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FOR
REGISTRATION

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Prepared by and return to:
William H. Weatherspoon, Jr.
Brown & Bunch
4900 Falls of Neuse Road, Suite 210
Raleigh, North Carolina 27609

KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

AMENDED AND RESTATED

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
RIGGSBEE FARM

THIS AMENDED AND RESTATED DECLARATION is made on the date hereinafter set forth by Zaring Homes, Inc., an Ohio corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H T H A T:

WHEREAS, Declarant is the owner of certain Properties located on Davis Drive, Cary, County of Wake, State of North Carolina; and,

WHEREAS, Declarant will convey lots from its said Properties subject to certain protective covenants, conditions, restrictions and easements as hereinafter set forth; and

WHEREAS, Declarant has previously recorded a Declaration of Covenants, Conditions and Restrictions for Riggsbee Farm in Book 6722, Page 624, Wake County Registry; and

WHEREAS, prior to the conveyance of any Lots from its said Properties, Declarant wishes to amend and restate such Declaration as hereinafter set forth;

NOW THEREFORE, Declarant hereby declares that all of the Properties described hereinafter shall be held, sold and conveyed

subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Properties 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 Riggsbee Farm Homeowners Association, Inc., its successors and assigns.

Section 2. "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 contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean that certain portion of the Properties (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including any recreational facilities, landscaping and street circles. The Common Area to be owned by the Association at the

time of the conveyance of the first Lot is described with greater particularity on Exhibit B attached hereto and incorporated herein by this reference.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area and road rights-of-way which are offered for public dedication.

Section 6. "Lot in Use" shall mean and refer to any Lot on which a dwelling unit has been fully constructed and is being occupied as a dwelling unit.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Building Envelope" shall mean and refer to the maximum allowable area of a Lot within which a single-family residence may be constructed in accordance with Article VI, Section 4 hereof.

Section 9. "Declarant" shall mean and refer to Zaring Homes, Inc., an Ohio corporation, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 10. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 11. "Bylaws" shall mean and refer to the Bylaws of the Association, as amended from time to time.

Section 12. "Builder" shall mean any person or entity, other than Declarant, who, in the ordinary course of business, constructs a dwelling unit (i) for resale to, or on behalf of a third party, or (ii) for their own use or the use of their family. A Builder may or may not be an Owner.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to and right of ingress and egress over the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any of the recreational facilities which constitute a portion of the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of any of the recreational facilities which constitute a portion of the Common Area 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;

(c) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and its facilities, and in aid thereof to deed in

trust the Common Area, which lien of such deed of trust shall be subject to the rights and easements of every Owner created herein;

(d) 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 two-thirds (2/3) of each class of Members has been recorded; and,

(e) the right of the Association to formulate, publish, impose and enforce rules and regulations for the use and enjoyment of the Common Area, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use. Subject to Section 1 above, any Owner may delegate, in accordance with the Bylaws, his rights of use and enjoyment in and to the Common Area, to the members of his family, his lawful tenants, or contract purchasers who reside on such Owner's Lot and, to his guests, invitees and licensees.

Section 3. General Easements and Associated Undertakings. All of the Properties, including Lots and Common Area, shall be subject to such easements for private roads or drives, public streets, water lines, sanitary sewers, storm drainage facilities, gas lines, cable communication transmission, telephone and electric power lines and other public utilities, whether above or below ground, as shall be established by the Declarant or by its predecessor in title, prior to the subjecting of the Properties to

this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Area conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. Sight easements, if any, as may be shown upon any recorded subdivision map of the Properties are hereby reserved by the Declarant.

An easement is hereby established for the benefit of the Town of Cary and any agency or utility performing any of the following services over all Common Area and over an area of all Lots within the Properties five (5) feet from the curb line of any street or roadway established within the Properties hereby or hereafter established for the setting, removal, and reading of water and electricity meters, the maintenance and replacement of water, electricity, sewer and drainage facilities. In addition thereto, an easement is hereby established over all of the Properties for the benefit of the Town of Cary and all other agencies and personnel performing any of the following duties and services for the fighting of fires, mail delivery, collection of garbage, ambulance services and police protection.

