

FILED
GRANVILLE COUNTY
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KATHRYN CREWS AVERETT
Register Of Deeds

Prepared by and return to: Wayne Bailey, 6604 Six Forks Rd., Ste 104, Raleigh, NC 27615

STATE OF NORTH CAROLINA
COUNTY OF GRANVILLE

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR THE PRESERVE AT SMITH CREEK**

THIS DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS, made this the 14 th day of October, 2005, by GARNER ROAD ASSOCIATES, LLC, a North Carolina Limited Liability Company, herein called Declarant;

WITNESSETH:

THAT WHEREAS, Declarant is the Owner of certain real property herein described and desires to subject said real property to certain restrictive covenants hereinafter set forth, and does hereby declare that the real property hereinafter described is and shall be held, transferred, sold and conveyed subject to the Covenants and Conditions hereinafter set out.

**ARTICLE I
DEFINITIONS**

Section 1. "Declarant" shall mean and refer to Garner Road Associates, LLC, its successors and/or assigns.

Section 2. "Home" shall mean and refer to a dwelling or place of residence constructed upon a lot within the property.

Section 3. "Lot" shall mean and refer to Lots 1 through 28 as shown on the recorded subdivision map entitled "The Preserve at Smith Creek" as recorded in Plat Book 32, Page 124, Granville County Registry. Lot 29 is specifically excluded.

Section 4. "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 properties, including

10/18/05 recorded to: ↗

contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 5. "Person" shall mean and refer to any individual, Corporation, Partnership, Association, Trustee or other legal entity.

Section 6. "Property" or "Properties" shall mean and refer to that certain real property on plat and survey of Lots 1 through 28, The Preserve at Smith Creek subdivision, as it is developed by Declarant and surveyed, platted and described in Plat Book 32, Page 124, Granville County Registry. Lot 29 is specifically excluded.

Section 7. "Association" shall mean and refer to The Preserve Homeowners Association, (hereinafter referred to as "PHOA"), a North Carolina non-profit corporation, its successors and assigns.

Section 8. "Common Expenses" shall mean and include all sums lawfully assessed by the Association against its members which expenses are required by the Declaration or Bylaws which the Association adopts as it deems appropriate or is required to adopt. Those expenses whose adoption is required are (a) Expenses for maintenance of homes as described in Article III, Section 6, (b) Expenses of a administration, maintenance repair or replacement of entrance areas and easements as described in Article III, Section 16 (c) Expenses and maintenance which are required to maintain any other common areas assigned to the Association by the Declarant, (d) Upon assignment or conveyance, upkeep of Community Center or improvements on Lot 29.

Section 9. "Common Areas" shall mean and include any entrance, landscape or drainage easements as depicted in Plat Book 32, Page 124, Granville County Registry and any portion of Lot 29 as depicted in said Plat Book that may be conveyed or assigned to the Association by the Declarants. Common areas shall include future landscape and drainage easements on other land areas that are developed into lots and conveyed or assigned to the Association by the Declarant provided however, that the lot owners from the new developed land areas be required to be members of the Association.

ARTICLE II PROPERTY RIGHTS

Section 1. Every Owner shall have the right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a) The right of the Declarant Association or Assign to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas;
- b) The right of the Declarant Association or Assign to charge reasonable admission and other fees for the use of any recreational facility by an Owner for any period during which any assessment against his/her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction or its published rules and regulations;

- c) The right of the Declarant Association or Assign to dedicate or transfer all or any part of the Common Areas to any public agency, the "Association" authority, or utility for the reason of the Management and all responsibilities of the recreational facilities;
- d) The right of the Declarant or Assign to formulate, publish and enforce rules and regulations as hereinafter set forth;
- e) All easements and parking rights hereinafter defined.

Section 2. Any Owner may delegate, in accordance with the Bylaws, his/her right of enjoyment to the Common Areas and facilities to the members of his/her family who reside on the property.

