<sup>rd</sup> day of August, 2001.

[OFFICIAL SEAL]

[Signature]  
Notary Public  
My Commission Expires: 7/25/04



State of North Carolina-Johnston County Terri L. Clontz  
The foregoing Certificate(s) of \_\_\_\_\_  
Notary (Notaries) Public is (are) certified to be correct.  
This instrument was prepared for registration and recorded in Book 2104 Page 34  
This August 23, 2001 at 4:58 P.M.  
Cecil M. Messerhill [Signature]  
Register of Deeds Deputy Register of Deeds