An access easement for ingress, egress and regress for the benefit of all Lot Owners is hereby established across such of the Lots as is necessary to provide access from the public street right-of-way to the Common Area. The exact width and location of such easement shall be as specifically shown on any recorded subdivision map of the Properties.

Section 4. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Area is hereby reserved, conveyed and established in favor of Declarant and all Owners of any Lot to be used for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials, the necessary disturbance of land for construction on any Lot, and installation of driveways, sidewalks, underground drainage and utility conduits and hookups. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In using and taking the benefits of said easement, Declarant or its designate and Owners shall use their best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should Declarant, its designate or an Owner fail to restore the disturbed land as required above, the Association may restore the land to the required condition and Declarant, its designate or Owner, as the case may be, shall indemnify the Association for the reasonable expense incurred in performing such restoration. Where any Owner shall seek to take advantage of the easement herein conveyed, such Owner's rights of use shall be restricted to that Common Area which shall be reasonably servient and proximate to his Lot. Anything in the foregoing to the contrary

notwithstanding, every Owner shall obtain the approval of the Declarant before commencing any construction as required in Article VI of this Declaration.

Section 5. Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns that it will convey fee simple title to the Common Area described on Exhibit B hereto to the Association, free and clear of all encumbrances and liens, except public streets, private roads or drives, utility easements and any use restrictions of record prior to the conveyance of the first Lot.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. 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 separated from ownership of a Lot which is subject to assessment.

Section 2. Classes of Membership. The Association shall have the following two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one 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 vote or a fractional vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to four (4) 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 the Class B membership; provided, however, in the event the Class B membership shall cease and be converted to Class A membership because the Declarant no longer owns the number of lots required to keep such Class B membership in effect, such Class B membership shall be reinstated by the recordation of a subdivision map of the Properties which creates additional Lots; or
- (b) upon the surrender of all Class B memberships by the holder thereof.

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 therefor, 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 when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

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, including any private roads, for the establishment of adequate reserves for the replacement of capital improvements, if any, located within the Common Area, payment of insurance premiums for contracts of hazard and liability insurance on the Common Area and payment of local ad valorem taxes or governmental charges, if any, on the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Thousand and NO/100 Dollars (\$1,000.00) per Lot.

Thereafter, annual assessments shall be established by the Board of Directors, but each annual increase shall not be more than twenty percent (20%), except by a vote of two-thirds (2/3) of

each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

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, including fixtures and personal property related thereto; provided, however, any such assessment shall have the assent of two-thirds (2/3) 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 Section 3 or 4 or this Article 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 percent (60%) 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 (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 annual assessments shall be due and payable and collected on a monthly, quarterly or annual basis as determined by the Board of Directors. Notwithstanding anything herein to the contrary, annual and special assessments for all Lots which are not a Lot in Use owned by Declarant shall be equal to fifty percent (50%) of such assessments for other Lots. Special assessments may be collected on a quarterly basis.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence and shall be due and payable as to all Lots on the first day of the month following the conveyance of the Common Area and on the first day of each calendar year thereafter. Such amount due and payable on the first day of each such calendar year shall be as set forth and established pursuant to Section 3 of this Article. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. There shall be paid at the time of the initial sale of each Lot at least two (2) months' assessments in order to provide a working capital fund for the initial months of the Association's operation. For the purpose of establishing such working capital fund, a sale by Declarant to a purchaser who intends solely to acquire such Lot in order to construct a dwelling unit thereon for resale purposes shall not be considered the initial sale; provided, however, the sale at which time a Lot shall become a Lot in Use shall be

considered the initial sale for such purpose. Amounts paid into such fund shall not be considered as advance payment of any portion of the annual assessment. 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 date shall be as previously set forth herein, unless otherwise 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. A 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 percent (8.0%) per annum and shall be subject to a late charge of Twenty Five and No/100 Dollars (\$25.00). The Association may bring an action at law against the Owner personally obligated to pay the same for such delinquent assessment, interest costs, late charges and reasonable attorney's fees of any such action, or foreclose the lien against the property. For purposes of this Section, the amount of delinquent assessment, plus accrued interest, shall be considered evidenced by this paragraph and therefore, evidence of indebtedness shall

exist hereby. 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 assessments 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 assessments 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.

