

DECLARATION

BOOK 1992 PAGE 250

OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS

FOR

CREEK WOOD SUBDIVISION

9881-42-4162_n

THIS DECLARATION, made on the date hereinafter set forth by S & H Development, LLC, a North Carolina limited liability corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Orange County, State of North Carolina, commonly referred to as "Creek Wood" which is more particularly described on Exhibit A attached hereto; and,

WHEREAS, it is the desire and intention of Declarant to impose on that Property described in Exhibit A attached hereto restrictions, conditions, easements, covenants and agreements under a general plan or scheme of improvement for the benefit of all Property herein described and the future owners thereof; and,

WHEREAS, the Property shall be comprised of single family residential lots;

NOW, THEREFORE, Declarant hereby declares that all of the Property described on Exhibit A 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 title to, the Property and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

Section 1.1. "Association" shall mean and refer to Creek Wood, Orange County, Homeowners Association, Inc., a North Carolina non-profit corporation, its successors, and assigns.

Section 1.2. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

68.02

Section 1.3. "Common Elements" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of the Owners or Members of the Association. The Common Elements to be owned by the Association at the time of the conveyance of the first Lot is all of that Property other than the Lots.

Section 1.4. "Common Expenses" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses for planting and maintenance of the vegetation in the Common Area, easement areas reserved for such purpose and any amenities as provided in this Declaration;
- (c) Expenses of administration, maintenance, repair, or replacement of the Common Elements;
- (d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;
- (e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;
- (f) Ad valorem taxes and public assessment charges lawfully levied against Common Elements;
- (g) Expenses for the maintenance of pedestrian easements shown on the recorded plat of the Property;
- (h) Any other expenses determined by the Board or approved by the Members to be common expenses of the Association.

Section 1.5. "Declarant" shall mean and refer to S & H Development, LLC, its successors, and assigns, to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose.

Section 1.6. "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision map of the Property, as such map or maps may be from time to time amended or modified, for detached single-family residential use, designated for residential use and for separate ownership and occupancy.

Section 1.7. "Member" shall mean and refer to every person or entity who holds membership in the Association by reason of being an Owner or Lot Owner defined below.

Section 1.8. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.9. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 1.10. "Property" shall mean and refer to that certain real property hereinbefore described on Exhibit "A", attached hereto, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II PROPERTY RIGHTS

Section 2.1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements together with and including the right of pedestrian access, ingress, and egress, on and over the walkways of the Common Elements, all of 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 suspend voting rights, to suspend the right to use the recreational or other Common Element facilities, and to impose fines as permitted by N.C.G.S. § 47F-3-107 and § 47F-3-107.1;

(b) the right of the Association to dedicate, sell, lease, or transfer all or any part of the Common Elements, or any interest therein, to any public agency, authority, or utility, or to any other person

for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication, sale, lease, or transfer shall be effective unless it has been approved by at least eighty percent (80%) voting interests of each class of Members and an instrument of dedication, sale, lease, or transfer properly executed by the Association has been recorded. On such instrument the Secretary of the Association shall certify, that at least eighty percent (80%) voting interests of each class of Members have approved the dedication, sale, lease, or transfer and that certificate may be relied upon by any third party without inquiry and shall be conclusive as to any grantee, its successors, or assigns; provided, however, conveyances for general utility purposes, as specified herein, may be made by the Board of Directors of the Association without consent of the Members;

(c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and facilities, and in aid thereof, to mortgage the Common Elements, and the rights of such mortgagee in the Common Elements shall be subordinate to the rights of the Members hereunder;

(d) the right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Elements and improvements thereon, which rules and regulations may further restrict the use of the Common Elements.

Section 2.2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

Section 2.3. Title to the Common Elements. The Declarant hereby covenants for itself, its heirs, and assigns, that it will convey fee simple title to the Common Elements located within the Property to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except for encumbrances of utility service, access, storm drainage, and other similar service or utility easements as well as pedestrian, non-motorized and motorized wheelchair easements.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Every record 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 3.2. The Association shall have two classes of voting membership:

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; however, the vote for such Lot shall be exercised as they among themselves determine, or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B Member shall be the Declarant and shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership with one vote for each Lot owned on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal or first exceeds the total votes outstanding in Class B membership, however, no earlier than two (2) years following the date of conveyance of the first Lot by Declarant, or

(b) five (5) years from the date of conveyance of the first Lot by Declarant.

Section 3.3. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association and according to the provisions of Article II, Section 2.1(b) herein.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore,

whether or not it shall be so expressed in such deed, is deemed to covenant, and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, (2) special assessments for extraordinary maintenance and capital improvements, (3) special assessments for purchase, construction, or reconstruction of improvements; and (4) to the appropriate governmental taxing authority, a pro rata share of assessments for public improvement to the Common Elements and public roads if the Association shall default in payment thereof. The annual and special assessments together with interest, costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

The Association shall also have the authority, through the Board of Directors to establish, fix, and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration which breach shall require the expenditure of time and money or both, by the Association for repair or remedy, including court costs and reasonable attorneys fees if necessary for the enforcement of the provisions herein.

