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WAKE COUNTY, NC 490  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
05/24/2004 AT 13:35:36

BOOK:010834 PAGE:01259 - 01279

~~WAKE COUNTY, NC 388  
LAURA M RIDDICK  
REGISTER OF DEEDS  
PRESENTED & RECORDED ON  
04/29/2004 AT 12:45:49~~

BOOK:010792 PAGE:01582 - 01601

Drawn by and Hold for: Richard O. Gamble, Atty., Box 66

STATE OF NORTH CAROLINA

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF BANKS POINTE SUBDIVISION

COUNTY OF WAKE

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,  
made this 28 day of April, 2004, by R. KIRK LEONE BUILDER, INC., a North  
Carolina corporation, with its principal office located in Wake County, North Carolina,  
hereinafter referred to as "DECLARANT".

WITNESSETH:

WHEREAS, DECLARANT is the owner of certain real property located in Middle  
Creek Township, Wake County, North Carolina, (hereinafter referred to as the  
"PROPERTIES"), which is more particularly described as follows:

Banks Pointe Subdivision, Phase I, Book of Maps 2009, Page 722-724,  
Wake County Registry.

NOW, THEREFORE, DECLARANT hereby declares that all of the  
PROPERTIES described above shall be held, sold and conveyed subject to the  
following easements, restrictions, covenants and conditions, which are for the purpose  
of protecting the value and desirability of, and which shall run with the real property and  
be binding on all parties having any right, title, or interest in the described  
PROPERTIES or any part thereof, their heirs, successors and assigns, and shall inure  
to the benefit of each owner thereof.

THIS INSTRUMENT IS BEING RE-RECORDED TO GET  
ON CHAIN OF TITLE OF 43.25 ACRES.

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Richard O. Gamble  
Richard O. Gamble

## ARTICLE I

### DEFINITIONS

Section 1. "Association" and "HOA" shall be used interchangeably to mean and refer to Banks Pointe Homeowners' Association, Inc., its successors and assigns, a private non-profit corporation formed or to be formed by the DECLARANT primarily as a homeowners association for the lot owners in Banks Pointe Subdivision.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the PROPERTIES, including contract sellers, by excluding those having such interest merely as security for the performance of any obligation.

Section 3. "Properties" shall mean and refer to that certain property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Permanent Open Space" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, which shall include any real property, improvements thereon, and other amenities conveyed to the Association by the Developer, which may also be known as "Common Area."

Section 5. "Lot" shall mean and refer to any of the numbered lots as shown on plats of Banks Pointe recorded in the Wake County Registry.

Section 6. "Declarant" shall be used interchangeably with "Developer", and shall mean and refer to R. KIRK LEONE BUILDER, INC., or its successor in interest if such successor should acquire undeveloped property from the DECLARANT for the purpose of development.

Section 7. "Declaration" shall mean this instrument as it may be from time to time amended or supplemented.

Section 8. "Membership" shall mean and refer to the rights, privileges, benefits, duties, and obligations, which shall inure to the benefit and burden of each member of the Association.

Section 9. "Member" shall mean and refer to every person or entity who has a membership in the Association.

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Section 10. "Mortgagee" shall mean a beneficiary under a mortgage or Deed of Trust.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the Permanent Open Space which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- a. The right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Permanent Open Space.
- b. The rights of the Association to suspend the voting rights and right to use the Permanent Open Space facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for any infractions of its published rules and regulations.
- c. The right of the Association to dedicate or transfer all or part of the Permanent Open Space to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds (2/3) of the members, agreeing to such dedication or transfer, has been recorded, and provided the dedication or transfer is in compliance with applicable zoning regulations.
- d. The right of the Association to impose regulations for the use and enjoyment of the Permanent Open Space and improvements thereon, which regulations may further restrict the use of the permanent open space.

