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WAKE COUNTY, NC 760
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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Prepared by and Hold for:

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**PROTECTIVE COVENANTS
OF
KENDALL HILLS SUBDIVISION
PHASE 2**

THIS DECLARATION OF PROTECTIVE COVENANTS is made this 8th day of June, 2004 by **Tar Heel Developers, Inc. (A North Carolina Corporation)**, hereinafter referred to in the neuter singular as the "DECLARANT");

WITNESSETH:

1. DECLARANT is the Owner and Developer of that certain real property located in Panther Branch Township, Wake County, State of North Carolina, which is more particularly described as follows:

BEING all of the Kendall Hills Subdivision, Phase 2, as shown in Book of Maps ~~2007~~, Page(s) 1067-1070, Wake County Registry.

2. The DECLARANT intends to sell and convey the lots and parcels within the Development and, before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes, and charges under the general plan or scheme of improvements for the benefit of all lots and parcels in the Development and for the benefit of the Owners and future Owners thereof.

WHEREAS, Declarant desires to create on said property certain Common Properties for the benefit of said community and for the benefit of all the lots of the subdivision; and

WHEREAS, Declarant desires to provide for the preservation of the values, amenities, and conceptual intent of the said community as for the maintenance of the said Common Properties; and, to this end desire to subject the said real property above described to the covenants, conditions, restrictions, easements, obligations, charges, and liens, hereinafter set forth, each and all of which is and hereby is declared to be for the benefit of said property and each and every owner of any and all parts thereof.

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the power and authority of maintaining and administering the Common Properties and Services and administering and enforcing the covenants and restrictions governing the same residential lots, and collecting and distributing all assessments and charges necessary for such maintenance, administration, and enforcement, as hereinafter created; and

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NOW, THEREFORE, the DECLARANT declares that all of the lots and parcels in the Development are held and shall be held, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the provisions of this Declaration, all of which are declared by the DECLARANT, and agreed by DECLARANT'S successors in title, to be in furtherance of a plan of development established for the purpose of enhancing and protecting the value, desirability, and attractiveness thereof.

The provisions of this Declaration are intended to create mutual and equitable servitudes upon each of said lots and parcels in favor of each and all other lots and parcels; to create reciprocal rights between their respective Owners of all such lots and parcels; to create privity of contract and estate between the Grantors of such lots, their heirs, successors and assigns; and to operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective Owners present and future.

ARTICLE I

DEFINITIONS

The following words and terms, when used in this Declaration, or any Supplement Declaration, shall have the following meanings:

- 1.1 Association shall mean and refer to the Kendall Hills Subdivision Property Owners Association of Wake County.
- 1.2 Owner shall mean and refer to the record owner, whether one or more persons, firms, associates, corporations, or other legal entities of the fee simple title to any tract situated upon the Properties, but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgage, its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure, nor shall said term "Owner" mean or refer to any lessee or tenant of as owner.
- 1.3 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, as are subjected to this Declaration or Supplement Declaration.
- 1.4 Common Properties shall mean and refer to those areas of land with any improvements thereon which are deeded to the Association and designed in said deed as "Common Properties". The term "Common Properties" shall also include those properties labeled as Permanent Open Space and are also devoted to uses listed on any recorded plat of the subdivision; and, include any personal property acquired by the Association if said property is designated as "Common Property". All "Common Properties" are to be devoted to and intended for the common use and enjoyment of the owners, subject to the fee schedules and operating by the Declarant or the Association (upon its inception in accordance with Article VI of this agreement).
- 1.5 Lot (tract) shall mean and refer to any improved or unimproved parcel of land, shown upon any recorded subdivision map of the Properties, intended for the construction of a detached single family dwelling and appurtenant structures, excluding any "Common Properties", as heretofore defined.
- 1.6 Member shall mean and refer to all owners as heretofore defined.
- 1.7 Declarant shall refer to Tarheel Developers, Inc.