Each Owner covenants for himself, his heirs, successors, and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof become a lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid.

Section 4.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses as defined in Article I, Section 4, including, but not limited to, the cost of repairs, replacements, and additions, the cost of labor, equipment, materials, management, and

supervision, the payment of taxes and public assessments assessed against the Common Elements, the procurement and maintenance of insurance in accordance with the Bylaws or as deemed appropriate by the Board, the employment of counsel, accountants, and other professionals for the Association when necessary, and such other needs as may arise.

Section 4.3. Amount of Assessment.

(a) Initial Maximum Assessment. To and including December 31, 1999, the maximum monthly assessment for an individual Lot shall not exceed \$100.00.

(b) Increase by Association. From and after January 1, 2000, the monthly assessment imposed by this Association may be increased by the Board of Directors, without a vote of the membership, by a percentage which may not exceed the greater of ten (10%) percent or the percentage increase reflected in the U. S. City Average, Consumer Price Index - United States and selected areas for urban wage earners, and clerical workers, all items most recent index and Percentage changes from selected dates, (published by the U.S. Bureau of Labor Statistics, United States Department of Labor, Washington, D.C.), or such other Index as may succeed the Consumer Price Index, for that twelve-month period ending December 31, 1999.

(c) Increase by Members. From and after January 1, 2000, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative vote of seventy-five percent (75%) voting interests of each class of Members who are voting in person or by proxy, at a meeting duly called for such purpose.

(d) Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of ten (10%) percent or the sums derived by application of the Consumer Price Index formula provided in Subsection (b) without the consent of members required by Subsection (c) of this Section 4.

(e) Board Authority. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(f) Declarant Expenses. Until such time as Declarant shall no longer control the Board, Declarant shall pay any Association expenses not otherwise covered by the assessment hereunder.

Section 4.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair, or replacement of a capital improvement upon the Common Elements, any extraordinary maintenance, including vegetation, fixtures, and personal property related thereto and any property for which the Association is responsible, provided that any such assessment shall have the assent of seventy-five percent (75%) voting interests of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4.5. Replacement Reserve. Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements which the Association may be obligated to maintain.

Section 4.6. 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 this Article shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 4.7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis or other periodic basis established by the Board.

Section 4.8. Date of Commencement of Annual Assessments; Due Dates; Initial Working Capital.

The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Elements to the Association or January 1, 1999, whichever shall later occur. 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. The Association shall, upon demand, and for a reasonable charge if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

In addition to the regular assessments to be charged and paid hereunder, each Lot Owner shall, at the time of the initial sale of each Lot by Declarant to that Lot Owner, pay to the Association a sum equal to one (1) months assessment on that Lot as additional working capital of the Association. These amounts need not be segregated but may be commingled with regular assessment funds. This working capital amount shall be paid by the Lot Owner notwithstanding the fact that Declarant may have made prior regular assessment payments to the Association on the Lot being sold pursuant to the provisions of the first sentence hereunder.

Section 4.9. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and shall bear interest from the due date at the highest rate then permitted by North Carolina law not to exceed ten (10%) percent. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges, and reasonable attorneys fees, 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 Elements or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Offices of the Clerk of Superior Court in Orange County in the manner provided therefore by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of record owner, the amount due, and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any, installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorneys fees, advances to pay taxes, and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

Section 4.10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax 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, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.11. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the Property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina may be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 4.12. Responsibility for Maintenance of the Grounds of Each Lot (Excluding Improvements Thereon). It shall be the responsibility of each Lot Owner to maintain his or its Lot grounds in a clean cut, well kept and neat manner.

Section 4.13. Exterior Improvement Maintenance Responsibility. Each Lot Owner, at his sole cost and expense, shall provide exterior upkeep and maintenance of the improvements on the Lot. Such improvements shall always be maintained in a neat and attractive manner and in keeping with the quality or standard of maintenance of other Lot Owners in the Property. Such maintenance and upkeep shall include, and without limitation, exterior building surface care such as painting, staining, cleaning, repair, and replacement of roofs, shingles or siding, repair, and replacement of gutters, downspouts, moldings, doors, screens, and glass surfaces, and shall further include repair and maintenance of fences, screens, walks, driveways, or exterior lighting and lighting fixtures.

In the event an Owner fails to keep and maintain the improvements on his Lot in a neat and attractive manner, then the Association may maintain, repair, replace, or generally keep up, including painting, staining, and other repairs to the improvements on the Lot if such has been approved in advance by a vote of seventy-five percent (75%) of the voting interests of each class of Members present and voting in person or by proxy at a meeting of Members duly called for the purpose of making this determination or at any annual meeting at which this matter is announced as an agenda item.

In the event the Association must do any maintenance, repair, replacement, or upkeep on any Lot, each Lot Owner hereby gives to the Association, and the same is hereby reserved unto the Association, its agents, servants, or independent contractors, the right and easement for unobstructed access in, over, and on each Lot at all reasonable times to perform such repair or replacement by the Association and to charge the Lot Owner the costs thereof as allowed by this Declaration.