ARTICLE III BUILDING AND USE RESTRICTIONS

Section 1. All lots shall be used for single family residential purposes only.

Section 2. No home (or other structure permitted by these restriction) shall be erected, altered, or placed on any Lot herein conveyed until the plans and specification, site plans, exterior paint colors, and landscaping for such have been submitted to and approved in writing by Wayne Bailey or other individual specifically assigned by the Declarants. All mail boxes and posts shall be approved by Declarant. Any fence construction or modification must be approved by the Declarant or Assignee. Any outbuilding or detached garage construction or modification must be approved by the Declarant or Assignee. Such approval shall not be unreasonably withheld and is for the purpose of maintaining architectural continuity in the interest of the orderly development of the subdivision. Failure of the said Declarant or Assignee to accept the submitted plans within thirty (30) days after submission in writing shall constitute a rejection of said plans.

Section 3. Outbuildings shall be confined to the rear of the lot, shall not be of metal construction, and shall be harmonious with the home as to the exterior siding color and roof color. If water wells are located on the front of the lot, well houses of suitable approved materials shall be constructed with an exterior in conformity to the home on the lot. All driveways shall be constructed to the North Carolina Department of Transportation specifications. All homes shall have paved driveways.

Section 4. All homes must be stick built onsite. No single, double or triple wide mobile homes or modular homes of any kind shall be parked or placed on any lot except a modular home to be used as a temporary new home sales office may be permitted. A recreational type trailer or camper may be stored on the rear of the property if it is screened from public view, but cannot be used as a residence.

Section 5. No more than two (2) animals of a large species shall be allowed on any lot. No animal shall be allowed to roam and all animals shall at all times be appropriately penned. No animals, livestock or poultry of any kind shall be raised or bred on the herein conveyed lots, except that dogs, cats or any other household pets may be kept on any lot so long as sanitary condition are maintained and they are not kept, bred or maintained for any commercial purpose.

All pets shall be kept in compliance with the Granville County animal control laws. Pets shall be kept so that they shall not be a nuisance, danger or annoyance to other Lot Owners.

Section 6. Each Owner shall maintain all homes, buildings and other improvements in a neat and pleasing manner and shall keep the lot free and clear of all tall grass and unsightly undergrowth, dead trees, bushes, trash and rubbish. Failure of the Owner to remedy any unsightly or unsanitary condition will result in the PHOA making all necessary repairs. The Owner shall reimburse the PHOA for all expenses resulting from the repairs. All garbage shall be stored in receptacles that are picked up and disposed of weekly. Receptacles shall be out of site from the road right of way, and screened. All large propane, oil and other storage tanks shall be located underground, except that any tanks with a 125 gallon or less capacity may be above ground but shall be screened from street view.

Section 7. No part of the lots herein conveyed shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste, and the same shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 8. No water supply system for human consumption or sewage disposal system shall be permitted on any lot herein conveyed unless the location, construction and design are in full compliance with requirements, standards and recommendations of the Granville County Health Department and North Carolina State Board of Health.

Section 9. No trade, business or commercial activity of any kind, and no noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood except that offices and business activities as permitted in a residential area by the Granville County Zoning code shall be allowed.

Section 10. No sign of any kind shall be displayed to the public view on any lot, except one sign of not more than five (5) square feet advertising the lot for sale or rent, or signs used by the builder to advertise the lot during the construction and sales period. This restriction shall not apply to the subdivision entrance signs located on any sign easement or right of way and for signs pertaining to Association business.

Section 11. No loud, prolonged, repetitive or obnoxious or offensive noises or activities shall be allowed on any lots. Further, no discharge of firearms shall be allowed within the subdivision at any time.

Section 12. No further subdivision of the lots as depicted on the subdivision plats referenced herein shall be allowed unless approved by the Declarant. Only one home per lot shall be allowed. Further, nothing shall be done on any lot which shall become an annoyance or nuisance to adjoining property Owners in the subdivision.

