

WAKE COUNTY, NC 66
 LAURA M RIDDICK
 REGISTER OF DEEDS
 PRESENTED & RECORDED ON
 02/12/2010 AT 10:29:50

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NORTH CAROLINA
 COUNTY OF WAKE

**PROTECTIVE COVENANTS
 OF
 HIGH GROVE II SUBDIVISION PHASE 5**

THIS DECLARATION OF PROTECTIVE COVENANTS is made this 12th day of February, 2010 by **A.B.PERRY CONSTRUCTION, INC. (A North Carolina Corporation)**, hereinafter referred to in the neuter singular as the "Declarant");

WITNESSETH:

1. Declarant is the Owner and Developer of that certain real property located in Middle Creek Township, Wake County, State of North Carolina, which is more particularly described as follows:

**BEING all of Lots 85-92, High Grove II
 Subdivision Phase 5, as shown in Book of Maps
 2010, Page 59-160, Wake County Registry.**

2. The Declarant intends to sell and convey the lots and parcels within the Development and, before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes, and charges under the general plan or scheme of improvements for the benefit of all lots and parcels in the Development and for the benefit of the Owners and future Owners thereof.

WHEREAS, Declarant desires to create on said property certain Common Properties for the benefit of said community and for the benefit of all the lots of the subdivision; and

WHEREAS, Declarant desires to provide for the preservation of the values, amenities, and conceptual intent of the said community as for the maintenance of the said Common Properties; and, to this end desire to subject the said real property above described to the covenants, conditions, restrictions, easements, obligations, charges, and liens, hereinafter set forth, each and all of which is and hereby is declared to be for the benefit of said property and each and every owner of any and all parts thereof.

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community to create an agency to which should be delegated and assigned the power and authority of maintaining and administering the Common Properties and Services and administering and enforcing the covenants and restrictions governing the same residential lots, and collecting and distributing all assessments and charges necessary for such maintenance, administration, and enforcement, as hereinafter created; and

NOW, THEREFORE, the Declarant declares that all of the lots and parcels in the Development are held and shall be held, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the provisions of this Declaration, all of which are declared by the Declarant, and agreed by Declarant's successors in title, to be in furtherance of a plan of development established for the purpose of enhancing and protecting the value, desirability, and attractiveness thereof.

The provisions of this Declaration are intended to create mutual and equitable servitudes upon each of said lots and parcels in favor of each and all other lots and parcels; to create reciprocal rights between their respective Owners of all such lots and parcels; to create privity of contract and estate between the Grantors of such lots, their heirs, successors

RETURN TO:

A.B. PERRY CONST. CO.
 5600 ROCK SERVICE STATION RD.
 RALEIGH, N.C. 27603

and assigns; and to operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective Owners present and future.

ARTICLE I. DEFINITIONS

The following words and terms, when used in this Declaration, or any Supplement Declaration, shall have the following meanings:

- (1.1) ASSOCIATION shall mean and refer to the High Grove Subdivision Homeowners Association, Inc.
- (1.2) OWNER shall mean and refer to the record owner, whether one or more persons, firms, associates, corporations, or other legal entities of the fee simple title to any tract situated upon the Properties, but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgage, its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure, nor shall said term "Owner" mean or refer to any lessee or tenant of as owner.
- (1.3) PROPERTIES shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, as are subjected to this Declaration or Supplement Declaration.
- (1.4) COMMON PROPERTIES shall mean and refer to those areas of land with any improvements thereon which are deeded to the Association and designed in said deed as "Common Properties". The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated as "Common Property". All "Common Properties" are to be devoted to and intended for the common use and enjoyment of the owners, subject to the fee schedules and operating by the Declarant or the Association (upon its inception in accordance with Article III of this agreement).
- (1.5) LOT (TRACT) shall mean and refer to any improved or unimproved parcel of land, shown upon any recorded subdivision map of the Properties, intended for the construction of a detached single family dwelling and appurtenant structures, excluding any "Common Properties", as heretofore defined.
- (1.6) MEMBER shall mean and refer to all owners as heretofore defined.
- (1.7) DECLARANT shall refer to A. B. Perry Construction, Inc.