Section 2. DELEGATION OF USE. Any owner may delegate his right of enjoyment to the Permanent Open Space and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. TITLE TO PERMANENT OPEN SPACE: While reserving the right to build and own facilities on the Permanent Open Space and to charge reasonable fees for use of said facilities, the Declarant hereby covenants for itself, its successors or assigns, that it will convey to the Association fee simple title to the Permanent Open

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Space specifically described in the recorded plat. Such conveyance shall be free and clear of all encumbrances and liens, but shall be subject to those covenants and to all easements of record for utilities and for access. It is expressly provided that the Declarant, at its sole discretion, may exchange with the Association for fair value, any portion of the Permanent Open Space heretofore conveyed to the Association for additional contiguous property to be added to the Permanent Open Space. Upon such exchange and conveyance the area conveyed to the Declarant shall cease to be Permanent Open Space and shall cease to be subject to the provisions of this Declaration relating to the Permanent Open Space. Any area acquired by the Association pursuant to the foregoing language shall become Permanent Open Space and be subject to the provisions of these covenants relating to Permanent Open Space. Any conveyance of Permanent Open Space must be approved by Wake County or its successor.

Section 4. PARKING RIGHTS. The Association may regulate the parking of boats, trailers and other such items on the Permanent Open Space. No boats or trailers shall be parked within the right of way of any public street in or adjacent to the property described herein.

**ARTICLE II-A**

Section 1. Permanent Open Space shall mean all real property dedicated to the common use and enjoyment of the owners, including, but not limited to, the real property conveyed to the Association. Permanent Open Space shall be maintained for forestry, agriculture or active and passive recreational uses. Permanent Open Space shall be designated on plats for Banks Pointe recorded or to be recorded in the Office of the Wake County Register of Deeds.

Section 2. Permanent Open Space shall be conveyed to the Homeowners' Association at such time as the Homeowners' Association has been legally established.

Section 3. Homeowners' Association shall be responsible for the maintenance of Permanent Open Space at such time as the Homeowners' Association takes ownership. The developer shall be responsible for maintenance of the Permanent Open Space until Homeowners' Association has taken ownership.

**ARTICLE III**

**EASEMENTS**

Section 1. Easements are reserved and may be granted by DECLARANT or the Association as necessary in the Common Areas for installation and maintenance of underground utilities and drainage facilities.

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Section 2. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the lots and common area in the performance of their duties.

Section 3. In case of an emergency originating in or threatening any lot or the common areas and facilities, regardless of whether any Lot Owner is present at the time of such emergency, the Board of Directors, or any other person authorized by it, shall have the right to enter upon any lot for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the Lot Owners, and such right or entry shall be immediate.

Section 4. The DECLARANT reserves unto itself, its successors and assigns, a perpetual alienable and releasable easement and right on, over, and under the ground with men and equipment to erect, maintain, inspect, repair and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public conveniences or utilities on, in, or over each lot and such other areas as are shown on the plat of the PROPERTIES recorded or to be recorded in the Office of the Register of Deeds of Wake County; provided further, that the DECLARANT may cut drainways for surface water whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Such rights may be exercised by any licensee of the DECLARANT, but this reservation shall not be considered an obligation of the DECLARANT to provide or maintain any such utility or service.

Section 5. All easements and rights described herein are easements appurtenant and running with the land, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration.

#### **ARTICLE IV MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

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

- a. CLASS "A". Class A members shall be all Owners with the exception of the DECLARANT and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.
- b. CLASS "B". Class B member(s) shall be the DECLARANT or Developer, and DECLARANT or Developer shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
  - (1) when total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership, or
  - (2) on December 31, 2008.

**ARTICLE V**

**MANAGEMENT AND CONTROL**

Management of the affairs of the Association shall be the right and responsibility of its Board of Directors in accordance with this Declaration and the By-Laws. PROVIDED HOWEVER, that all of the powers and duties of the Board of Directors may be exercised by the DECLARANT until such time as 90% of the lots in Banks Pointe Subdivision have been sold and conveyed by the DECLARANT to purchasers or until December 31, 2008, whichever occurs first, no later than 120 days after the happening of the earlier of the above events.