Section 13. Any damage to any subdivision road that is the result of negligence or

willful act of an Owner or his family, agent, servant, or employee, prior to the road maintenance being assumed by the NCDOT, shall be sole responsibility of said Lot Owner. Said Lot Owner shall repair the same at his own expense within a reasonable time, but not to exceed 30 days after written notice of such damages. Failure of the lot owner to repair street damage within the stated 30 days will result in the Declarant or Assignee making all necessary repairs. The lot owner shall reimburse the Declarant or Assignee for all expenses resulting from the repairs

Section 14. There shall not be granted across any lot any easements or right-of-ways for ingress, egress or regress to any other adjacent tract or parcel of land without written permission Declarant.

Section 15. All utility lines extending from the public road to the dwelling site shall be underground utilities.

Section 16. The landscape easements depicted on Lots 1 and 29, the entrance traffic island, and any other easements depicted on the recorded plat shall be maintained by the PHOA upon assignment by the Declarant.

Section 17. Lot 29 shall be excluded from these covenants and from assessments, including annual, special or otherwise.

ARTICLE IV EASEMENTS

The following portions of the subject lots shall be subject to the following easements or rights of way:

Section 1. A strip or parcel of land five (5) feet in width, beginning at the outer edge of the road right of way, extending into the lot along the entire road frontage of each lot, and along each side line, and ten (10) feet along the rear line of each lot shall be reserved by the Declarant for the purpose of installing and maintaining utilities and the granting of utility easements related thereto.

Section 2. The Declarant reserves the right to subject the property in the subdivision to a contract with Wake Electric Membership Corporation for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Wake Electric Membership Corporation or to the Association by the individual lot owners.

ARTICLE V HOMEOWNERS ASSOCIATION AND COVENANT FOR MAINTENANCE AND ASSESSMENT

Section 1. The Owners of the lots in The PRESERVE at SMITH CREEK as shown in Book 32, Page 124, Granville County shall be members of the Association.

Membership in the Association is mandatory for each lot buyer and successive buyers and each lot owner shall have one vote per lot owned. The Association shall be formed at the time of the assignment of the common areas to the Association by the Declarant.

Section 2. After assignment by the Declarant, the PHOA shall be vested with the powers to a) perform upkeep maintenance and repair of the entrance area, b) to maintain and manage other common areas assigned by the Declarant, c) to collect dues for expenses as defined in Article I, Section 8, d) to elect a minimum of five officers, e) to establish an annual meeting date for the election of officers, f) to inform all members in writing 10 days prior to the meeting, g) to establish such Bylaws as may be necessary to conduct the business of the Association and promote the health, safety, and well-being of the members.

Section 3. Creation of the Lien and Personal Obligation of Assessments: The Owner of each lot by the acceptance of the deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Declarant or, when assigned, to the Association:

1. Annual assessments or charges.
2. Special assessments for capital improvements, such assessments to be established by the Association and collected as hereinafter provided.

Section 4. The annual and special assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the lot and shall be a continuing lien upon the property against which each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the owner of such property at the time when the assessment is due.

Section 5. The purpose of any assessments levied shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the common Areas, the enforcement of these covenants and rules of the Association and the provision of services and facilities for purposes of and related to the Common Areas.

Section 6. The initial Annual assessment shall be \$150.00. After the formation of the Association, the annual assessment shall be determined by a two-thirds (2/3) vote of the PHOA officers.

Section 7. 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, repair or replacement of a capital improvement upon the Common Areas, 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 the Board of Directors.

Section 8. 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. However, if sub-classes of membership are created by the PHOA officers, such assessment shall be fixed at uniform rates for all lots within any sub-class. Assessments may differ between areas having different sub-classes or membership. Assessments with respect to a sub-class membership shall be determined by the cost to the Association, experienced or reasonable anticipated, of carrying out the purposes of assessments. As applied to the sub-classes of membership. Provided however, that the assessment for lots owned by the Declarant or its immediate grantee, for which a Certificate of Occupancy has not been issued by the appropriate government authority, may be a lesser amount as fixed by the PHOA officers of the Association, but shall not be less than thirty (30%) percent of the regular assessments for such lots.