ARTICLE II. USES OF PROPERTY

(2.1) USES (GENERAL): No lot shall be used except for residential purposes. No road shall be constructed on any lot in this subdivision connecting to any lot not within this subdivision. The owners of said lots may not vary the lines and boundaries of said lots except as otherwise provided herein; provided, the owners may not reduce the size of any lots except in accordance with appropriate re-subdivision approval by Wake County or other local governmental agency, and the owners may not re-subdivide the lots in such a manner as to increase the number of lots within the subdivision. In the event the lines and boundaries of any said lots are revised or varied pursuant hereto, the location of the easements reserved herein and reserved as shown on the recorded map shall automatically change so as to be located along and with the property lines of the lots as revised.

(2.2) **BUILDING REQUIREMENTS**: No dwelling shall be permitted on any lot which has in the main structure less than **3,100** square feet of finished living area for a two-story dwelling or **2,800** square feet of finished living area for a ranch, one-story dwelling. Basements, porches, garages and storage area shall not be included when calculating finished living area. The Declarant reserves the right to waive up to 5% of the above square footage requirements provided the builder or owner obtains prior written approval of the Declarant. All materials used in the exterior construction of a dwelling shall be new building materials. Siding shall be fiber cement, brick, stone or a combination thereof. All roofs shall be shingle. All houses shall have at least a double-car garage, and a paved driveway. Garages other than a double-car garage shall only be allowed upon obtaining written approval of the Declarant. After completion of a dwelling in accordance with the provisions of this paragraph, any 1) Addition to the original dwelling, or 2) Building of a new structure attaching to the original dwelling or located on the Lot shall require the permission of the Declarant. Driveway pipes for each lot to be installed by the developer at the expense of the builder. All driveways are to have stone head walls. Any private pools must be in ground pools and be approved by the developer (HOA). No above ground pools allowed.

(2.3) **SETBACK REQUIREMENTS**: All setbacks shall be per the "Minimum Building Setbacks" as set forth on the recorded map.

(2.4) **IMPERMISSIBLE USES**: No mobile home, modular units, single or double-wide, shall be erected or placed on any lot covered by these covenants, under any circumstances. No pre-engineered prefabricated buildings may be erected on any lot without the prior written consent of the Declarant. Boats, Trailers, Campers, and Motor Homes shall not be permitted to be parked on any Lot without the prior written consent of the Declarant.

(2.5) **OUTBUILDINGS AND STORAGE BUILDINGS**: No outbuilding or storage building shall be erected upon any lot except those which are incidental to residential use and any building so erected shall be of similar types of material and appearance as the main dwelling structure and the outbuilding so constructed shall be approved by the Declarant and meet all setbacks requirements. No portable buildings allowed. All outbuildings must be built on site on a crawl space foundation.

(2.6) **NOXIOUS OR OFFENSIVE ACTIVITY**: No noxious or offensive activities shall be conducted or permitted to be conducted upon any lot nor shall anything be done or allowed to be done which may be or may become a nuisance or an annoyance to the neighborhood. No motor vehicle licensed to carry more than two tons shall be allowed or parked on any lot or street within said subdivision except those vehicles delivering building material to develop or improve the lots within the subdivision or to carry furniture of any homeowner within said subdivision. No motor vehicles shall remain parked on any lot for more than 30 days which cannot move under its own power and/or components. No clotheslines are permitted on any lot.

(2.7) **PETS**: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot except no more than two of either dogs, cats or other household pets (excluding pot belly pigs, which are not allowed), which are not dangerous or kept, bred or maintained for commercial purposes. Only pets that spend the majority of their time inside the home will be allowed.

(2.8) **FENCES**: No above ground fences of any kind may be placed in the front or side yards of any lot. The Declarant must approve all fences erected in the back yard. Fences will have a maximum height limit of four feet and shall be either black wrought iron or black aluminum. Brick or stone columns in the fence line are allowed. No chain link fences or wooden fences will be allowed.

(2.9) **STORAGE RECEPTACLES**: No LP fuel tanks allowed. High Grove Estates has access to natural gas and builders are expected to construct homes with gas appliances in the kitchen, gas hook-ups for outside grills, gas heat and gas water heaters.

(2.10) SATELLITE DISHES: No large satellite discs or dishes shall be permitted on any lot. The only satellite dishes allowed are those 18 inches or less in width (i.e. Directv or Dish Network). Any apparatus used in connection with any utility or utility service shall be screened and not exposed to public view. Small satellite discs shall be permitted if positioned so it is not viewable from the street.

(2.11) GARBAGE, REFUSE, AND DEBRIS: It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, unhealthy, or unkept condition on any lot. All lots shall be kept clean and free of garbage, junk, trash, debris, and any other substance which might contribute to a health hazard or the breeding and habitation of snakes, rats, insects, or other pests and vermin. Each lot owner shall provide receptacles for garbage in an area not generally visible from the public street, or provide underground garbage receptacles or similar facilities in accordance with reasonable standards.