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ARTICLE II**USES OF THE PROPERTY****2.1 Allowed Uses.**

- (a) All Lots shall be used for residential purposes exclusively. No structure, except as hereafter provided shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling (stick built) not to exceed two and one-half (2 1/2) stories in height, which must be used and occupied as a residence for a single family. No part of any lot may be used for manufacturing, commercial or business purposes nor may any form of advertisements for any business be allowed on any lot. No road shall be constructed on any lot in this subdivision connecting to any property not a part of this subdivision.
- (b) Only one (1) outbuilding per lot is allowed, and is to be incidental to residential usage. No outbuilding shall exceed one thousand (1000) square feet in size nor one (1) story in height with a minimum roof pitch of 7/12. Roof shingles must be identical in appearance to main dwelling. Exterior material and color will be identical in appearance to the majority material and color of the main dwelling. Only one single garage door not exceeding twelve feet (12') may be used on any outbuilding and it must have identical facing to that of the main dwelling's garage doors unless the Declarant approves otherwise. No outbuildings will be permitted to be built or to remain without the prior written approval of the Declarant (or approval of the Association pursuant to Article VI). Outbuildings must be placed in compliance with county setback lines. Attached shelters are included in the one thousand (1000) square feet maximum size.

2.2 Impermissible Uses.

- (a) No above ground pools are to be erected in the subdivision. No dwelling, fence, swimming pool or any other structure shall be erected, altered, placed or permitted to remain on any lot in said subdivision until the building plans, specifications (including all exterior materials and colors), and site plan showing the location of such improvements and a landscaping plan has been approved in writing as to conformity and harmony of external design with existing dwellings in the subdivision by the Declarant, Tar Heel Developers, Inc., A North Carolina Corporation, or its assigns. Proof of submittal by registered mail or acknowledged receipt from the Declarant or Association (pursuant to Article VI). Submittal and approval of plans prior to any construction is required. In the event that Declarant or Association (pursuant to Article VI) fails to approve or disapprove submitted plans and location within thirty (30) days from submittal, or in any event, if no suit to enjoin in the erection of such improvements or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with.
- (b) No chain link fences or other wire fences will be allowed in said subdivision. Only fences erected pursuant to Article III, Section 3.5 will be allowed. No fence of any kind, however, shall be erected on any lot until a site plan showing the location, type of materials, and screening has been submitted to and received the written approval of the Declarant or Association (pursuant to Article VI). No fence of any kind shall be permitted or placed closer to the front lot line than the rear of the dwelling or a line projected along the rear of the dwelling to each sideline. The Declarant or Association (pursuant to Article VI), reserves the right to reject any proposed fence due to type of materials or proposed location.
- (c) No mobile homes, modular units, single or doublewide units shall be erected or placed on any Lot covered by these covenants, under any circumstances. No pre-engineered or pre-fabricated buildings may be erected on any Lot without the prior written consent of the Declarant or Association (pursuant to

BK010878PG00043

Article VI). Travel trailers or other recreational vehicles (including motor homes) may be parked behind the main dwelling on any Lot, but such trailer or vehicle may not be used primarily as a residence, either permanently or temporarily. Except with the prior written consent of the Declarant or Association (pursuant to Article VI), no detached garage or any detached building shall at any time be used for human habitation either temporarily or permanently. No structure or house may be moved from another location onto a Lot under any circumstance.

- (d) No portion of any dwelling can be used for rental purposes. No dwelling shall be built or modified so as to establish a separate apartment or living quarters that does not have unrestricted access to the main living area. No dwelling shall be kept or maintained as rental investment property as defined by the Internal Revenue Service Code; however, in certain instances the Declarant maintains the right to waive this stipulation (i.e. job related temporary transfers, etc.).
- (e) No animals, livestock, horses, or poultry of any kind shall be raised, bred, or kept on any Lot except (a) for dogs, cats, or other household pets (excluding hoofed animals), which are not dangerous, so long as they are not kept, bred or maintained for any commercial purposes.
- (f) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Except with the written permission of the Declarant or Association (pursuant to Article VI), no motor vehicle licensed to carry more than ten (10) tons shall be allowed or parked on any Lot or street within the subdivision except those vehicles delivering building materials to develop or improve the Lots or future Lots within the subdivision or carry furniture for any homeowner within the subdivision. No motor vehicle shall remain parked on any Lot for more than thirty (30) days, which cannot move under its own power and/or components. A boat may be parked on a Lot only behind the main dwelling so that it cannot be seen from the street in front of the dwelling. Ownership of mini-bikes, go-carts, or two (2), three (3), or four (4) wheel all-terrain vehicles (not licensed for public roads) is permitted within said subdivision, however, vehicles of this nature shall not be operated on any streets or on any lots. No signs or billboards shall be erected or maintained on the premises, except that one (1) professional sign of not more than twenty-four (24) inches square and one (1) sign of not more than six (6) square feet may be used to advertise the property during construction sales period. Large signs may be used on a temporary basis, but only with the written permission of the Declarant or Association (pursuant to Article VI). No stripped, partially wrecked, or junked motor vehicle, or parts thereof, shall be permitted to be parked on any Lot except in an enclosed garage. All motor vehicles of any type kept on any Lot shall have current registration and inspection certificates.

