

WAKE COUNTY, NC 194
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
05/14/2010 AT 12:33:57

BOOK:013940 PAGE:02440 - 02446

PREPARED BY AND RETURN TO: DON R. WELLS, ATTORNEY AT LAW, MAST LAW FIRM
5842 NC HWY 42 WEST, GARNER, NC 27529

STATE OF NORTH CAROLINA	AMENDMENTS TO DECLARATION OF
	COVENANTS, CONDITIONS AND
	RESTRICTIONS FOR HERON POINT
COUNTY OF WAKE	SUBDIVISION, RESIDENTIAL
	COMMUNITY

These Amendments to the Declaration of Covenants, Conditions and Restrictions for Heron Point Residential Community (hereinafter the “Amended Declaration”) is made this 12th day of May, 2010 by CAP Properties, LLC, a North Carolina limited liability company (hereinafter referred to as the “Declarant”).

WITNESSETH:

WHEREAS, Declarant executed and caused to be recorded in the Wake County, North Carolina Registry in Book 12659, beginning at page 1074, that certain document titled “Declaration of Covenants, Conditions and Restrictions for Heron Point Subdivision, Residential Community” (hereinafter the “Original Declaration”);

WHEREAS, the real property that was made subject to the Original Declaration was described in Exhibit “A” attached thereto;

WHEREAS, at the time the Original Declaration was recorded the Declarant intended to develop the property subject to the Original Declaration in two phases, Phase One having twenty-three (23) lots and Phase Two having nine (9) lots;

WHEREAS, at present ten (10) of the twenty-three (23) lots in Phase One have been sold and no lots in Phase Two have been sold;

WHEREAS, pursuant to Section 2 of Article III of the Original Declaration, the Declarant was identified as the sole Class B member and was given the right to seven (7) votes for each lot owned by the Declarant, while Class A members were identified to be all other owners of lots and were given one vote per lot;

WHEREAS, Declarant is the current title owner to thirteen (13) of the twenty-three (23) lots in Phase One and all nine (9) lots in the planned Phase Two of Heron Point;

WHEREAS, pursuant to Section 2 of Article XII of the Original Declaration, “As long as Class B membership exists, Declarant may amend this Declaration without the approval of any member provided the amendment does not materially alter or change any owners right to the use and enjoyment of such owner’s lot, and the amendment does not adversely affect the title to any lot”;

WHEREAS, under the terms of Section 2 of Article III of the Original Declaration including all sub-parts thereof, Class B membership at this time still exists;

WHEREAS, Declarant now wishes to make certain amendments to the Original Declaration as are more particularly set forth below.

NOW THEREFORE, the Declarant hereby makes the following amendments to the Original Declaration, which amendments shall be binding on and applicable to all property referenced herein, and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof and on their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

- 1. Section (q) of Article I shall be re-written to read as follows:

“Property shall mean the property described on Exhibit A attached to this Amended Declaration dated May ____, 2010 and any and all other Additional Property (as herein defined) hereinafter made subject to this Declaration by Supplemental Declaration or merger or consolidation as provided herein below.”

Any reference in the Original Declaration to “Property” shall hereafter be deemed to refer only to the real property described in Exhibit “A” to this Amended Declaration. Any real property that is described in Exhibit “A” to the Original Declaration that is not also included in the description that is attached to this Amended Declaration as Exhibit “A” is and shall forever be hereby released and discharged from any restrictions, covenants, provisions or any other terms of the Original Declaration and this Amended Declaration.

It is the purpose of this Amendment to remove from the provisions of the Original Declaration and the Amended Declaration the real property that would have comprised Phase Two of Heron Point Subdivision.

- 2. Section 16 of Article VIII shall be re-written to read as follows:

“Section 16. Landscaping. All landscape plans shall be reviewed by the Architectural Review Committee and no landscape construction may begin until said Committee approves

such submitted landscape plan. Except for the single-family residence, driveways, sidewalks and other Improvements on each Lot, the surface of each Lot shall be of undisturbed areas left in their natural state or grass or other live foliage or areas covered with mulch and/or other ground cover approved by the Architectural Control Committee. Such natural areas, grass, foliage, mulch and ground cover shall be neatly maintained by Owner at all times. If any Lot Owner fails or refuses to complete the landscape construction at the time of the completion of the residence located on the Lot or any additions to or improvements to an existing home on a Lot, or to neatly maintain his or her lawn and/or landscaping, the Association may notify the Lot Owner in writing, and if the Owner does not correct such deficiency within thirty (30) days after the date of the notice, the Association may employ an outside contractor to correct such deficiency, and the Owner shall be liable to the Association for the costs of such contractor and the costs, including court costs and attorney's fees, which may be incurred by the Association in the collection of such amounts."