(2.12) STREET LIGHTING: The developer reserves the right to subject the real property in this subdivision to a contract with Progress Energy Carolinas, Inc. for the installation of street lighting, which requires a continuing monthly payment to Progress Energy Carolinas, Inc. by each residential customer.

(2.13) Drainage and Utility Easements: The developer reserves the right to put in place a drainage and/ or utility easement, if needed, on the front, sides and rear of any lot in the subdivision.

(2.14) YARDS: All front, side and rear yards, to include any part of the lot that is cleared during construction of new homes shall have sod installed by the builder or buyer prior to the occupancy of the home. Builders are expected to include a heavy landscape package with each new home.

(2.15) Construction Activities: No Sunday construction allowed. Construction on Saturdays shall be between the hours of 8:00 AM and 5:00PM. All portable toilets shall be located on the lot and not on the street right of way.

(2.16) ENFORCEMENT: Any lot owner or combination of lot owners within the subdivision shall be entitled to damages or any other remedies from any person, firm or corporation violating or attempting to violate these covenants from which a court of law or equity will allow. If any covenant herein is declared void, then all other covenants contained herein shall remain in full force and effect.

(2.17) AMENDMENT AND DURATION: These covenants may be amended from time to time by 80% of the owners within the subdivision and these covenants and any amendments adopted shall run with and be binding on all parties owning lots until January 1, 2035 at which time they will expire.

ARTICLE III. ESTABLISHMENT OF HOMEOWNERS ASSOCIATION

(3.1) MEMBERSHIP: Officers of the Declarant will make all decisions for the subdivision until 100% of the Lots are sold. After all Lots are sold, every person or entity which is a record Owner of a fee simple or undivided interest in any Lot which is subject by the Covenants shall be a member of the Association; provided that any such person or entity who holds such title or interest merely as security for the performance of an obligation shall not 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 by the Association.

(3.2) VOTING RIGHTS: Before all Lots within the subdivision are sold, solely the officers of the Declarant will hold voting rights. After all Lots have been sold, the Lot Owners within the Association shall have voting rights being one vote per Lot owned.

When more than one person holds an interest in any Lot, all such persons shall be members; and the vote for such Lot shall be exercised as they among themselves

determine. When one or more co-owners sign a proxy or purport to vote for his or her co-owners, such vote shall be counted unless one or more of other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, it shall be split equally among the co-owners.

(3.3) PROPERTY RIGHTS IN THE COMMON PROPERTIES:

(A) Member's Easement of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot.

(B) Delegation of Use. Any member may delegate in accordance with the by-laws of the Association, his right of enjoyment to the Common Properties and facilities to the members of his family or contract purchasers who reside on the property.

(C) Title to Common Properties. Declarant hereby covenants for its officials, their successors and assigns that it will convey, bargain, and sell the Common Properties to the Association on or before the date the Declarant has acquired effective contracts for the sale of all the lots as shown on the recorded maps of the subdivision subject to all restrictive covenants of record.

(D) Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (1) The right of the Declarant and of the Association, in accordance with its by-laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties;
- (2) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosures;
- (3) The right of the Association, as provided in its by-laws, to suspend the enjoyment of rights of any member for any period during which any assessments remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the member's obligation to pay the assessment;
- (4) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties and/or facilities therein; and
- (5) The right of the Association to give or sell all or any part of the Common Properties, including leasehold interest, to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the members, provided that no such gift or sale or determinations as to the purposes or as to the conditions thereof shall be effective unless such dedications, transfer, and determination as to purpose and conditions shall be authorized by the vote of two-thirds (2/3) of the vote at a duly called meeting and unless written notice of the proposed agreement action there under is sent to every member at least twenty (20) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the membership.

(3.4) COVENANTS FOR MAINTENANCE ASSESSMENTS:

(A) Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot shall, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of these covenants and to pay to the Association:

- (1) Annual assessment or charges;
- (2) Special Assessments for the purposes set forth in Section d of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided, shall be a charge and continuing lien on the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time the assessment fell due. In the case of co-ownership of a Lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

(B) Purpose of Assessments. The assessments by the Association shall be used exclusively for the improvement, maintenance and operation of the Common Properties, including but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereof, and for the cost of labor, equipment, materials, management and supervision thereof. The Special Assessments shall be used for purposes set for in Section d of this Article.

