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WAKE COUNTY, NC 525
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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**PROTECTIVE COVENANTS
OF
FLEMING FIELDS SUBDIVISION**

THIS DECLARATION OF PROTECTIVE COVENANTS is made this 20th day of November, 2006 by **Properties of Southern Wake, LLC (A North Carolina Limited Liability Company)**, hereinafter referred to in the neuter singular as the "DECLARANT");

WITNESSETH:

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

BEING all of Phase 1, Fleming Fields Subdivision, as shown in Book of Maps 2006, Page(s) 2345 - 2346, of the 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 conducted thereon, 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;

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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 Fleming Fields Subdivision Homeowners Association, Inc. (A North Carolina Non-Profit Corporation).
- 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 by the Declarant, which are subjected to this Declaration or any applicable Supplementary 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 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 Properties of Southern Wake, LLC (A North Carolina Limited Liability Company).

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 (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 or commercial 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 unless said road is constructed by the Declarant and approved by the applicable governmental authority.
- (b) Only one (1) outbuilding per lot is allowed, and is to be incidental to residential usage. No outbuilding shall exceed one thousand (1,000) square feet in size and one and one-half (1 1/2) stories in height and said outbuildings shall have 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. A maximum of two garage doors not exceeding twelve feet (12') may be used on an outbuilding and they must have identical facing to that of the main dwelling's garage doors. No outbuildings will be permitted to be built on or to remain on any Lot 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 (1,000) square feet maximum size. Declarant reserves the right to allow reasonable variances as to, but not limited to, the number, size, height, materials, and / or color of any outbuilding as set forth by this section.

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, the Association (pursuant to Article VI), or the entity or person appointed by the Declarant or the Association to approve such plans. Proof of delivery by certified mail or an acknowledged receipt from the Declarant or Association (pursuant to Article VI) shall be required to prove delivery of any proposed plans. Submittal and approval of plans prior to the commencement of construction is required. In the event that Declarant, Association, or party appointed to act in said capacity fails to approve or disapprove submitted plans and/or location within thirty (30) days from receipt (as defined hereinabove), 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 expiration of 60 days of 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 unless the fence is faced with a wood board fence or plantings such that no wire fencing can be seen from any adjoining lot or any street. No fence of any kind 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). The Declarant or Association (pursuant to Article VI), reserves the right to reject any proposed

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fence due to type of materials or proposed location, and to allow variances to this section based on its sole discretion.

- (c) No mobile homes, modular units, single or doublewide units shall be erected or placed on any Lot governed 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 Article VI). Travel trailers or other recreational vehicles (including motor homes) may be parked on a Lot only after approval from the Declarant or Association (pursuant to Article IV). Declarant or Association (pursuant to Article IV) reserves the right to require the construction of any structure (fence, wall, building, etc.) as a prerequisite to parking any travel trailer or other recreational vehicle (including motor homes) on a Lot. Any 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 detached building shall be used at any time 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 dwelling may be subdivided for the purpose of renting multiple units. The rental of a portion of a dwelling (room, floor, loft, etc.) is also prohibited. However, the rental of an entire dwelling will be permitted.
- (e) No animals (including pot-belly pigs), livestock, horses, or poultry of any kind shall be raised, bred, or kept on any Lot except for dogs, cats, or other household pets, which are not dangerous, so long as they are not kept, bred or maintained for any commercial purposes. A maximum of two outdoor dogs or cats are allowed to be kept in an approved fenced-in area.
- (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 their own power and / or components. A boat may be parked on a Lot only after approval from the Declarant or Association (pursuant to Article IV). Declarant or Association (pursuant to Article IV) reserves the right to require the construction of any structure (fence, wall, building, etc.) as a prerequisite to parking any boat on a Lot. 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. 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 signs defaming the Declarant or subdivision builders are allowed. 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

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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.

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 Area. Each single family dwelling structure shall have a minimum of 2200 square feet of heated and finished livable square footage, exclusive of any garages and / or unfinished area. Declarant solely reserves the right to grant up to a twenty (20%) percent negative variance on all minimum square footage areas. 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).

One-car and two-car garages are allowed and said garages may be front-load garages (facing the subdivision street).

- 3.3 Exterior. The exterior of each single-family dwelling is to consist of either brick or cement-based siding, or stone veneer unless otherwise approved by the Declarant or Association (pursuant to Article VI). No vinyl siding shall be used except for facial boards, trim, or windows. All steps are to be brick or stone, except for any deck steps on the rear of the property, which may be wood.

