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Henry W. Jones, Jr.
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Record in Grantor Index:
MacGregor West Homeowners Association, Inc.

AMENDED AND RESTATED PROTECTIVE COVENANTS AND RESTRICTIONS FOR MACGREGOR WEST SUBDIVISION, PHASES 2,3,4, AND 5.

THIS DECLARATION, made this 18 day of September, 1999, by MacGregor West Homeowners Association Inc., a North Carolina corporation with its principal office in The Town of Cary, North Carolina (hereafter called Association);

Wake County, NC 413
Laura M Riddick, Register Of Deeds
Presented & Recorded 11/02/1999 11:29:36
Book : 008453 Page : 00070 - 00078

WITNESSETH:

WHEREAS, the undersigned lot owners of the real property described below *are* desirous of subjecting certain real property described below to the protective Covenants hereinafter set forth:

NOW, THEREFORE, the Association hereby declares that the following described real property and such additions thereto as may hereafter be made, located in Wake County, North Carolina, is and shall beheld, transferred, sold and conveyed, subject to the protective covenants hereinafter set forth:

The lots in phases 2,3,4, and 5 in MacGregor West Subdivision and those lots in phase 1 who have subjected their lots to the Covenants of the Association.

1. The real property is hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each building site in this subdivision; to protect the owners of the building sites against such improper use as is practicable, to protect the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials, to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to secure and maintain proper setbacks from streets, and adequate free spaces between structures, and in general to provide adequately for a high type and quality of improvements in said property, and thereby to enhance the values of investments made by purchasers of building sites therein.

2. Each lot shall constitute a residential building site (hereinafter called "building site") and shall be used for residential purposes only. The appearance of the lots as shown on the recorded plat shall be substantially adhered to, provided, however, with the prior written approval of Declarant its successors or assigns, or the Architectural Committee, hereinafter referred to, the size and shape of any building site may

be altered provided that no building site or group of building sites may be resubdivided so as to produce a greater number of building sites. More than one lot may be used as one building site provided the location of any structure permitted thereon is approved in writing by the Architectural Committee referred to in Paragraph 3 hereof. Except as provided in this paragraph, no structure shall be erected, altered, placed or permitted to remain on any building site, other than one detached single family dwelling not to exceed three and one-half stories in height, and a private garage for not less than two motor vehicles. It is expressly provided, however, that an efficiency apartment of not more than three rooms may also be constructed at the same time on any building site provided it is accompanied by the main dwelling.

3 . No building, fence, mail box, outside lighting, newspaper box, screen planting or other improvements shall be erected, placed or altered on any building site until the building plans, specifications, plot plans and landscaping plan showing the location of such improvements on the building site have been approved in writing as to conformity and harmony of landscaping, external design, and external materials with existing structures in the area and as to location with respect to topography, finished ground elevation and neighboring structures by an architectural committee (herein, called "the Architectural Committee") composed of no more than five (5) nor less than (3) persons designated and appointed by Declarant, or its successors or assigns. The landscaping plans submitted shall show the location of all trees having a diameter of ten (10) inches or more at two (2) or more feet above ground level: plans shall also depict the driveway, utility yard, parking area(s), any additional improvements as well as proposed landscaping. In the event the Architectural Committee fails to approve or disapprove such design or location within sixty (60) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required, and this covenant will be deemed to have been fully complied with. Members of such Architectural Committee shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Committee shall have the right to establish and encourage general development standards for the approval of construction of buildings which may include general or specific requirements covering the nature, kind, height, materials, color schemes as well as other architectural, structural, and esthetic requirements

4. Except with the prior written approval of the Architectural Committee, no building of any kind, including garages, shall be located on any building site less than 50 feet from the front property lot line, and no building shall be located less than 10 feet from any side lot line, or less than 30 feet from any rear lot line.

5. No residential structure, which has a minimum area of less than 3,500 square feet of finished heated area for two-story structures and split-level structures, and 3,500 square feet of finished heated area for one-story structures, exclusive of porches, basements and garage, shall be erected or placed on any building site.

6. No business activity or trade of any kind shall be carried on on or upon any building site. No noxious activity shall be carried on upon any building site, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No signs or billboards shall be erected or maintained on the premises unless approved in advance by the Architectural Committee. No trade materials or inventories may be stored upon the premises and no commercial trucks, boats, campers, recreational vehicles, or tractors may be regularly parked on the premises except in garages or well screened enclosures approved by the Architectural Committee. All trash and garbage must be kept in covered containers and placed out of site of neighboring lots or streets unless within the utility yard referred to in Paragraph 13 hereof.