ARTICLE V
ARCHITECTURAL CONTROL

No site preparation (including, but not limited to, grading, elevation work, landscaping, sloping, or tree work) or initial construction, erection, or installation of any improvements, including, but not limited to, buildings, driveways, fences, signs, walls, retaining walls, screens, landscaping, plantings, play areas, and play equipment or other equipment, furniture, or structures shall be commenced, erected, placed, altered, removed, repaired, or maintained upon the Property or any Lot, nor shall any addition to, change, or alteration therein be made by any Owner, other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, exterior colors, siding, location, and elevations of the proposed improvements or landscaping shall have been submitted to, and approved in writing by, the Architectural Committee composed of three (3) people selected by the Declarant. In the event said Architectural Committee fails to approve or disapprove such submission 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 plans and specifications that contain inaccurate or missing data or information when submitted shall not be deemed to be approved notwithstanding the foregoing.

Upon request the Architectural Committee shall provide any Owner with a letter stating that any such work plans and specifications have been approved and the same may be relied upon by third parties.

Refusal of approval of such plans, location, or specifications may be based upon any grounds, including purely aesthetic and environmental, that in the sole discretion of the Architectural Committee, it shall deem sufficient. The Architectural Committee shall not be responsible for any defects in the plans and specifications submitted to it or in any structure erected according to such plans and specifications.

The Architectural Committee or their appointed agents, shall have the right, at its election, but shall not be required, to enter upon any of the Property during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in

conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

The Architectural Committee shall have power to, and may allow variances of, and adjustments of, the restrictions on use and building restrictions established herein in order to overcome practical difficulties and prevent unnecessary hardships in application of the restrictions contained herein; provided, however that variances or adjustments are done in conformity to the intent and purposes hereof; and, provided also, that in every instance such variance or adjustment will not be materially detrimental or injurious to the Property or other Lots in the immediate neighborhood. Variances and adjustments may be of the height, size, setback requirements and materials used but shall not be limited thereto.

In the event of the grant of any variance in the building or use restrictions, the Architectural Committee shall execute a document attesting to such grant and the specific nature thereof in form suitable for recording, so that the Lot Owner may record same in the Registry of the County in which the Property is located. Such document shall be prepared at the cost of the Lot Owner and shall be binding upon the Association and may be relied upon by third parties.

ARTICLE VI
USE RESTRICTIONS

Section 6.1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 6.2. Use of Property. Except as provided herein, no Lot shall be used except for single-family residential purposes and for purposes incidental or accessory thereto. Any home occupation use of any Lot is subject to the Orange County zoning regulations and can occur only following the issuance by Orange County of a home occupation permit. If and only if permitted by the Orange County zoning ordinance, and as provided in the zoning ordinance, Declarant may use a Lot for the purpose of establishing a temporary model home/sales

office. As of the date hereof, such model home/sales office use does not comply with said zoning ordinance and no permit for such use has been granted.

Section 6.3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be, or may become, a nuisance or annoyance to the neighborhood.

Section 6.4. Animals. No animals, birds, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats, pet birds, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are controlled in accordance with applicable governmental ordinances and are not a nuisance to other Owners. All pets shall be kept on a leash when not on the Lot of the owner of the pet; no pets shall be allowed to roam the subdivision.

Section 6.5. Insurance. Nothing shall be kept, and no activity shall be conducted, on the Property which will increase the rate of insurance applicable to residential use for the Property or any Lots. No Owner shall do or keep anything, nor cause or allow anything to be done or kept, on his Lot or on the Common Elements which will result in the cancellation of insurance on any portion of the Property, or Lots therein, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Elements.

Section 6.6. Offensive Behavior. No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof. All laws, orders, rules, regulations, ordinances, or requirements of any governmental agency having jurisdiction thereof, relating to any Lot or any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to comply with such requirements.

Section 6.7. Structural Integrity. Nothing shall be done in, to, or upon any of the Common Elements which will impair the structural integrity of any structure or other improvement or portion of the Common Elements or which would impair or alter the exterior of any structure, improvement or portion thereof, except in the manner provided in this Declaration.

Section 6.8. Business. No business, trade, occupation, or profession of any kind shall be conducted, maintained, or permitted on any Lot unless it meets the following requirements:

- A. A limit of one full-time equivalent employee who is not a member of the family residing on the Lot. "Full time equivalent employee" refers to one or more employees who work a total of no more than 40 combined hours on-site per week.
- B. The use of the Lot for the home occupation shall be clearly incidental and subordinate to the use of the Lot for residential purposes, and not more than 35% nor more than 750 square feet of the floor area of the dwelling unit and any accessory buildings combined shall used in the conduct of the home occupation, provided that the floor area used for the home occupation is the area dedicated to or primarily used for the home occupation, and does not include areas incidentally used for the home occupation.
- C. No external evidence of the conduct of the home occupation, including commercial signs, shall be visible from the street or from other Lots.
- D. Traffic and Parking
 - (1) The home occupation shall not generate traffic volumes or parking area needs greater than would normally be expected in the residential neighborhood.
 - (2) In addition, normally there shall be no more than 3 vehicles parked at a given time on or off-street for non-residential purposes including but not limited to parking by non-resident employees, customers, delivery services, etc., but excluding drop-offs and pick-ups. Home

occupations for arts education or similar educational purposes are exempt from any parking restrictions.