**ARTICLE VI**

**COVENANTS FOR ASSESSMENTS**

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT. The DECLARANT, for each lot owned within the PROPERTIES, hereby covenants, and each Owner, of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association:

- a. Annual assessments or charges, and

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- b. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided;
- c. Insurance assessments; and
- d. To the appropriate governing taxing authority, a pro rata share of ad valorem taxes levied against the Common Area or permanent open space, if any.

The annual, special, and insurance assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fee was due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. PURPOSE OF ASSESSMENTS.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in Banks Pointe Subdivision and for the improvement and maintenance of all easements, utilities, and the Common Area, specifically including, but not limited to, the maintenance and repair of all storm water drainage facilities and easements as herein provided, maintenance and repair of all other utility facilities and utility equipment not otherwise maintained and repaired by municipal, public, or private utility authorities, maintenance and operation of all lighting facilities, maintenance and repair of any amenities located upon the common areas, maintenance of the entrance area and subdivision sign, the costs of enforcing this Declaration, and the payment of all other expenses associated with the common areas, including the prompt and full payment of all ad valorem property taxes and insurance for said common area(s), and, in addition, doing any other things necessary or desirable in the opinion of the Association to keep the property in neat and good order, and to provide for the health, welfare, and safety of the Owners and residents of Banks Pointe Subdivision.

**Section 3. MAXIMUM ANNUAL ASSESSMENT.** Upon the sale and closing of each lot upon which there shall be a house, the Purchaser shall pay the Association \$100.00 as a capitalization fee.

- a. The maximum annual assessment for the calendar year beginning January, 2005 and for successive calendar years thereafter, shall be established by the Board and may be increased by the Board without approval by the membership of the Association by an amount per year not

to exceed the greater of (i) ten percent (10%) of the amount of the maximum annual assessment of the immediately preceding calendar year or (ii) the percentage increase reflected in the Consumer Price Index as established by the U.S. Bureau of Labor Statistics, Washington, D.C. or such other index as may be the successor to said Consumer Price Index, for the twelve-month period ending the immediately preceding July 1.

- b. The maximum annual assessment for the calendar year beginning January, 2005 and for each successive calendar year thereafter, may be increased without limit by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. The provisions of this subsection shall not apply to nor be a limitation upon any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws or any applicable laws.

**Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. INSURANCE.** The Board of Directors, on behalf of the Association, as a common expense, shall at all times keep the property of the Association, if any, insured against loss or damage by fire or other hazards and other such risks, including, but not limited to, directors' liability and public liability insurance, upon such terms and for such amounts as may be reasonably necessary from time to time to protect the PROPERTIES and Common Area, which insurance shall be payable in case of loss to the Association for all members. The Association shall have the sole authority to deal with the insurer in the settlement of claims. Such insurance shall be obtained without prejudice to the right of each member to insure his personal property for his own benefit at his own expense. In no event shall the insurance coverage obtained by the Association be brought into contribution with insurance purchased by members or their mortgagees.

**Section 6. INSURANCE ASSESSMENTS.** All insurance policy premiums on the Common Areas for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a

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common expense, (herein called "Insurance Assessment") which shall be in addition to the amounts provided for under Section 3 above, an amount sufficient to pay the annual cost of all such insurance premiums.

Section 7. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty (60%) percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 8. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all lots or units and shall be collected on a quarterly basis.

Section 9. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENT AND DUE DATES. The annual assessments provided for herein shall commence as to all lots on the first day following the day of conveyance of the lot to an Owner, except that annual assessments shall not commence for any lot until a certificate of occupancy has been issued for such lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata quarterly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified house have been paid.