- 3.4 Driveway. Each dwelling shall be required to have a standard concrete 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. Builders must use stone or brick to encompass the culvert on both sides of all driveways.

- 3.5 Setbacks. Except where otherwise more restricted by county regulations, no dwelling shall have a front line setback of less than forty feet (40') nor a side yard setback of less than fifteen feet (15'), and all other setbacks shall be governed by the Wake County Building Code, Town of Fuquay-Varina Building Code, and / or other applicable governmental authority. Some Lots will require a variance to these setback restrictions due to the location of the Lot lines. These variances may be granted by the Declarant or Association (pursuant to Article VI) only, and said variances shall be made in accordance with the rules and regulations of the applicable governmental authority holding jurisdiction over granting said variances.

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:
- (a) All non-wooded areas of yard shall be smoothed and grassed, or landscaped with pine straw or mulch.
 - (b) Dwelling foundation front shall be landscaped with adequate shrubs or bushes to create an attractive appearance, as determined in the sole discretion of the Declarant or Association (pursuant to Article VI).

All yards shall be maintained to a reasonable at all times similar to that of yards in similar subdivisions in the surrounding area. During mowing season, all yards must be mowed regularly so as to create a manicured appearance. For maintenance

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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 Article VI), in its sole discretion, reserves the right to have said yard maintenance completed at homeowner's expense if the homeowner is given adequate notice to remedy all issues and fails to do so in a timely fashion.

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 a Lot Owner does not properly maintain his Lot as above provided (in the sole 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 from the Declarant, and all mailboxes shall be installed before the dwelling is occupied. All replacement mailboxes are to remain uniform.

5.2 Recreational equipment. All playground equipment, including but not limited to swings, swing sets, merry-go-rounds, play pens, and sandboxes, toys, etc., must be approved by the Declarant or Association (pursuant to Article VI) in terms of their style and location.

TV satellite dishes not to exceed two feet (2') in diameter are permitted and must be mounted on the house only. All other larger satellite reception apparatus will not be permitted on any Lot.

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 Other. No visible 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, or provide underground garbage receptacles or similar facility in accordance with reasonable standards. 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, or until such a time when the Declarant forms and turns all subdivision regulatory authority over to the Association. After 100% of the Lots are sold, or at the Declarant's discretion before such time, 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 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 100% of the Lots within the subdivision are sold, or until formation of the Association, whichever shall occur first, voting rights will be held solely by the Officers of the Declarant. After 100% of the Lots have been sold, or upon formation of the Association, the Lot Owners shall have voting rights being one vote per Lot owned, with the Declarant to maintain control of the Architectural Committee (as defined hereinbelow) until all Lots are sold.

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 and Obligations 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 closed on the sale of all the Lots as shown on the recorded maps of the subdivision (current phase and all future phases) 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

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- 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 Members present at a duly called meeting (a "duly called meeting" under this provision shall require written notice of the proposed transfer and meeting date being sent to every Member at their last known address at least twenty (20) days in advance of the meeting). A true copy of such resolution together with a certificate of the 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.
- (e) Until the formation of the Association and the levying of applicable assessments to cover such expenses, Lot Owners within the subdivision shall be responsible for reimbursing the Declarant for payments made by the Declarant to Progress Energy (or applicable power company) for each Lot Owner's pro rata portion of the following items: (a) power for all street lights, (b) sign maintenance, and (c) any subdivision entrance lights. Until the formation of the Association and the levying of applicable assessments to cover such expenses, Lot Owners within the subdivision are also responsible for reimbursement of their pro rata portion of monies paid by the Declarant for: (a) subdivision fence maintenance, (b) subdivision sign maintenance, and (c) mowing the perimeters of subdivision fencing.

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. Beginning the month immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be (\$10.00 monthly/\$120.00 yearly) per Lot. From and after January 1

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of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased each year as deemed reasonably necessary by the Declarant or Association.