- (3) There shall be no regular pick-up and delivery by vehicles other than those of a size normally used for household deliveries.
- E. No equipment or process shall be employed that will cause noise, vibration, odor, glare, or electrical or communication interference detectable to the normal senses off the Lot.
- F. The on-premises sale and delivery of goods which are not the products of the home occupation are prohibited, except that the sale of goods which are incidental to the service of the home occupation is permitted.
- G. Any home occupation use of any portion of the property is subject to the Orange County zoning regulations and can only occur following the issuance by Orange County of a home occupation permit.
- H. If and only if permitted by the Orange County zoning ordinance, and as provided in the Orange County zoning ordinance, Declarant may use a Lot for the purpose of establishing a temporary model home/sales office. As of the date hereof, such model home/sales office use does not comply with said zoning ordinance and no permit for such use has been granted.

Section 6.9. Signs. No Lot Owner shall display, or cause, or allow to be displayed, to public view any sign, placard, poster, billboard, or identifying name or number upon any Lot, or any portion of the Common Elements, except as allowed by the Association pursuant to its Bylaws or regulations or as required by local governmental authority. Declarant or its respective agents, however, may place "For Sale" signs on any Lots for sale and in suitable places on the Common Elements approved by the Association, and, if allowed under Section 6.2 herein, the Declarant may maintain a model home/sales office and may erect and display such signs thereon as

the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable laws, including the Orange County zoning ordinance.

Notwithstanding the foregoing, Lot owners may place standard "For Sale" signs on their Lot, but no other signs shall be allowed by the Lot owner on their Lot or anywhere else in the Subdivision.

Section 6.10. Alterations. No person shall undertake, cause, or allow any alteration or construction in or upon any portion of the Common Elements except at the direction or with the express written consent of the Association.

Section 6.11. Common Elements Use. The Common Elements shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the Property, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

Section 6.12. Parking. No boats, trailers, campers, motorhomes, trucks, or tractors shall be parked in the front yard of any Lot, on the Common Elements, or on any right-of-way of any roads or streets within the Property or adjoining the Property by any Lot Owner, its family members, tenants, or contract purchasers. Said items may, however, be parked inside an enclosed garage located on a Lot, or in another area on a Lot provided that the items are totally screened from view from the street and adjoining lots. Delivery and maintenance vehicles are permitted. The Board, or at its request, the Architectural Committee, may grant temporary exceptions.

The Owner(s) of any occupied Lot shall provide at least two (2) parking spaces on the Lot (in addition to the garage) for off-street parking. Only licensed and operative vehicles, classified as passenger cars, station wagons, passenger pick-up trucks, passenger vans or passenger sport utility vehicles may be regularly parked in driveways. No vehicle will be permitted to park regularly on any roadway or road shoulder within the Subdivision.

Section 6.13. Trailers, etc. No trailer, tent, mobile home, modular home, or other structure of a temporary character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters or storage units used by the contractor during the construction of a dwelling, garage, or accessory

building, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the Lot after completion of construction.

Section 6.14. Subdividing. No Lot shall be subdivided, or its boundary lines changes except with the prior written consent of the Declarant during the period of Declarant control of the Association and thereafter by the Board. However, the Declarant hereby expressly reserves unto itself, its successors, and assigns, the right without Board approval to replat any two (2) or more Lots shown on the plat of the subdivision of the Property in order to create one or more modified Lots; to recombine one or more Lots to create a larger Lot; to eliminate from this Declaration Lots that are not otherwise buildable or are needed for access to any area of the Property and to take such steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site or access area, said steps to include, but not to be limited to, the creation of or the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of the said replatted Lots.

Section 6.15. Delivery Receptacle. No mail box, paper box, or other receptacle of any kind for use in the delivery of mail, newspapers, magazines, or similar material shall be erected or located on any Lot, except if permitted by the Association and the Architectural Committee.

Section 6.16. Antennae. Exterior radio and television antennae, aerials, and disks and dishes larger than 40" in diameter for reception of commercial broadcasts shall not be permitted on any Lot. Disks and dishes 40" or less in diameter are permitted provided that they are not visible from the street or from an adjoining Lot, and provided that the Architectural Committee has approved the location. No other aerials, disks and dishes (for example, without limitation, amateur short wave) shall be permitted on any Lot without permission of the Architectural Committee as to design, appearance, and location or pursuant to Regulations issued for that purpose.

Section 6.17. Construction Limitations. During construction, all vehicles involved, including those delivering supplies, must enter the Lot on a driveway only as approved by the Board so as not to damage unnecessarily trees, street paving, and curbs. During construction, builders must keep the homes, garages, and

building sites clean and free of debris. All building debris, stumps, trees, etc. must be removed from each Lot by builder as often as necessary to keep the house and Lot attractive. Such debris will not be dumped in any area of the Property.