ARTICLE III

REQUIREMENTS AS TO CONSTRUCTION ON LOTS

- 3.1 **Time Limits.** By acceptance of a deed, each Lot Owner or assigns agrees to have all public or private approvals necessary and shall start physical construction of a dwelling within nine (9) months of acceptance of said deed. In the event construction is not started within nine (9) months of acceptance of deed, the Lot Owner shall at the Declarant's option sell the Lot back to the Declarant at the original sales price, exclusive of any other costs incurred by Lot Owner. Declarant may extend the nine (9) months start time by up to three (3) months for any reason deemed acceptable to Declarant. At the end of any time extension the buy out option would then exist again for the Declarant. Time is of the essence. Notification will be by certified mail.

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Once construction begins, each Lot Owner will be required to complete construction of any dwelling ready for occupancy within three hundred sixty (360) days. Start date for construction will be the date a Wake County building permit is issued. Completion date will be the date Wake County issues a certificate of occupancy. If construction is not completed within the allowed three hundred sixty (360) days then the Lot's Owner will pay to the Declarant fifty (50) dollars a day for each day over the three hundred sixty (360) days until completion. Time is of the essence. Notification will be by certified mail.

- 3.2 Base. No primary dwellings are to be constructed on concrete or other type slab on grade. All primary dwellings must be constructed with crawl space.
- 3.3 Area. Each single family dwelling structure shall have a minimum of 1700 heated and finished livable square footage, in addition to a two car garage. No roof pitch will be allowed that is less than 7/12 unless written permission is obtained from the Declarant or Association (pursuant to Article VI). However, Declarant solely reserves the right to grant up to a ten (10%) percent negative variance on all minimum square footage areas.
- 3.4 Exterior. The exterior of each single family dwelling is to consist of either brick, hardiplank siding, or vinyl siding, unless otherwise approved by the architectural control committee. All steps are to be brick, except for any deck steps on the rear of the property, which may be wood. All shingles are to be 25-year dimensional shingles.
- 3.5 Fences. Fences are to be six feet (6') high with four-inch (4") wooden boards. All materials are to be unpainted treated wood. There must be a one inch (1") gap between each board. The wooden boards must have a pointed top construction. All posts are to be below the top of the fence with a flat top. Any fence with a design other than this design will have to be approved by the developer.
- 3.6 Garages. Each single family dwelling structure shall have a one or two car garage only.
- 3.7 Driveway. Each dwelling shall be required to have a standard concrete paved driveway with a minimum solid paved width of nine feet (9'). Any other paving material or color must be approved by the Declarant. Driveway dimensions shall be considered to be the distance from the street pavement to garage opening inclusive or to side of dwelling.
- 3.8 Setbacks. Except where otherwise more restricted by county regulations, no dwelling shall have a front line setback of less than fifteen feet (15') nor a side yard setback of less than five feet (5') or as governed by Wake County Code.

ARTICLE IV

LANDSCAPING REQUIREMENTS

- 4.1 Prior to occupancy of any dwelling the lot will be landscaped to reasonable standards with a minimum of the following:
- All non-wooded areas of yard shall be smoothed and grassed.
 - Dwelling foundation front shall be landscaped with adequate shrubs or bushes to create an attractive appearance.