Section 10. Responsibility for Maintenance of Private Streets and Drives. The responsibility for maintenance of any private streets and drives as may be shown on any recorded subdivision map of the Properties shall be that of the Association pursuant to the applicable provisions of the Wake County Code.

ARTICLE V

INSURANCE ON COMMON AREA

Section 1. Ownership of Policies. Contracts of insurance upon the Common Area shall be purchased by the Association for the benefit of the Association and its mortgagees, if any, as their interests may appear. The Association may re-evaluate its coverage from time to time and may provide, subject to Section 2 of this Article, for such insurance coverage as it deems appropriate.

Section 2. Coverage. All improvements and personal property included in the Common Area shall be insured in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement and such other risks as from time to time shall be customarily covered with respect thereto. In addition, the Association shall acquire and maintain in full force and effect a policy of insurance which insures against any public liability arising out of its ownership of the Common Area and the use and operation thereof with limits of liability therefor of not less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage as the Association shall from time to time determine to be desirable and necessary or as may be required by the Federal Housing Authority, Veterans Administration or Federal National Mortgage Association. Such policies shall contain clauses providing for waiver of subrogation, if possible.

Section 3. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in

the performance of their duties in an amount equal to at least one-half the annual assessment plus reserves accumulated.

Section 4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and charged ratably to the Owners as an assessment according to the provisions of Article IV above.

Section 5. Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interests may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein.

Section 6. Distribution of Insurance Proceeds. Proceeds of contracts of insurance received by the Association as insurance trustee shall be distributed to or for the benefit of the beneficiary or beneficiaries thereof in the following manner:

(a) The proceeds shall be paid first to defray the cost of reconstruction and repair of casualty or liability so covered.

(b) Any expense of the insurance trustee may be paid from proceeds after payment of reconstruction or repair expenses or liability. Any proceeds remaining thereafter shall be distributed to the beneficiary or beneficiaries of the trust.

ARTICLE VIARCHITECTURAL AND APPEARANCE CONTROL

Section 1. Required Approval. Except for the initial dwelling structure constructed on any Lot by or for Declarant in accordance with its general plan of development, which initial dwelling structure shall be exempt from the following approval process, no building (including an accessory building or structure and a garage), fence, wall or other structure shall be erected, placed, or altered on the Properties, nor shall any exterior addition to or change or alteration therein be made, including expansions of the initial dwelling structure, until the building plans, specifications, and plot showing the nature, kind, height, materials and location of the same shall have been submitted to and approved in writing as to conformity and harmony of external design with existing structures in the development, including without limitation, proposed exterior materials and colors, and as to location of the building with respect to topography and finished ground elevation by the Architectural Committee, which shall be a committee composed of three (3) persons designated and appointed by the Declarant or such person, firm or corporation to whom Declarant has expressly assigned this right. In the event such Committee fails to approve or disapprove such design or location within thirty (30) days after the plans and specifications have been submitted to it or, in any event, if no suit to enjoin the erection of any such building or the making of such alterations has been commenced prior to the completion

thereof, such approval will not be required and this Section will be deemed to have been fully complied with. In the event that the Architectural Committee disapproves of the design or location of a residential dwelling unit and if in such event the Owner refuses to revise such design or change such location in order that it will be approved by the Architectural Committee, the Declarant will purchase such Owner's Lot within thirty (30) days after demand is made on the Declarant by such Owner in writing. The purchase price shall be the same price as the price which the Declarant received upon the sale of the Lot. Members of the committee shall not be entitled to any compensation for services performed pursuant to this Section. If Declarant is dissolved without having assigned its rights hereunder, the provisions of this Section shall terminate on the day such dissolution occurs. The Architectural Committee shall have absolute discretion in performing the review function set forth in this Section. Each Builder, prior to initial construction of a dwelling unit and/or accessory structures on a Lot shall secure the Declarant's approval of plans and specifications. Approval of plans and specifications by the Declarant shall be conducted in the same manner and in the same time frame as set forth herein. The Declarant shall have all legal and equitable remedies available under this Declaration to enforce its decision against Builders, Owners or their successors.