Section 10. EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum legal rate, together with all costs and reasonable attorney's fees associated with their collection, and all such sums shall become a lien upon the Owner's lot. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the lot. No owner may pay the same, or foreclose the lien against the lot. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his home.

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Section 11. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE VII

### FIDELITY BONDS

Section 1. GENERAL. The Association shall maintain a blanket fidelity bond for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all of the responsibility for the handling of its funds to a management agent, such fidelity bond shall be maintained by such management agent for its officers, employees and agents handling or responsible for funds of or administered on behalf of the Association.

Section 2. AMOUNT OF COVERAGE. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than or at least equal to three months' aggregate assessments on all units plus reserve funds.

Section 3. OTHER REQUIREMENTS. Fidelity bonds required herein must meet the following requirements:

- a. Fidelity bonds shall name the Association as an obligee.
- b. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions.
- c. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense.

- d. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association, to any insurance trustee and each Eligible Mortgage Holder.

## **ARTICLE VIII**

### **ARCHITECTURAL CONTROL**

Section 1. **BUILDING AND SITE IMPROVEMENTS.** Before any lot is purchased, plans and colors of paint or finish shall be approved as hereinafter described. No dwelling or other structure shall be commenced, erected or maintained upon any lot in the **PROPERTIES**, nor shall any exterior addition to or change in or alteration therein (including color of paint or finish) be made until the plans and specifications showing the nature, kind, shape, heights, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the **DECLARANT**, or its designee, or, after the sale of all lots by the **DECLARANT**, by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event the **DECLARANT**, or its designee, or, if applicable, 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, provided that such addition, change, or alteration is in general conformity with the overall plan, design, and appearance of the subdivision in general. Refusal of approval of any such plans, location or specification may be based upon any ground, including purely aesthetic and environmental considerations, that in the sole and uncontrolled discretion of the **DECLARANT** or Architectural Control Committee shall be deemed sufficient. One copy of all plans and related data shall be furnished to the **DECLARANT** or Architectural Control Committee, as the case may be, for its records. Neither the **DECLARANT** nor the Architectural Control Committee shall be responsible for any structural or other defects in plans and specifications submitted to it or any structure erected according to such plans and specifications.

Section 2. **DEVELOPER'S RIGHTS.** All duties and responsibilities conferred upon the Board or the Architectural Control Committee by this Declaration or the Bylaws of the Association shall be exercised and performed by the **DECLARANT** or its designee, so long as **DECLARANT** shall own any lot in the Properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

Section 3. **MAINTENANCE BY ASSOCIATION.** The Association, at its expense, shall be responsible for maintaining, repairing, and replacing the planting in

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the easement areas, the storm water drainage system, including all drainage lines, pipes and ditches, and storm water retention ponds which are located on the PROPERTIES, except those constructed by individual lot owners and located on individual lots. The Association shall have the right to enter upon any lot at reasonable times for the purpose of maintaining, repairing and replacing all utility and drainage lines and pipes which might be located on such lot; and each Owner hereby grants permission to the Association to enter upon his or her lot for such purposes.

In the event that such need for maintenance, repair or replacement (other than such being caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies) is caused through the willful or negligent act of the Owner, his family, guests, or invitee, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

The Association shall maintain all common areas, including all roadways, plantings, shrubbery, boardwalks, and walkways located thereon, and lighting fixtures, and shall pay all costs of operation thereof including premiums associated with general liability insurance insuring the Association from liability arising from the ownership and operation thereof.

## ARTICLE IX

### USE RESTRICTIONS

Section 1. LAND USE AND BUILDING TYPE. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories in height.

Section 2. DWELLING QUALITY AND SIZE. It being the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded for the minimum permitted dwelling size. All homes must have a minimum of 2,000 square feet of heated floor space for one story homes or 2,400 square feet of heated floor space for one and one-half to two story homes. Minor violations of 10% or less in square footage may be waived by DECLARANT or the Association.