All yards shall be maintained to a reasonable standard at all times. During mowing season, all yards must be mowed regularly so as to create a manicured appearance. For maintenance purposes only, the front yard of each Lot is considered to extend to the pavement of any adjacent street. Yard maintenance will begin at acceptance of deed. All unused construction material or debris will be removed prior to occupancy. Once occupied by a homeowner, the homeowner of any Lot referenced by this covenant, is required to maintain this area the same as his yard. If the homeowner is not in compliance with above requirements, the Declarant or Association (pursuant to

BK010878PG00045

Article VI) reserves the right to have said yard maintenance completed at homeowner's expense.

Each Lot Owner shall keep his Lot free of all tall grass, undergrowth, dead trees, trash, rubbish, and building materials and other unsightly materials and shall otherwise keep his Lot maintained in such a manner so as to present a pleasing appearance. This provision shall not require a Lot Owner to remove natural growth from those areas of his Lot which are left in a totally natural and undisturbed condition. In the event an Owner does not properly maintain his Lot as above provided, in the opinion of the Declarant or Association, then Declarant or Association (pursuant to Article VI) may have the required work done to bring the Lot into compliance with this covenant and the cost thus incurred shall be paid by the Lot Owner. Each Lot Owner shall remove from his Lot all debris resulting or remaining following the destruction of any structure on the property. In the event that the structure is suitable for rebuilding, the structure will either be removed entirely or rebuilt within a period of six months from the time of damage.

ARTICLE V

REQUIREMENTS AS TO PERSONAL PROPERTY AND FIXTURES

- 5.1 Mailboxes. All mailboxes and mailbox posts shall be placed only within ten (10') feet of the edge of the driveway for the lot that the mailbox serves. Newspaper boxes may be incorporated into the mailbox, but no plastic or unapproved newspaper boxes are allowed. All mailboxes are to be uniform and shall be purchased by either the builder or the homeowner, but shall be installed before the dwelling is occupied.
- 5.2 Recreational equipment. All playground equipment, including but not limited to swings, swing sets, merry-go-rounds, play pens, and sandboxes, toys, etc., shall be located in the rear yard of the home and not in the front yard and must be kept in neat order.
- TV satellite dishes not to exceed two feet (2') in diameter will be permitted. Dishes to be mounted on rear of home.
- All recreational equipment and personal property other than automobiles or bicycles must be stored in such a manner as not to be visible from any street or to the occupants or other Lots.
- 5.3 Subdivision Lighting. Lot owners shall be responsible for paying all subdivision street and entrance light bills. Said lighting bill(s) shall be assessed pro rata based on lot ownership.
- 5.4 Other. No outdoor clotheslines shall be permitted on any Lot. No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only within the main dwelling house, within any structure, or buried underground. All water well components including but not limited to casings, tanks, valves, and controls will be enclosed in a well house approved by Declarant or Association (pursuant to Article VI). Each Lot Owner shall provide receptacles for garbage in an area not generally visible from public street view. All dwelling connections for all utilities including but not limited to water, electricity, gas, telephone and television shall be run underground from the property connecting points to the dwelling structure in such a manner as may be acceptable to the appropriate utility authority.

ARTICLE VI

ESTABLISHMENT OF HOMEOWNERS ASSOCIATION

- 6.1 Membership. Officers of the Declarant will make all decisions for the subdivision until 100% of the Lots are sold. After all Lots are sold, every person or entity which is a record Owner of a fee simple or undivided interest in any Lot which is subject by the Covenants shall be a member of the Association; provided that any such person or entity who holds such title or interest merely as security for the performance of an obligation

(Page 7 of 13)

BK010878PG00046

shall not be a member of the Association; membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

6.2 Voting Rights. Before all Lots within the subdivision are sold, voting rights will be held solely by the officers of the Declarant, Tar Heel Developers, Inc. After all Lots have been sold, the Lot Owners within the Association shall have voting rights being one vote per Lot owned.

When more than one person holds an interest in any Lot, all such persons shall be members; and the vote for such Lot shall be exercised as they among themselves determine. When one or more co-owners sign a proxy or purport to vote for his or her co-owners, such vote shall be counted unless one or more of other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, it shall be split equally among the co-owners.

