

04052

PREPARED BY: STAINBACK & SATTERWHITE - Michael E. Satterwhite

STATE OF NORTH CAROLINA

COUNTY OF VANCE

VANCE COUNTY, N. C.
FILED FOR RECORD

2000 JUN 28 AM 8:43

CYNTHIA S. ABBOTT
REGISTER OF DEEDS

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the day hereinafter set forth by **2000/5 PARTNERS, INC., a North Carolina Business Corporation**, herein referred to as "Declarant;"

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in Middleburg Township, Vance County, North Carolina, which is more particularly described as follows:

The same being Lots 50 and 51 of Kerr Lake Estates as shown on map recorded in Map Book "P," Page 50, Vance County Registry, said lots being more particularly described as follows:

BEGIN at a concrete monument on the western side of Hedrick Drive and 30 feet from the center thereof, corner of Lot 50; run thence along Hedrick Drive and 30 feet from the center thereof North 5 degrees 57' East 160 feet to an iron stake; thence North 39 degrees 03' West 21.2 feet to an iron stake on Dee Boulevard and 30 feet from the center thereof; run thence along the southern

side of Dee Boulevard and 30 feet from the center thereof North 84 degrees 03' west 285 feet to an iron stake in Neathery's line; thence along Neathery's line South 5 degrees 57' West 175 feet to a concrete monument; thence South 84 degrees 03' East 300 feet to the place of the beginning.

NOW, THEREFORE, Declarant hereby declares that all the property 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.

ARTICLE I.

DEFINITIONS:

Section 1: "Association" shall mean and refer to "**KERR LAKE GOLF VILLAS HOMEOWNERS' ASSOCIATION, INC.**" its successors and assigns.

Section 2: "Properties" shall mean and refer to that certain real property hereinbefore described.

Section 3: "Common Area" shall mean and refer to all real property (including the improvements thereto, if any) owned by the Association for the common use and enjoyment of the Owners.

Section 4: "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the property with the exception of the Common Area.

Section 5: "Declarant" shall mean and refer to 2000/5 Partners, Inc., a North Carolina Business Corporation.

Section 6: "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of the fee simple title to any Lot situated upon the properties, including contract sellers, but excluding those which have such interests merely as security for the performance of an obligation.

Section 7: "Member" shall mean and refer to all those Owners who are members of the Association as hereinafter provided.

ARTICLE II.

PROPERTY RIGHTS

Section 1: Owners' Easements of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the Common Area (specifically including the septic system and septic lines, well and water lines and other utilities [NOTE: Under no circumstance shall the Association be authorized to discontinue septic, water or other utility services to a Lot]) which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (1) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area; and
- (2) the right of the Association to suspend the voting rights and the right to use of any recreational facility 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 infraction of its published rules and regulations; and
- (3) the right of the Association to dedicate or transfer all or any part of the Common Area 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 agreeing to such dedication or transfer signed by 2/3rds of each class of Members has been recorded; and

Section 2: Delegation of Use: Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3: Owners' Easement for Encroachment: Every Owner shall have a right and easement of enjoyment in and to any portion of the Common Area upon which any improvement erected on any Owner's lot inadvertently encroaches.

ARTICLE III.

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 separate from ownership of any Lot which is subject to assessment.

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

"Class A" Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

"Class B" The Class B member(s) shall be the Declarant and 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:

- (a) when the total votes outstanding in the *Class A* membership equal the total votes outstanding in *Class B* membership; or
- (b) on January 1, 2005.

ARTICLE IV.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments:

The Declarant, for each Lot owned within the Properties, 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; and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special 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 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 property at the time the assessment fell due.

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 the Properties and for the improvement and maintenance of the Common Area (specifically including the septic system and septic lines, well and water lines and other utilities) and of the homes situated upon the Properties.

Section 3: Maximum Annual Assessment: Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Thousand Two Hundred (\$1,200.00) Dollars per Lot.

(1) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership; and

(2) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five (5%) percent by a vote of two-thirds (2/3rds) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose; and

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

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 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 Area or any Lot, including fixtures and personal property related thereto, *provided that* any such assessment shall have the assent of two-thirds (2/3rds) 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. 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 of 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 ($\frac{1}{2}$) 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 6. 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, quarterly, bi-annual or annual basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates: 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 Area. 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, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. The 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 its issuance.