7. No trailer, basement (unless said basement is part of a residence erected at the same time), tent, shack, barn or other outbuilding shall be erected or placed on any building site covered by these covenants, except as specifically permitted herein. No structure of a temporary character shall be placed upon any lot at any time, except for shelters used by a building contractor during the course of construction.

8. No animals or poultry of any kind, other than house pets, shall be kept or maintained in any part of a building site.

9. No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum front or side set-back line established herein unless approved by the Architectural Committee.

10. Adequate off-street parking shall be provided by the owner of each building site for the parking of automobiles, campers, travel trailers, and trucks, owned by such owner and guests, and owners of building sites agree not to park their automobiles on the streets in this subdivision.

11. Television antennae, satellite dishes exceeding 1 meter in diameter and outdoor clotheslines are prohibited on the lots unless approved in writing by the Architectural Committee.

12. All mail box support posts, mail boxes and drive entrances features shall be of uniform material and design as initially approved by Declarant.

13. Each residential structure may have attached thereto one utility yard. Each utility yard shall be walled or fenced, and the entrance thereto shall be screened, using materials and with a height and design approved by the Architectural Committee.

14. All telephone, electric, cable television and other utility lines and connections between the main utility lines and residences and other buildings located on each building site shall be concealed and located underground so as not to be visible.

15. Association, for itself and its successors and assigns, hereby reserves, and is given a perpetual easement, privilege and right for utility purposes, on, in and under a five (5) foot strip along the rear line of each building site and on, in and under a five (5) foot strip along the interior side lot lines of each building site.

16. Unless located within ten (10) feet of a main structure or accessory building or within ten (10) feet of an approved building site, no trees, shrubs, bushes or other vegetation having a trunk diameter of ten (10) inches or more at a point two feet above the ground level may be cut, pruned, mutilated or destroyed at any time without the prior written approval of the Architectural Committee. Dead or diseased trees, shrubs, bushes or other vegetation may be cut and removed by Lot Owners

17. All buildings, structures or other improvements such as landscaping, walkways and driveways must be completed within one (1) year after commencement of construction, except where, in the sole discretion of the Architectural Committee, such completion within one (1) year is not possible or would result in great hardship to the Owner or builder due to strike, fire, national emergency or natural calamity.

18. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until September 1, 2008, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then owners of the building sites in MacGregor West Subdivision, whether covered by these or substantially similar covenants, it is agreed to change said covenants in whole or in part. These covenants may be otherwise amended at any time by an affirmative vote of not less than 60% of the lot owners in MacGregor West Subdivision.

If the parties hereto, or any of them, or their heirs, successors or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for Declarant or any other person or persons owning any real property which is subject to these or substantially similar covenants to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent it, her, him or them from so doing or recover damages or other dues for such violations.

19. Each owner of a lot covenants and agrees, and each owner of any lot by acceptance of a deed for the same (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay annual general assessments or charges to the Association as hereinafter provided. The annual general assessments levied by the Association shall be used for the management, care, maintenance and improvement of the Association. Maintenance shall also include but shall not be limited to payment of electricity for said entrance and exit lights. The annual general assessments with respect to each lot, together with such other costs relating thereto shall be a continuing charge and lien upon the lot or lots against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who is the owner of the lot at the time when the assessment was made. The annual general assessment may be increased ten percent (10%) per year from the previous year's assessment. provided however, that the Association may elect not to assess and collect all of said amount in any year. The annual general assessment shall be allocated equally among all lots subject to these restrictive covenants. The Board of Directors shall establish the annual general assessment effective January 1 of the next year during the month of December and a notice of the annual general assessment shall be given to all lot owners subject to these restrictive covenants by January 15 of the following year. It shall be the sole responsibility of each lot owner to