Section 9. Date of Commencement of Annual Assessments: 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 Areas. 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 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 dates shall be established by the Board of Directors. 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 specific lot have been paid. The properly executed certificate of the Association as to the statement of assessment on a lot is binding upon the Association as of date of its issuance.

Section 10. Effect of Nonpayment of Assessments: 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 rate of prime plus one and one-half (1 ½%) percent per annum. The Association may bring an action against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability of the assessments provided.

Section 11. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinated to a lien of any first mortgage. However, the sale or transfer of a lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien upon such sale or transfer. However, no such sale or transfer shall relieve such lot from liability for any lien for assessments thereafter becoming due.

ARTICLE VI GENERAL PROVISIONS

Section 1. These restrictions and conditions are covenants running 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 of this instrument and cannot be altered or changed prior to that date without the written consent of the Declarant, or 80% of the lot owners once the Declarant no longer owns lots in the subdivision. Any amendments must be recorded. After the completion of the initial 30 year period, said covenants shall be automatically extended for successive periods of ten

years, unless by vote of 80% of the then owners of the lots in the entire subdivision, it is agreed to change said covenants in whole or in part.

Section 2. Enforcement. The Declarant 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 and hereafter imposed by the provisions of this Declaration. Failure by the Declarant 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 3. Severability. Invalidation of any one of these provisions shall not affect any other provisions herein which shall remain in full force and effect.

This the 14th day of October, 2005.

GARNER ROAD ASSOCIATES, LLC

(SEAL)

Sonya G. Lehto by M. Lehto
Sonya G. Lehto, a Manager

(SEAL)

R. Wayne Bailey
R. Wayne Bailey, a Manager

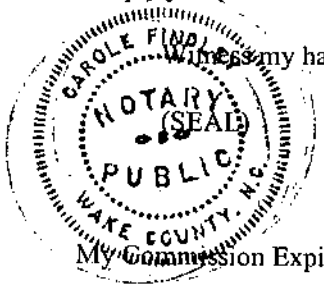
(SEAL)

Julie Wright
Julie Wright, a Manager

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, Carole Findley, a Notary Public for said County and State, do hereby certify that R. Wayne Bailey, and Julie Wright, Managers of Garner Road Associates, LLC, a North Carolina Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.



Witness my hand and notarial seal, this the 7th day of October, 2005

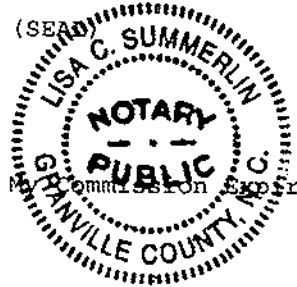
Carole Findley
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF GRANVILLE

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I, Lisa C. Summerlin, a Notary Public of the County and State aforesaid, do hereby certify that N. Kyle Hicks, Attorney-in-Fact for Sonya G. Lehto, a Manager of Garner Road Associates, LLC, a North Carolina Limited Liability Company, personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of Sonya G. Lehto, as Manager of Garner Road Associates, LLC and that his authority to execute and acknowledge said instrument is contained in that certain Limited Power of Attorney duly acknowledged and recorded in the Office of the Register of Deeds of Granville County on March 17, 2005 in Book 1077, Page 535, and that this instrument was executed under and by virtue of the authority given by said instrument granting N. Kyle Hicks power of attorney; and that N. Kyle Hicks, Attorney-in-Fact, acknowledged the due execution of the foregoing and hereto annexed instrument for the purposes therein expressed for and on behalf of the said Sonya G. Lehto, as Manager of Garner Road Associates, LLC, a North Carolina Limited Liability Company.

Witness my hand and notarial seal this the 13th day of October, 2005.



Lisa C. Summerlin

Notary Public
11/09 ✓

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