(C) Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$40.00 monthly / \$480.00 yearly per Lot.

- (1) 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 each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.
- (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 percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting person or by proxy, at a meeting duly called for this purpose.
- (3) The Board of Directors of the Association may fix the annual assessment at an amount not in excess of the maximum, however, the Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year at a lesser amount, but such action shall not constitute a waiver by the Association of its right to revert to the full assessment for the remaining year or years of the then current period fixed as provided in the preceding paragraph.

(D) Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section c, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary Properties, provided that any such assessments shall have the assent of two-thirds (2/3) of the vote at a duly called meeting, written notice of which shall be sent twenty (20) days in advance and shall set forth the purpose of the meeting.

(E) Change in Basis and Maximum of Annual Assessments Upon Merger or Consolidation. The limitations of Section c hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under the By-Laws of the Association.

(F) Notice and Quorum for any Action Authorized. The presence at the meeting of members or of proxies entitled to cast thirty (30) percent of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at a meeting, another meeting may be called subject to the notice requirement set forth in Section d of this Article; but no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(G) Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement. The first annual assessments shall be made for the balance of the calendar year and shall be payable on the first day of the month fixed for commencement. The assessments for any year after the first year shall be similarly payable commencing on the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided in Section c, hereto, as the remaining number of months in the year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property that is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section (3.4)(D) hereof shall be fixed in the resolution authorizing such assessment.

(H) Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against all Lots for each assessment period and shall, at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand, at any time furnish to any Owner liable for said assessment, a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(I) Effect of Non-Payment of Assessment. The Personal Obligation of the Owner, the Lien; Remedies of Association. If the assessment or any monthly installment(s) thereof are not paid on the date when due (being the dates specified in Section g hereof); then such assessment shall become delinquent and shall, together with interest thereon at the rate of ten percent (10%) per annum from the due date and cost of collection thereof as hereinafter provided, thereupon become a charge and continuing lien on the land and all improvements thereon, against which each assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner at the time of the assessment to pay such assessment, however, shall remain his personal obligation and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

If the assessment or any monthly installment thereof is not paid within thirty (30) days after the due date, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and, in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fee, to be fixed by the court, together with the costs of the action.

(J) Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessments; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments accruing after the conveyance from mortgage Owner to subsequent Owner.

(K) Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

- (1) The grantee in conveyances made for the purpose of granting utility easements;
- (2) All Common Properties as defined in Article I, hereof;
- (3) Any properties exempted from taxation by the laws of the State of North Carolina, shall be so upon the terms and to the extent of such legal exemptions;
- (4) All properties owned by Declarant; however, Declarant agrees to subsidize at its discretion the operation of the Association, in order to show good faith and to help assure the maintenance and operation of the Common Properties up to the amount the Association would have had to pay in assessments in accordance with these covenants if it were not exempted by this provision;
- (5) All properties owned by builders or real estate agents under a statutory exemption from the Office of Interstate and Sales Registration who acquire such Lots for the purpose of engaging in the business of constructing residential buildings or for the purpose of re-sale of such lots to persons or companies engaged in such business, for a period of two (2) years from the date of a sales contract.

IN TESTIMONY WHEREOF, the parties set out in the preamble above have hereunto set their hands and seal this 11th day of February, 2010.

DECLARANT
A.B. Perry Construction, Inc.
(A North Carolina Corporation)

Anthony Bryan Perry, Sr. (SEAL)
Anthony Bryan Perry, Sr., President

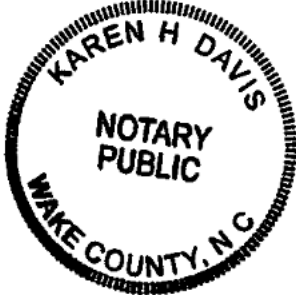
STATE OF NORTH CAROLINA
COUNTY OF Wake

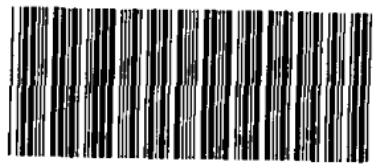
I, Karen W. Davis, a Notary Public in and for said County and State, do hereby certify that Anthony Bryan Perry, Sr., personally came before me this day and acknowledged that he is President of A.B. Perry Construction, Inc. (A North Carolina Corporation), and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official stamp or seal, this the 11th day of February 2010.

Karen W. Davis
Notary Public

My Commission Expires: 4/25/2010





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Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



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

This Customer Group
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