Section 6.18. Firearms; Hunting Prohibited. There shall be no discharging of firearms, guns or pistols of any kind, caliber, type, or method of propulsion and no hunting of any type shall be carried on or conducted on the Property.

Section 6.19. Drying Areas. Clotheslines or drying yards shall not be located upon any Lot.

Section 6.20. Unsightly Growth. No underbrush or other unsightly growth shall be permitted to grow or remain on any Lot, and no refuse pile or unsightly trash or other objects shall be allowed to be placed or suffered to remain thereon, including vacant parcels.

Section 6.21. Driveways. All portions of any driveway that are visible from any roadway or any other Lot shall be paved prior to occupancy of any dwelling constructed on that Lot. Guidelines for driveway paving and materials shall be established by the Architectural Committee.

Section 6.22. Independent Covenants. Each and every covenant and restriction contained herein shall be considered to be an independent and separate covenant and agreement, and in the event any one or more of said covenants or restrictions shall, for any reason, be held to be invalid, or unenforceable, all remaining covenants and restrictions shall nevertheless remain in full force and effect.

Section 6.23. Additional Restrictions. Declarant may include in any contract or deed hereafter made any additional covenants and restrictions that are not inconsistent with and which do not diminish the covenants and restrictions set forth herein.

ARTICLE VII BUILDING RESTRICTIONS

Section 7.1. Square Footage. Any dwelling erected on a Lot shall contain a minimum enclosed dwelling area of 2500 square feet. In addition thereto, and unless a variance is granted therefore as provided herein, all dwellings shall have an enclosed two car garage. The term "enclosed dwelling area" as used in this

Article VII shall mean the total enclosed area within a dwelling subject to heating and cooling; provided, that the term specifically does not include garages, terraces, open porches, decks, stoops, and like areas regardless of heating or cooling.

Section 7.2. Setback Lines. Any and all dwellings and other permitted improvements erected on a single-family residential Lot (including garages) shall conform to and comply with the minimum building setback requirements shown on a recorded subdivision plat of the Property and as follows:

(a) Front Line and Rear Line. No dwelling, building, garage or other improvements including decks and porches, but excluding eaves and steps (the "Improvements") shall be located on any Lot nearer to a front Lot line than 50 feet or nearer to a rear Lot line than 50 feet. For those Lots which border the Nature Preserve (referenced in Section 8.6. below), no Improvements shall be located nearer the rear Lot line than sixty (60) feet, being a total of fifty (50) feet for the Buffer Zone referenced in Section 8.6. plus ten (10) feet for the utility easement area referenced in Section 8.3. below. If for any reason Section 8.6. is rendered inapplicable, then the minimum rear Lot line setback requirement of 50 feet shall apply to those Lots bordering the tract which was previously intended as the Nature Preserve.

(b) Corner Lot. A corner Lot shall be considered to have two (2) front lines and Improvements must not be located closer than 50 feet from both front lines.

(c) Side Line. No Improvement shall be located nearer than 25 feet to an interior Lot line.

(d) Waiver. The Architectural Committee shall have the authority and discretion without need of formal Board approval to waive the strict setback requirements stated herein for any infraction provided: (i) the infraction does not violate the minimum setback requirements promulgated by Orange County or other governmental authority having jurisdiction over the Property and (ii) the infraction constitutes a *de Minimis* violation of the prescribed setback requirements herein. *De Minimis* shall mean ten percent (10%) or less of the stated requirement.

Section 7.3. Height and Accessory Building. No structure, except as hereinafter provided, shall be erected, altered, placed, or permitted to remain on any Lot other than a detached single family dwelling three (3) stories in height, however, the Architectural Committee may approve in writing a variance permitting a structure of more than three stories, and a garage and small accessory building (such as guest cottages), provided, the use of such dwelling or accessory building does not in the opinion of the Architectural Committee overcrowd the site. Such accessory building may not be constructed prior to the construction of the primary dwelling.

Section 7.4. Multi-Family Use Prohibited. No multiplex residence or apartment house shall be erected, placed on, or allowed to occupy, any Lot, and no dwelling once approved and constructed shall be altered or converted into a multiplex residence or apartment house.

Section 7.5. Remedies. If the finished dwelling, garage, accessory building, or other structure does not comply with the submitted and approved plans and specifications, the Board retains the right to make the necessary changes at Owner's expense to comply with the approved plans and specifications, the right to treat such charge or cost as an assessment, the right to file under the North Carolina lien laws a notice of liens for any costs incurred, and the further right to resort to all remedies provided under the laws of North Carolina for the recovery of such costs and the expenses of collection, including without limitation, reasonable attorneys' fees. Any changes in plans or specifications must first be preapproved by the Architectural Committee in accordance with the procedure herein specified for architectural control.

Section 7.6. Trash Receptacles. Each Lot Owner shall provide receptacles for garbage in a screened area not generally visible from the road, or provide underground receptacles or similar facilities in accordance with standards established by the Association.