6.3 Property Rights in the Common Properties.

- (a) **Member's Easement of Enjoyment.** Every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot.
- (b) **Delegation of Use.** Any member may delegate in accordance with the by-laws of the Association, his right of enjoyment to the Common Properties and facilities to the members of his family or contract purchasers who reside on the property.
- (c) **Title to Common Properties.** Declarant hereby covenants for its officials, their successors and assigns that it will convey, bargain, and sell the Common Properties to the Association on or before the date the Declarant has acquired effective contracts for the sale of all the lots as shown on the recorded maps of the subdivision subject to all restrictive covenants of record.
- (d) **Extent of Member's Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:
 - (1) The right of the Declarant and of the Association, in accordance with its by-laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties;
 - (2) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosures;
 - (3) The right of the Association, as provided in its by-laws, to suspend the enjoyment of rights of any member for any period during which any assessments remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the member's obligation to pay the assessment;
 - (4) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties and/or facilities therein; and
 - (5) The right of the Association to give or sell all or any part of the Common Properties, including leasehold interest, to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the members, provided that no such gift or sale or determinations as to the purposes or as to the conditions thereof shall be effective unless such dedications, transfer, and determination as to purpose and conditions shall be authorized by the vote of two-thirds (2/3) of the vote at a duly called meeting and unless written notice of the proposed agreement action there under is sent to every member at least twenty (20) days in advance of any action taken. A true copy of such resolution together with a certificate of the

(Page 3 of 13)

BK010878PG00047

result of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the membership. The Association's right to sell, transfer, give, etc. is subject to the approval of the Wake County Planning Department or any successor agency.

6.4 Covenants for Maintenance Assessments.

- (a) **Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot shall, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of these covenants and to pay to the Association: (1) Annual assessment or charges; (2) Special Assessments for the purposes set forth in Section d of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided, shall be a charge and continuing lien on the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.
- (b) **Purpose of Assessments.** The assessments by the Association shall be used exclusively for the improvement, maintenance and operation of the Common Properties, including but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereof, and for the cost of labor, equipment, materials, management and supervision thereof. The Special Assessments shall be used for purposes set for in Section d of this Article.
- (c) **Maximum 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 (\$15.00 monthly/\$180.00 yearly) per Lot.
- (1) 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 each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.
 - (2) 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 above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting person or by proxy, at a meeting duly called for this purpose.
 - (3) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum, however, the Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year at a lesser amount, but such action shall not constitute a waiver by the Association of its right to revert to the full assessment for the remaining year or years of the then current period fixed as provided in the preceding paragraph.
- (d) **Special Assessments for Improvements and Additions.** In addition to the annual assessments authorized by Section c, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary Properties, provided that any such assessments shall have the assent of two-thirds (2/3) of the vote at a duly called meeting, written notice

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of which shall be sent twenty (20) days in advance and shall set forth the purpose of the meeting.

- (e) **Change in Basis and Maximum of Annual Assessments Upon Merger or Consolidation.** The limitations of Section c 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 the By-Laws of the Association.
- (f) **Notice and Quorum for any Action Authorized.** The presence at the meeting of members or of proxies entitled to cast thirty (30) percent of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at a meeting, another meeting may be called subject to the notice requirement set forth in Section d of this Article; but no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- (g) **Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The first annual assessments shall be made for the balance of the calendar year and shall be payable on the first day of the month fixed for commencement. The assessments for any year after the first year shall be similarly payable commencing on the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided in Section c, hereto, as the remaining number of months in the year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section d hereof shall be fixed in the resolution authorizing such assessment.

- (h) **Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against all Lots for each assessment period and shall, at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand, at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

- (i) **Effect of Non-Payment of Assessment. The Personal Obligation of the Owner, the Lien; Remedies of Association.** If the assessment or any monthly installment(s) thereof are not paid on the date when due (being the dates specified in Section g hereof); then such assessment shall become delinquent and shall, together with interest thereon at the rate of ten percent (10%) per annum from the due date and cost of collection thereof as hereinafter provided, thereupon become a charge and continuing lien on the land and all improvements thereon, against which each assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner at the time of the assessment to pay such assessment, however, shall remain his personal obligation and shall not

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pass as a personal obligation to his successors in title unless expressly assumed by them.

If the assessment or any monthly installment thereof is not paid within thirty (30) days after the due date, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and, in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fee, to be fixed by the court, together with the costs of the action.