No mobile homes, manufactured homes or modular homes shall be erected, altered, placed or permitted to remain on any lot. No dwelling shall have or contain a metal roof, metal siding or exposed cinder block; provided, painted or wood-grain

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aluminum or vinyl siding, reasonably maintained, shall be permitted, Such metal or block materials shall be deemed exposed even though the same is painted completely. All materials used in the exterior construction of a dwelling shall be new building materials.

The DECLARANT shall have the right to approve the building plans for any residences constructed on the subdivision lots prior to construction.

**Section 3. BUILDING LOCATION.** No building shall be located on any lot nearer than forty (40) feet to the front lot line, or nearer than twenty-five (25) feet to any side street line.

No building shall be located nearer than ten (10) feet to any interior lot line, except that no side yard shall be required for a garage or other permitted accessory building located forty (40) feet or more from the minimum building setback line.

For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

**Section 4. LOT USES.** No lot shall be used except for single-family residential purposes. No lot shall be used for business, manufacturing or commercial purposes. No retail or wholesale businesses are permitted, which shall include, but not be limited to, antique shops, gift shops, craft shops, beauty shops or auto repair shops. Any and all lots or any improvements constructed thereon located within the subdivision shall not be used for the following purposes which are strictly prohibited:

- (a) Group Homes for any ages;
- (b) Half-way house;
- (c) Boarding home for children and/or adults.

**Section 5. NOXIOUS OR OFFENSIVE ACTIVITY.** No noxious, offensive or environmentally unsound activity, conditions or trade shall be carried on or permitted upon the property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the community. There shall not be maintained any plants or animals, or device or thing of any sort whose normal activity or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the community by the Owners thereof, except as otherwise specifically permitted herein.

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No signs or billboards shall be placed, erected or maintained on any lot, except one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by the Developer to advertise the property during the construction and sales period.

Section 6. AUTOMOBILES. No automobiles or motor vehicle may be dismantled on said property. No mechanically defective automobile or currently unlicensed automobile shall be placed or allowed to remain on said property over ten (10) days. No junked cars shall be placed or allowed to remain on the property.

Section 7. OBSTRUCTION, ETC. There shall be no obstruction of the Common Area, nor shall anything be kept, stored, altered, constructed or planted in or on the Common Area, or removed therefrom, without the prior consent of DECLARANT or the Association. Provided, however, DECLARANT and the Association shall have the right to install, place, repair, replace and maintain signs in the Common Area and to install, maintain, repair and replace in the Common Area such materials, equipment and other apparatus as may be necessary to enable the Association to carry out its powers and duties under this Declaration.

Section 8. RULES OF THE ASSOCIATION. All Owners and occupants of Lots shall abide by all rules and regulations adopted by the Association from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the DECLARANT for all damages and costs including attorney's fees.

Section 9. OUTBUILDINGS. No outbuildings or storage building shall be erected, placed or allowed to remain on any lot except those which are incidental to residential use, minimum of 12' x 12' in size or maximum of 24' x 36' and are constructed of the same or substantially the same identical materials as the residential dwelling on the lot. Said outbuilding must be architecturally compatible with the residential dwelling on the lot, be located no closer to the front boundary line of the lot than the rear wall of the single-family residence located on the lot and no closer to any side boundary line of a lot than the applicable building setback requirements and which have otherwise been approved by the Architectural Control Committee.

Section 10. PETS. Dogs, cats and other household pets shall be permitted on all lots, provided (a) not more than five (5) pets can be kept and maintained upon any lot, and (b) said pets must be kept properly supervised and under control so as to not cause or create a nuisance or menace to others, and (c) said pets must be kept on the lot of their owner and must not be allowed to go upon the property of others or to run free and unrestricted upon the streets of the subdivision property. No livestock or poultry of any kind shall be raised, bred or kept on any lot.

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Section 11. TEMPORARY STRUCTURES. No structure of a temporary nature, trailer, camper, van, basement, tent or shack shall be erected, placed, used or permitted on the property for residential purposes. Trailers, campers, vans, boats and RV's must be parked in back yards.