Section 7.7. Trees and Shrubs. The Declarant encourages the planting of flowering shrubs and trees; however, no trees, bushes, shrubs, grasses or other vegetation whatever, may be removed, planted, or installed from or on any Lot without prior written approval of the Architectural Committee, based upon a site plan, landscaping plan, or planting plan submitted to the Architectural Committee. Lot owners may, however, perform

routine maintenance of their landscaping without permission of the Architectural Committee. Routine maintenance shall include lawn and plant maintenance, supplementing existing landscaping, planting flowers, removing small trees (with a diameter of less than 6 inches), removing dead trees and branches, removing invasive or noxious plants such as poison ivy and kudzu. Should the cost of the landscaping work exceed 10 times the then current annual assessment, the Lot owner must obtain the approval of the Architectural Committee. The Architectural Committee in its sole discretion may withhold its consent to remove trees, bushes, shrubs, grasses, or other vegetation whatsoever. Any Owner who violates this provision shall be fined Five Hundred Dollars (\$500.00) payable to the Association. Such fine will be added to the cost of Owner's monthly Assessment and collected as an Assessment.

Section 7.8. Fences and Walls. Fences and walls, including, but not limited to, retaining walls, shall not be erected upon any Lot without the prior written consent of the Architectural Committee, which consent may be conditioned or withheld in the sole discretion of the Committee.

ARTICLE VIII EASEMENTS

Section 8.1. Utility Easements. All of the Property, including Lots and Common Elements, shall be subject to such easements for driveways, walkways, parking areas, waterlines, sanitary sewers, storm drainage, gas lines, telephone and electric power lines, and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Property to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under, and across the Common Elements conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Property without approval of the membership as provided in the Articles of Incorporation and this Declaration.

Section 8.2. Easement for the Benefit of Governmental Authorities. An easement is hereby established for the benefit of any governmental authority having jurisdiction over the Property, or other governmental agency, over all Common Elements for the setting, removing, and reading of water meters (which shall be separate for each Lot), maintaining and replacing water, sewage, and drainage facilities, for police

protection, fire fighting, and garbage collection and the rendering of such other services as are appropriate and necessary for the use and enjoyment of the Property. In no case shall the governmental authority or other responsible agency be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property or to any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, the Association, the Owners or occupants. All conveyances of any portion of the Property shall be subject to these limitations on the governmental authorities responsibilities.

Section 8.3. Specific Utility Easements. There is hereby reserved an easement ten (10) feet in width along the rear property line of each Lot for the purpose of installation, repair, maintenance, erection, construction, and inspection of water lines, sewer lines, gas lines, electric lines, telephone lines, cablevision lines, or other such utility or service lines and for drainage cuts and storm sewer lines. The ten (10) foot utility easement along the rear property lines of those Lots which border the nature preserve will be located parallel to but a distance of fifty (50) feet from the rear property lines separating such Lots from the nature preserve.

Section 8.4. Recorded Easements. There are hereby reserved easements as shown on the recorded map or maps of the subdivision. In the event of a conflict in the width of any easement or setback requirement reserved herein or on the recorded map, the wider easement or setback shall prevail. No improvements shall be located within any easement or setback areas shown on such map or maps, except as permitted by the Board.

Section 8.5. Greenway Easement. There is hereby reserved for the benefit of the Association a greenway easement thirty (30) feet in width running along the access right of way on the front Lot line(s) of each Lot. No trees, bushes, shrubs, grass or other vegetation may be planted or removed within this easement area except by written permission of the Architectural Committee. The Association further reserves for itself the right of unrestricted access to the easement area to install a paved pedestrian path up to six (6) feet wide, to plant or remove trees, bushes, shrubs, grass or other vegetation as recommended by the Architectural Committee or Board

of Directors. Also, the Association reserves the right of unrestricted access to the easement area for selective and minimal clearing necessary for the creation of reserved septic fields and for the remediation of failed septic fields.

Section 8.6. Fifty Foot Buffer Zones on Lots Which Border Nature Preserve. Declarant has conveyed approximately two hundred sixty-five (265) acres to the Triangle Land Conservancy ("TLC"), a non-profit entity, its successors and assigns, who will operate the property as a nature preserve. The real property conveyed to the TLC is more particularly described as Tract 2 as shown on a plat recorded in Map Book 83, Page 166, Orange County Registry. TLC intends to own and manage Tract 2 in its existing state as a "Nature Preserve". Declarant and the TLC have agreed to protect the existing natural state of Tract 2, and in furtherance of these intentions, Declarant does hereby create a fifty (50) foot wide buffer zone (the "Buffer Zone") upon the rear portion of all Lots which border the Nature Preserve. This Buffer Zone, more particularly described on Plat recorded in Map Book 83, Page 166, Orange County Registry, is intended to remain in its natural state. Hence, removing, destroying or cutting trees and vegetation within the Buffer Zone is strictly prohibited except for:

- (1) selective removal of trees or vegetation for the prevention or treatment of disease;
- (2) removal of dead or fallen trees and trees posing a hazard;
- (3) removal of invasive, non-native or noxious plants that threaten indigenous plant species; and
- (4) selective and minimal clearing necessary for the creation of reserved septic fields for the remediation of failed septic fields.