Section 8. 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 eight (8%) percent per annum. The

Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. 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 Lot.

Section 9. 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 assessment 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 V.

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot, which is subject to assessment hereunder as follows: paint, repair, replacement of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful and negligent acts of its Owner or through the willful and negligent acts of the family, guests, or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

ARTICLE VI.
ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, 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 Board of Directors of the Association, or by an architectural committee composed of two (2) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

ARTICLE VII.
GENERAL PROVISIONS

Section 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 an 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 2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendment: 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 first twenty (20) year period by an instrument signed by not less than ninety (90%) percent of the Lot Owners, and thereafter, by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded.

ARTICLE VIII.
MISCELLANEOUS

Section 1. Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats and other common household pets may be kept provided that they are not raised, bred or kept for any commercial purpose. Not more than two adult animals can be kept on any Lot (and no animals shall be kept on the Common Area). Adult animals shall be defined for the purpose of this section as those animals which are over three months old. Owners shall be responsible for curbing unreasonable noise and/or dangerous or unreasonable conduct of their animals.

Section 2. Parking: No boat or boat trailers or campers or trailers shall be permitted other than in Owners' garage and/or driveway. In addition, no storage or extensive repair work on automobiles shall be commenced or carried out on the lot (unless conducted inside the garage), and no cars shall be stored on blocks or other platforms (unless stored inside garage). In addition, no cars, trucks, boats, boat trailers, campers, trailers or other vehicles shall be allowed to be parked within the right of way of Dee Avenue and/or Hedrick Drive.

Section 3. Signs: No sign of any kind shall be displayed to the public view on any lot except for temporary signs erected by the Declarant in connection with the construction, lease or sale of Lots.

Section 4. Window Air Conditioners: No individual window air conditioning units shall be permitted since all dwellings have central air conditioning service.

Section 5. Use of Sound Amplifiers or Musical Instruments: Lot Owners shall not use sound amplifiers or any musical instruments in such a manner that will disturb the peace and quiet of the neighboring Lot Owner.

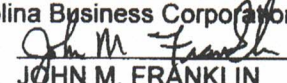
Section 6. Noxious or Offensive Activities: No noxious or offensive activity shall be carried on upon any Lot or in any dwelling nor shall anything be done therein which may be or become an annoyance or nuisance to the other Lot Owner, and all applicable zoning laws shall be strictly complied with.

Section 7. Use: All Lots shall be used for residential purposes only, and no business activity shall be conducted on any Lot.

Section 8. Trash Removal: Each Lot Owner shall be responsible for the removal of all trash from their Lot on a routine basis.

IN WITNESS WHEREOF, the parties have executed this agreement in Henderson, Vance County, North Carolina, this 8th day of June 2000.

2000/5 PARTNERS, INC., a North Carolina Business Corporation

BY: 

JOHN M. FRANKLIN
President

ATTEST: 

MICHAEL E. SATTERWHITE

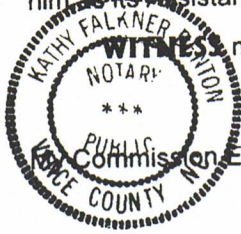
Assistant Secretary

(CORPORATE SEAL)



**STATE OF NORTH CAROLINA
COUNTY OF VANCE**

I, a Notary Public of the county and state aforesaid, certify that Michael E. Satterwhite personally came before me this day and acknowledged that he is Assistant Secretary of **2000/5 PARTNERS, INC.**, a North Carolina Business Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Assistant Secretary.



Witness my hand and notarial seal this 8th day of June 2000.

Kathy Falkner Denton
NOTARY PUBLIC

Commission Expires: 9-26-03

STATE OF NORTH CAROLINA, VANCE COUNTY

The foregoing certificate of Kathy Falkner Denton, Notary Public of Vance County, NC is 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.
CYNTHIA S. ABBOTT, REGISTER OF DEEDS

By *Cynthia S. Abbott*
Register of Deeds