3. Section 17 of Article VIII shall be re-written to read as follows:

"Section 17. Fences and Walls. Except as specifically approved in writing by the Architectural Control Committee no fence, wall or hedge shall be erected, placed or altered on any Lot nearer to any street fronting such Lot than the rear building corner of the main dwelling constructed on such Lot and shall in all respects conform to the requirements of the Architectural Control Committee. Unless written consent is given by Declarant (or, following termination of the Class B Membership, by the Board), no fence may be constructed within the Buffer Area. In the case of corner lots, the fence shall not be closer to the side road than the rear corner (closest to the side road) of the main building located on such Lot. All fences, whether or not on a corner lot, shall be attached to the main building with the rear deck or patio located inside the fence. Fences shall not be built any closer than 30 feet from the side lot line or, in the case of a corner lot, not any closer than 30 feet from the rear lot line. All fences on Lots shall be maintained at all times in a structurally sound and attractive manner and in a good state of repair. If the Owner(s) fails to maintain the fence or wall in accordance with the terms of this Section, then the Association may give written notice to the Owner(s) of such deficiency(ies). In the event that Owner(s) fail to correct the deficiency(ies) within thirty (30) days of his or her (their) receipt of the written notice, then the Association may correct such deficiency(ies) and the costs of

such action, including any court costs and attorney’s fees incurred by the Association in connection with the correction(s) shall be charged to the Owner(s) as an assessment hereunder.”

- 4. Section 29(a) of Article VIII shall be re-written to read as follows:

“Any dwellings constructed on Lots 10, 11 , 12, 13, 14, 15, 16, 17, 21 or 23 shall have a minimum of 2800 square feet of heated floor space; any dwellings constructed on Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 18 or19 shall have a minimum of 3000 square feet of heated floor space; any dwellings constructed on Lots 20 and 22 shall have a minimum of 2500 square feet of heated floor space.”

- 5. The following Section 33 shall be added to Article VIII of the Original Declaration;

“Section 33. Trash Collection. So long as Class B membership exists, the Declarant may, but is not required to, designate a specific trash collection service to be used by all Lot owners. Once Class B membership no longer exists, the Association may, but is not required, to adopt a resolution designating a trash collection service to be used by all Lot owners. The purpose of this restriction is to prevent excessive wear and tear on the streets of the subdivision that likely would result from multiple trash companies entering and exiting the subdivision on a frequent basis.”

Except as herein amended, all provisions of the Original Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this Amended Declaration to be signed in its company name by its duly authorized member/manager, David G. Williams, the day and year first written above.

CAP Properties, LLC



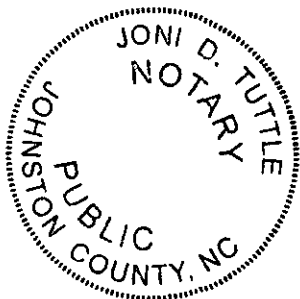
David G. Williams, Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF JOHNSTON

I, Joni D. Tuttle, a notary public of Johnston
County, North Carolina, certify that David G. Williams, who is personally known to me or has
proven his identity by satisfactory evidence, personally came before me this day and
acknowledged the due execution of the foregoing instrument for the purposes therein expressed.
Witness my hand and Notarial stamp or seal this 12th day of May, 2010.

(SEAL)

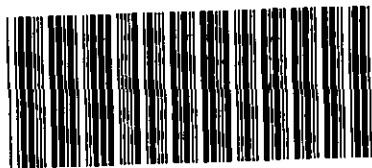


Joni D. Tuttle
Notary Public

My commission expires: 3-13-11

EXHIBIT “A”

BEING all of Phase One of Heron Point Subdivision containing Lots 1 – 23, inclusive, as described in map entitled “Surveyed for Phase One Heron Point” by Byrd Surveying, P.A., recorded July 18, 2007 in Book of Maps 2007, Pages 1640-1642, Wake County Registry.



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Laura M. Riddick
Register of Deeds

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