In addition to the foregoing restrictions, prior to the commencement of construction of any dwelling or other improvements upon any single Lot subdivided out of the Property which Lot borders the Nature Preserve, the Lot Owner shall install orange plastic tree protection fencing along the boundary line separating the Buffer Zone from the buildable area of the Lot. The protective fencing shall not be removed from the Lot until completion of construction and installation of all improvements to the Lot.

TLC shall have the authority to enforce this Section 8.6.

ARTICLE IX
INSURANCE

Section 9.1. Insurance to be Maintained by the Association. The following insurance coverage shall be maintained in full force and effect by the Association:

(a) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association.

(b) All liability insurance shall contain cross-liability endorsements to cover liability of the Owners as a group to an individual Owner.

(c) Such other insurance coverage as it may determine to be desirable and necessary, including fire and hazard insurance covering all improvements located on the Common Elements.

Section 9.2. Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and charged ratably to Owners as an assessment according to the applicable provisions of this Declaration.

Section 9.3. Insurance Beneficiaries. All such insurance policies shall be purchased by the Association for the benefit of the Association and the Owners.

Section 9.4. Insurance to be Maintained by the Owners. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his improvements except that the amount shall not be required to exceed the replacement cost of the improvements. An Owner shall exhibit to the Board, upon request, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be included in the annual assessment of the Owner and shall constitute a lien against his Lot until paid as a result of enforcement by the Association or otherwise.

ARTICLE X
RIGHTS OF INSTITUTIONAL LENDERS

Section 10.1. Rights Reserved to Institutional Lenders. "Institutional Lender" or "Institutional Lenders", as the terms are used herein, shall mean and refer to banks, savings and loan associations, savings banks, insurance companies, Veterans Administration, Federal Housing Authority, Federal National Mortgage Association, and other reputable mortgage lenders and guarantors and insurers of such first mortgages. So long as any Institutional Lender or Institutional Lenders shall hold any mortgage upon any Lot, or shall be the Owner of any Lot, such Institutional Lender or Institutional Lenders shall have the following rights:

(a) To be furnished with at least one copy of the Annual Financial Statement and Report of the Association, including a detailed statement of annual carrying charges or income collected, and operating expenses, such Financial Statement and Report to be furnished by April 15 of each calendar year.

(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed Amendment to the Declaration, or the Articles of Incorporation and Bylaws of the Association, which notice shall state the nature of the amendment being proposed, and to be given permission to designate a representative to attend all such meetings.

(c) To be given notice of default in the payment of assessments by any owner of a Lot encumbered by a mortgage held by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing to the Association.

(d) To inspect the books and records of the Association and the Declaration, Bylaws and any Rules and Regulations during normal business hours, and to obtain copies thereof.

(e) To be given notice by the Association of any substantial damage to any part of the Common Elements.

(f) To be given notice by the Association if any portion of the Common Elements, is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority.

Whenever any Institutional Lender, guarantor, or insurer desires the benefits of the provisions of this section requiring notice to be given or to be furnished a financial statement, such Lender shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, or to the address of the Property, identifying the Lot upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Lot owned by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender.

ARTICLE XI
GENERAL PROVISIONS

Section 11.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 11.3. General Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the five (5) year period (commencing from the date of first conveyance of the first Lot by Declarant) by an instrument signed by not less than seventy-five percent (75%) of the voting interests in each class of voting rights

held by the Member, and thereafter by an instrument signed by not less than sixty-seven percent (67%) of the voting interests of the Lot Owners.

Section 11.4. Amendments Permitted Without Membership Approval. The following amendments may be effected 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, 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 of 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.

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

(d) 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.

Section 11.5. Governmental Authority Amendments. No amendment which would change or delete any provision herein required by any governmental authority shall become effective until submitted to and approved by that authority; provided, however, if that authority fails to approve or disapprove such amendment within thirty (30) days after the same has been submitted to it, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

Section 11.6. Recordation. No amendment shall be effective until recorded in the County in which the Property is situate.

Section 11.7. North Carolina Planned Community Act. Unless otherwise provided as allowed by law, the provisions of the North Carolina Planned Community Act (N.C.G.S. Chapter 47F) shall apply to the Property and the Association.

Section 11.8. Governing Law. This Declaration shall be governed by the laws of the state of North Carolina.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this the 23rd day of SEPTEMBER, 1999.