- (j) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments accruing after the conveyance from mortgage Owner to subsequent Owner.
- (k) Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:
- (1) The grantee in conveyances made for the purpose of granting utility easements;
 - (2) All Common Properties as defined in Article I, hereof;
 - (3) Any properties exempted from taxation by the laws of the State of North Carolina, shall be so upon the terms and to the extent of such legal exemptions;
 - (4) All properties owned by Declarant; however, Declarant agrees to subsidize at its discretion the operation of the Association, in order to show good faith and to help assure the maintenance and operation of the Common Properties up to the amount the Association would have had to pay in assessments in accordance with these covenants if it were not exempted by this provision;
 - (5) All properties owned by builders or real estate agents under a statutory exemption from the Office of Interstate and Sales Registration who acquire such Lots for the purpose of engaging in the business of constructing residential buildings or for the purpose of re-sale of such lots to persons or companies engaged in such business, for a period of two (2) years from the date of a sales contract.

ARTICLE VII

RESERVATIONS OF DECLARANT

7.1 **Utility Easements.** Declarant reserves unto itself, its successors and assigns in addition to any easements of record a perpetual, un-alienable, and releasable easement and right on, over, and under the ground to erect, install, maintain, and use electric wires, cables, sewers, water mains, water drainage provisions and facilities, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, water, sewers, water drainage, and other public convenience or utilities owned, in or over five (5) feet around the perimeter of each Lot. These easements and rights expressed include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any similar actions reasonable to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance.

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ARTICLE VIII**ARCHITECTURAL CONTROL**

8.1 No building, wall, fence, swimming pool, or other structure shall be commenced, erected, or maintained on the Common Properties, nor shall any landscaping be done, nor shall any exterior addition to any such existing structure or change or alteration therein, be made until the plans and specifications therefor showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location with the surrounding structures and topography, by the Declarant or its Officers, or once the Declarant sells 100% of the Lots, by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives, appointed by the Board. If the Declarant or its Officers, or the 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.

ARTICLE IX**NOTICE**

9.1 Any notice required to be sent to any Owner under the provisions of this declaration shall be deemed to have been properly sent, and notice thereby give, when mailed, post-paid, to the last known address of the person who appears as Owner. Notice to one (1) of two (2) or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of all Owners to immediately notify the Declarant or the Secretary of the Association (pursuant to Article VI) in writing of any changes in address.

ARTICLE X**EFFECT OF VIOLATION OF COVENANTS**

10.1 Any Lot Owner or combination of Lot Owners within the subdivision shall be entitled to damages or any other remedies from any person, firm or corporation violating or attempting to violate these covenants which a court of law or equity will allow. If any covenant herein is declared void, then all other covenants contained herein shall remain in full force and effect.

ARTICLE XI**DURATION**

11.1 These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part and provided Declarant has sold all Lots.

11.2 No provision in these restrictions shall be deemed to have been waived, abandoned or abrogated by reason of failure to enforce them on the part of any person as to the same or similar future violations no matter how often the failure to enforce is repeated.

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ARTICLE XII

VARIANCES

12.1 The Declarant or Association (pursuant to Article VI), in its discretion, may allow reasonable variances and adjustments of these restrictions in order to alleviate practical difficulties and hardship in their enforcement and operation.

IN WITNESS WHEREOF, the DECLARANT has executed this Declaration on the day and year first above written.

DECLARANT

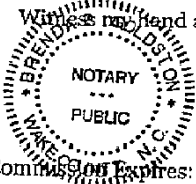
TAR HEEL DEVELOPERS, INC.
(A North Carolina Corporation)

Freddie L. Stancil (SEAL)
Freddie L. Stancil, President

STATE OF NORTH CAROLINA
COUNTY OF Wake

I, Brenda P. Alderton, a Notary Public, do hereby certify, **Freddie L. Stancil, President** personally appeared before me this date and acknowledged that he is the President of **Tar Heel Developers, Inc., A North Carolina Corporation**, and that he as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the 8th day of June, 2004.



Brenda P. Alderton
Notary Public

My Commission Expires: 11-22-06

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Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina – Wake County

The foregoing certificate of Brenda P. Goldston

Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: [Signature]
Assistant/Deputy Register of Deeds

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