Section 12. DRIVEWAYS. Any driveway constructed on any lot shall be constructed of concrete (cement).

Section 13. LANDSCAPING. Except for the single-family residence, driveways, sidewalks and other improvements on each lot, the surface of each lot shall be undisturbed areas left in their natural state or grass or other live foliage or area covered with pine straw and/or other ground cover approved by the Architectural Control Committee. Ground cover and other landscaping shall be neatly maintained at all times by each lot owner. If any lot owner fails or refuses to neatly maintain his or her lawn and/or landscaping, the homeowner's association may notify the lot owner in writing, and if the lot owner does not correct such deficiency with thirty (30) days after the date of the notice, the association may employ an outside contractor to correct such deficiency, and the lot owner shall be liable to the association for the costs, including court costs and attorney's fees, which may be enforced by the association filing a lien and a civil action for such costs.

Section 14. FENCES AND WALLS. No fence or wall shall be constructed, placed or allowed to remain on any lot until the Owner thereof has obtained written approval for such fence or wall by the DECLARANT or Architectural disapproval by DECLARANT. All fences or walls on lots shall be professionally installed and maintained at all times in a structurally sound and attractive manner and in good state of repair.

Section 15. GARBAGE, REFUSE AND DEBRIS. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, unhealthy or unkept condition of buildings on grounds on the property which shall tend to substantially decrease the beauty or usability of the lot or adjoining lots. All lots shall be kept clean and free of garbage, junk, trash, debris and any substance which might contribute to a health hazard, or breeding snakes, rats, insects or other pest and vermin. Each lot owner shall provide receptacles for garbage or similar facilities in accordance with reasonable standards.

No fires for burning of trash, leaves, clippings or other debris or refuse shall be permitted on any part of said land without the required permits issued by the appropriate authority.

Section 16. ANTENNAE AND ROOF STRUCTURES. No exterior antennae, earth satellite station, microwave dish or other similar improvements may be

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constructed, placed, maintained or allowed to remain on any lot or on any improvement located on any lot unless the same is no greater than twenty-four (24) inches in diameter and is screened by material approved by the Architectural Control Committee so that it cannot be seen from the street on which the single family residence situated on the Lot fronts or from any adjacent.

Section 17. **GAS METERS AND GAS TANKS.** No gas meters or gas tanks shall be set in the front or on the side of a residence on a lot unless such meter or tank is an underground type screened in a manner approved by the Architectural Control Committee.

Section 18. **MAILBOXES.** To insure uniformity, no mailbox or newspaper box or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected other than that mailbox with a newspaper box attached and post provided by the Homeowner or Builder. Each mailbox shall provide house numbers. If at any future time the mailbox or post becomes damaged or has to be replaced for some other reason, it will be replaced with a mailbox and post of the same size and material at the Owner's expense. Mailboxes and posts must be approved by the Architectural Committee.

Section 19. **STORAGE RECEPTACLES.** No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only within the main dwelling house, within any outbuilding or buried underground or screened so as not to be visible from the public street.

Section 20. **UNDERGROUND CABLES, EXPENSES.** The Developer reserves the right to subject the real property in this subdivision to a contract with Progress Energy for the installation of underground electric cables and the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy by each residential customer.

Section 21. **SIGHT DISTANCES AT INTERSECTIONS.** No hedge or shrub planting which obstructs sight lines at more than three (3) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines, and a line connecting them at points twenty (20) feet from the intersection of the street lines or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitation shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within the distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

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Section 22. **NOTICE.** Any notice required to be sent to an owner under the provisions of this Declaration shall be deemed to have been properly sent and notice hereby given, when mailed, postage prepaid to the last known address of the person who appears as owner upon the Wake County Tax Record.