S & H DEVELOPMENT, LLC (Seal)
a North Carolina limited liability company

By: Thomas H. Heffner (Seal)
Thomas H. Heffner Manager

NORTH CAROLINA

CHATHAM COUNTY

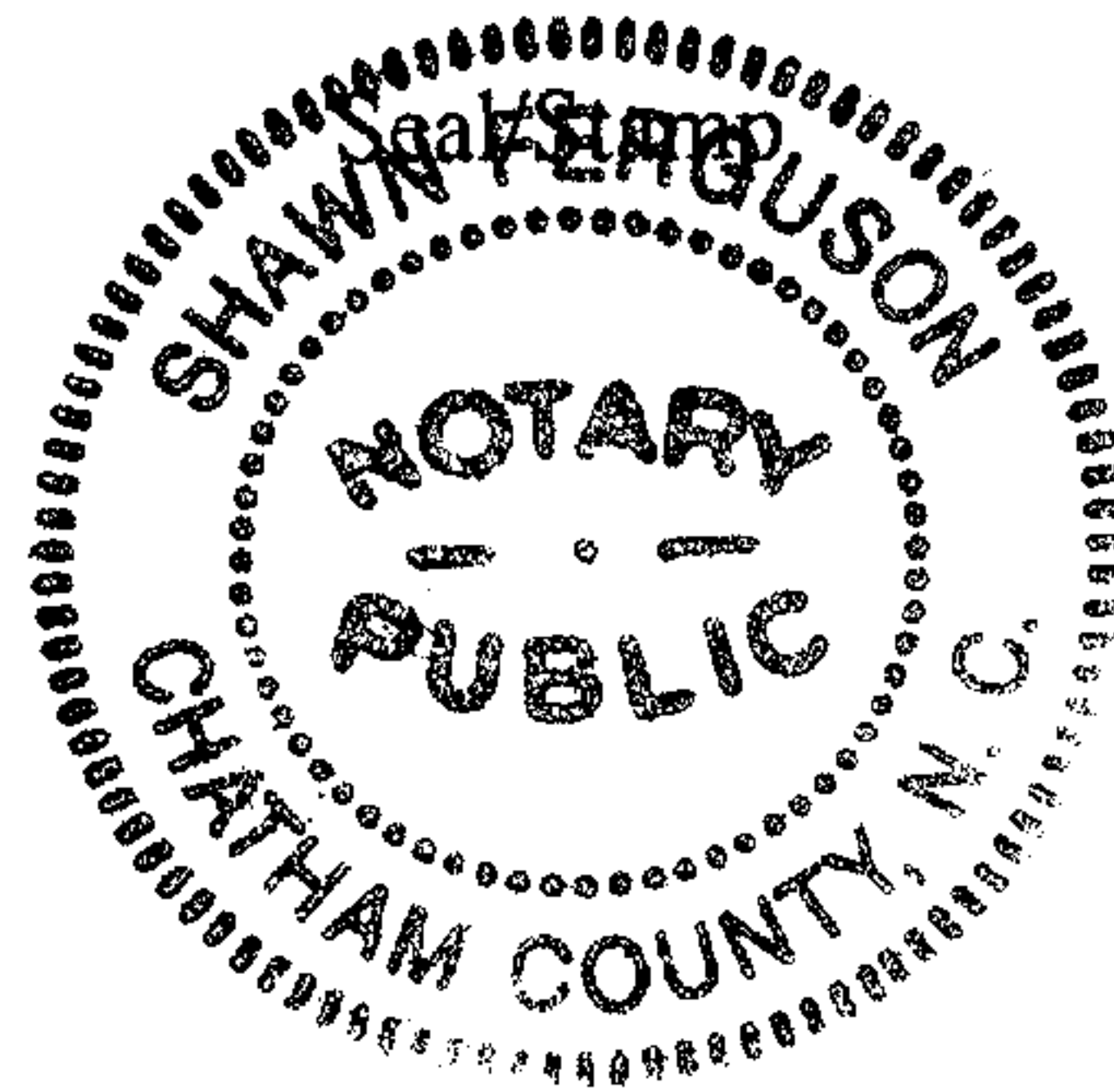
I, Shawn Ferguson, a Notary Public of the County and State aforesaid, certify that Thomas H. Heffner, Manager, S & H Development, LLC, a North Carolina limited * personally came before me this day and acknowledged the execution of this instrument.

Witness my hand and official stamp or seal, the 23rd day of September, 1999.

* liability company

Shawn Ferguson
Notary Public

My Commission Expires: 4/26/2003



State of North Carolina-Orange County

The foregoing certificate(s) of Shawn Ferguson

A Notary (Notaries) Public for the Designated Governmental units is (are) certified to be correct. See filing certificates herein.

This the 24th day of Sept. A.D. 1999

Joyce H. Pearson
Register of Deeds By: Priscilla O. Mize
~~Assistant~~ / Deputy

FILED
24 SEP 1999, at 04:58:26pm
Book 1992, Page 250 - 280
Joyce H. Pearson
Register of Deeds,
Orange County, N. C.

EXHIBIT A

Being all of that 138.268 acre tract shown as Tract 3 by plat of survey entitled, "DIVISION SURVEY, PROPERTY OF S & H DEVELOPMENT, LLC," of record at Plat Book 83 Page 166, Orange County Registry; TOGETHER WITH all of that 0.23 acre parcel conveyed to S & H Development, LLC by Deed of record at Book 1956 Page 445, Orange County Registry; LESS AND EXCEPT that 0.23 parcel conveyed to Gail Louise Stern by Deed of record at Book 1956 Page 442, Orange County Registry.

S & H / PHH