provide **the Association** with their current mailing address. After this notice, the assessment shall become due and payable within thirty days. If a lot is sold by the Developer after January 1 of any year, the purchaser shall pay a prorated portion of the annual general assessment as of the date of said purchase. The annual general assessment levied by the Association shall be used exclusively for the purposes as stated herein. The lien of the assessments provided for herein shall be subordinate to the lien of any first lien deed of trust made by a financial institution or mortgage company. The sale or transfer of any lot shall not affect the lien of any assessment. However, the sale or transfer of any lot pursuant to foreclosure of a first lien deed of trust made by a financial institution or mortgage company or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become 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. The personal obligation for delinquent assessments shall not pass to a successor in title to a lot unless expressly assumed by them, but, subject to these provisions, delinquent assessments shall continue to be a lien upon such lot.. Any general assessment if not paid within 30 days after the date such assessment is due, together with interest accruing at the lower of (1) the highest rate permitted by law, or (2 percent) 2% per annum above the prime rate (as hereinafter defined) from the date such assessment is due, plus costs of collection, court costs, and reasonable attorney's fees, shall constitute a lien against the lot upon which such assessment is levied. The Association may record a notice of the same in the office, of the Clerk of Superior Court of Wake County, North Carolina or file a suit to collect such delinquent assessments and charges. The Association may file notice of lis pendens and bring an action at law against the owner personally obligated to pay the same and/or bring an action foreclosing the lien against the lot. No owner may waive or otherwise escape liability for the assessments provided for herein. In the case of failure of an owner to pay the annual general assessments, the following relief shall be available: (a) The Association or aggrieved owner or owners of any lot subject to these restrictive covenants shall have the right to bring an action and recover sums due, damages, injunctive relief and/or such other and further relief, as may be just and appropriate; (b) the Association shall have the right to remedy any violation and assess the costs of remedying the same against the offending owner as a general assessment; (c) the remedies provided herein are cumulative, and in addition to any other remedies

provided by law; (d) the failure of the Declarant or any owner to enforce any restriction contained in these restrictions shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character. These restrictions are to run with the land and shall be binding on all parties and all persons claiming under them. Notwithstanding anything herein to the contrary or any provision of the restrictive covenants recorded in Book 4348, Page 868 and Book 4385, Page 210 both of Wake County Registry, this Paragraph 19 may only be amended or modified with the consent of sixty percent (60%) of all lot owners subjected to the restrictive covenants and other lot owners in MacGregor West Subdivision in which there are similar covenants as those in this paragraph 21.

20. In order to ensure that the Association will have sufficient monies available to meet operational needs or capital expenditures the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair and/or replacement of the common areas, including fixtures and personal property related thereto or for any additions for which the Association has taken on the responsibility for maintenance, provided that any such assessment shall have the assent of 51% of the votes of all members, who may vote in person or by proxy, at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of considering a special assessment shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting.

21. There shall be two classes of membership. Class A shall be comprised of those homeowners in all 5 phases whose lots have been subjected to the MacGregor West Homeowners Association. Class B members are those lots in phase 1 who have not subjected their lots to these covenants and who are not legally obligated to pay assessments but who voluntarily pay the yearly and special assessments to the Association. These owners who agree to pay these assessments yearly shall be considered voting members of the Association and have all such rights including the right to vote and hold a seat on the Board of Directors as the Class A members as long as the lot owners as long as their assessments are paid on a timely basis.

Each Class A and B member shall be entitled to only one vote per lot.

22. "An improvement or use on any Lot that lawfully existed prior to the recordation of this instrument is not made a violation or nonconformity by the imposition of the requirements herein."

23. Invalidation of any of these covenants or any part thereof by judgment or court order in no way affects any of the other provisions which shall remain in full force and effect.

24. This instrument has been approved by an affirmative vote of not less than 60% of the lot owners in MacGregor West Subdivision, as required.

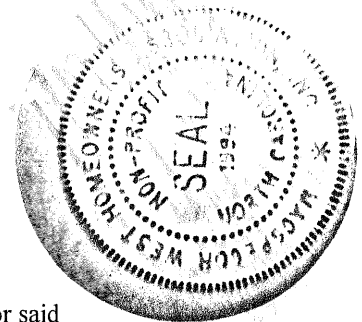
IN WITNESS WHEREOF, the Association has caused this instrument to be executed in its corporate name as of the day and year first above written.

MACGREGOR WEST HOMEOWNERS ASSOCIATION,
INC., a North Carolina non-profit corporation.

By: *Sam P. Merrick*

ATTEST:

Nan B. Merrick
Secretary



STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, *Sandra L. Folmsbee*, a Notary Public within and for said County and State, do hereby certify that *Nan B. Merrick* personally appeared before me this day and acknowledged that he/she is *She is* Secretary of MACGREGOR WEST HOMEOWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by *Chip P. Thomas*, President sealed with its corporate seal, and attested by him/her as its *her* Secretary.

WITNESS my hand and official seal, this the *17* day of *September*, 1999.

Sandra L. Folmsbee
Notary Public

My Commission Expires

May 7, 2002