Section 23. **DURATION.** 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 thirty (30) 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 is signed whereby these properties shall be released from any of said covenants by a two-thirds (2/3) majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

## **ARTICLE X**

### **GENERAL PROVISIONS**

Section 1. **ENFORCEMENT.** The Association, any lot owner, or the Developer, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any lot owner or the Developer to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. **SEVERABILITY.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no manner affect any other provisions which shall remain in full force and effect.

Section 3. **LOTS SUBJECT TO DECLARATION.** All present and future owners, tenants and occupants of Lots and their guests or invitees, shall be subject to, and shall comply with the provisions of the Declaration, and as the Declaration may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease (approved by the Association or Developer) or the entering into occupancy of any lot shall constitute an agreement that the provisions of the Declaration are accepted and ratified by such owner, tenant or occupant. The covenants and restrictions of this Declaration shall inure to the benefit of and be enforceable by the Association, or the Owner of any lot, their respective legal representatives, heirs, successors and assigns; and shall run with and bind the land and shall bind any person having at any time any interest or estate in any lot as though such provisions were made a part of each and every deed of conveyance or lease.

Section 4. **AMENDMENT OF DECLARATION.** Except as herein provided, the covenants and restrictions of this Declaration may be amended by an instrument

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signed by two-thirds (2/3) of each class of members (which votes may be cast in person or by proxy) duly recorded in the Wake County Register of Deeds. DECLARANT'S power to amend this Declaration as provided in Section 5 of this Article shall not require the consent of the Class A members and shall be valid when signed by the DECLARANT and recorded in the Wake County Register of Deeds.

Section 5. AMENDMENT BY THE DECLARATION. The following amendments may be affected by the DECLARANT, or the Board, as the case may be, without consent of the members:

- a. Prior to the sale of the first lot, this Declaration may be amended by the DECLARANT.
- b. The DECLARANT or the Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction.
- c. The DECLARANT, so long as it shall retain control of the Association, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property, or to qualify the property or any lots and improvements thereon for mortgage or improvement loans made, insured or guaranteed by a governmental agency, or to comply with the requirements of law or regulations or any corporation or agency belonging to, sponsored by, or under the substantial control of the United States Government or the State of North Carolina regarding purchase or sale of such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration, U.S. Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such corporation or agency shall be sufficient evidence of the approval of such corporation or agency, provided that the changes made substantially conform to such request or suggestion.
- d. The DECLARANT, for so long as it shall retain control of the Association, and thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any owner,


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to qualify the Association or the Property, or any portion thereof, for tax-exempt status.

- e. The DECLARANT, for so long as it has control of the Board, may amend this Declaration to include any platting change of the Property as permitted herein.

IN WITNESS WHEREOF, DECLARANT has hereunto caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

R. KIRK LEONE BUILDER, INC.

By:   
 R. Kirk Leone, President

NORTH CAROLINA

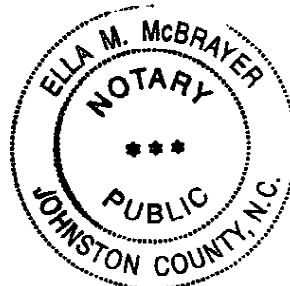
WAKE COUNTY

I, the undersigned, a Notary Public for said county and state, do hereby certify that R. Kirk Leone, as President of R. Kirk Leone Builder, Inc. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial stamp or seal this the 28 day of April, 2004.

  
 Notary Public

My commission expires: 7-27-08



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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 \_\_\_\_\_

*Ellen M. McBuyer*

\_\_\_\_\_ 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: *Frank C. Boyer*  
Assistant/Deputy Register of Deeds

This Customer Group  
\_\_\_\_\_ # of Time Stamps Needed

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

North Carolina - Wake County

The foregoing certificate \_\_\_ of \_\_\_\_\_  
\_\_\_\_\_  
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Laura M. Riddick, Register of Deeds

By: George W. Parson  
Assistant/Deputy Register of Deeds

This Customer Group  
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