- (d) **Special Assessments for Improvements and Additions.** In addition to the annual assessments authorized by Section (c) of this Article, 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 (a "duly called meeting" under this provision shall require written notice of the proposed assessment and meeting date being sent to every Member at their last known address at least twenty (20) days in advance 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 another Association.
- (f) **Notice and Quorum for any Action Authorized.** Unless otherwise provided herein, the presence at a meeting of Members or of proxies entitled to cast fifty percent (50%) 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 of forty percent (40%), but no such subsequent meeting shall be held more than sixty days (60) following the preceding meeting. If the required forty percent (40%) quorum is not forthcoming at a second called meeting, another meeting may be called subject to the notice requirement of thirty percent (30%), but no such subsequent meeting shall be held more than sixty days (60) 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 Declarant, and / or 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.

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 pass as a personal obligation to his successors in title unless expressly assumed by them and consented to by the Declarant or the Association.

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 herein;
 - (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 integrity of the subdivision up to the amount the Association would have had to pay in assessments in accordance with this Declaration if it were not exempted by this provision.

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

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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.

7.2 Additional Development. Declarant reserves the absolute and discretionary right and privilege to subject any desired properties (contiguous or non-contiguous to the property described on page 1 of this Declaration) to all of the rules, restrictions, rights, and privileges described in this, or any modified, amended, or supplemental version of this Declaration.

ARTICLE VIII

ARCHITECTURAL CONTROL

8.1 No building, wall, fence, 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 it external design and location with the surrounding structures and topography, by the Declarant, or once the Declarant sells 100% of the Lots (or at the Declarant's formation of the Association as outlined in Article 6.1), by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives, appointed by the Declarant or the Association. If the Declarant, the Board of Directors of the Association, or the Architectural Committee (as applicable) fails to approve or disapprove such design and location within thirty days (30) 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

COMMON PROPERTY POOL

9.1 WHEREAS, this subdivision is subject to further restrictions that shall be amended to include for the development and maintenance of a Common Property pool. This pool shall be included under the definition of Common Property pursuant to the terms of this Declaration and will be conveyed by deed to the Association at a later date (determined by the Declarant). Any property, included but not limited to a Lot or Lots, may be used for construction of the pool, and said property shall be chosen at the sole discretion of the Declarant. Once the development of the pool is completed and the pool has been given by deed to the Association, the Association shall be responsible for the maintenance and care of the pool. The Declarant and/or the Association (pursuant to Article IV) shall also be responsible for the assessment of additional Special and / or Annual assessments or charges to Lot Owner's for said development, maintenance, and upkeep of the pool. The initial monthly assessment shall be determined and / or increased as deemed reasonably necessary by the Declarant and / or Association. If additional Phases the subdivision are developed in the future, the Declarant shall have the exclusive right to allow Lot owners in said future Phases to use the pool upon the Lot owners (in these future Phases) payment of all applicable Special and Annual assessments. Declarant is not required to obtain the consent of the Association to allow Lot owners in future Phases of the subdivision to use the pool (this shall be the case even if 100% of previously developed lots in subdivision have been sold).

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ARTICLE X

NOTICE

10.1 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 XI

EFFECT OF VIOLATION OF COVENANTS

11.1 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 XII

DURATION

12.1 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.

12.2 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.

ARTICLE XIII

VARIANCES

13.1 The Declarant or Association (pursuant to Article VI), in its discretion, may allow reasonable variances and / or adjustments to all restrictions contained in this Declaration in order to alleviate practical difficulties and hardship in their enforcement and operation.

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

DECLARANT

**Properties of Southern Wake, LLC
(A North Carolina Limited Liability Company)**

 (SEAL)
Billy E. Anderson, Member-Manager

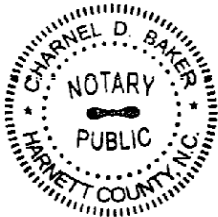
STATE OF NORTH CAROLINA
COUNTY OF HARNETT

I, Charnel D. Baker, a notary public of the aforesaid county, do hereby certify that **Billy E. Anderson**, Member-Manager of PROPERTIES OF SOUTHERN WAKE, LLC (A NORTH CAROLINA LIMITED LIABILITY COMPANY), personally appeared before me this day and acknowledged the execution and sealing of the foregoing instrument as Member-Manager on behalf of and as the act of the company referred to in this acknowledgement.

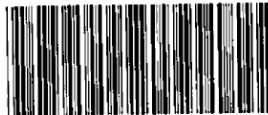
Witness my hand and official seal this the 20th day of November, 2006.

Charnel D. Baker
Notary Public

My Commission Expires: 12/11/2010
(NOTARY SEAL)



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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**

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