Section 2. Fees. The Board may charge reasonable fees for the processing of plans and specifications and any inspection in

connection therewith. Fees shall be paid at the time the plans and specifications are submitted to the Board.

Section 3. Dwelling Size. Except with the prior written approval of the Architectural Committee, no residential structure which has an area of less than one thousand six hundred (1,600) square feet of finished and heated living area, exclusive of basements, porches, breeze-ways, steps and garages, shall be erected or placed or permitted to remain on any Lot.

Section 4. Building Location. No structure shall be located on any Lot in violation of the following yard requirements:

- (a) Street Yards. No structure shall be located closer than twenty (20) feet from a private drive, measured from the center line of the pavement. No structure shall be located closer than thirty (30) feet from public street rights-of-way.
- (b) Rear Yard. The rear yard shall not be less than twenty (20) feet, except when the rear yard adjoins a public street or private drive the setback shall be calculated in accordance with Section 3(a) above.
- (c) Aggregate Front and Rear Yards. The aggregate setbacks of front and rear yards shall not be less than forty (40) feet.
- (d) Aggregate Side Yards. The aggregate width of the side yards shall not be less than twenty (20) feet, while neither individual side yard shall be less than ten (10) feet.

For the purpose of this Section, eaves and steps shall not be considered a part of a structure, provided, however, that this shall not be construed to permit any portion of a structure on a Lot to encroach upon another Lot or to imply that such eaves and steps are not subject to the provisions of the Town of Cary Code. In the event of a violation of the setback provisions of this Section, any variance or waiver relative to such violation granted by the Cary Board of Adjustments shall be conclusively deemed to also constitute a variance or waiver as to a violation of this Section. Nothing herein shall mean that the Architectural Committee cannot withhold its approval of the location of a structure regardless of the fact that such structure meets the requirements of this Section.

Section 5. Handicap Accessibility. Notwithstanding the other provisions herein, an Owner of a dwelling unit and Lot may, at his expense, have such reasonable modifications made to the interior and exterior of his dwelling unit and Lot as may be necessary to afford physically handicapped persons full enjoyment of their premises. Any modifications to be undertaken to the exterior of a dwelling unit and Lot shall comply with the guidelines and regulations of the United States Department of Housing and Urban Development for buildings and facilities providing accessibility and usability for physically handicapped people, and should be undertaken pursuant to a contract, the terms, conditions and specifications of which, shall be approved by the Board.

Section 6. Required Land Area. No Lot may be subdivided by sale or otherwise so as to reduce the total area thereof below that as shown upon any recorded subdivision map of the Properties; provided, however, adjustments may be made, in the line between any two (2) Lots so long as the area of any Lot is not reduced by more than ten percent (10%) and so long as all other restrictions herein set forth are observed and such adjustment or recombination is approved by the Town of Cary Planning Department. Upon any recombination of Lots, the setbacks and side line clearances from new Lot lines shall be applicable and setbacks from former Lot lines shall no longer be required. No recombination of Lots may be made in a manner which results in any increase in the number of Lots in excess of and shown on any recorded subdivision map of the Properties.

Section 7. Utilities Easements. Declarant reserves an easement for and the right at any time in the future to grant a right-of-way and easement for the purpose of drainage, underground or above ground installation, repair and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful in furnishing electric power, gas, sewer, telephone service, cable services and any other utilities for or to the Lots or Common Areas as may be shown upon any recorded subdivision map of the Properties, and over the rear ten (10) feet of each Lot unless shown in excess of such distance on any recorded subdivision map of the Properties.

Section 8. Fences and Lawn Toys. No fence, wall, hedge, swingset, jungle gym, playhouse, basketball goal or other similar lawn toys or equipment shall be permitted except upon approval by the Architectural Committee.

Section 9. Radio and Television Antennas. No exposed or exterior radio or television transmission or receiving antennas shall be erected, placed or maintained on any part of a Lot or upon a structure thereon which shall exceed a height of four (4) feet above the highest point of the roof of the residential structure constructed upon such Lot. In addition, no dish apparatus intended for the reception of cable communication transmission shall be erected, placed or allowed to remain on any Lot without the prior approval of the Architectural Committee.

Section 10. Swimming Pools. No above-ground swimming pools above one (1) foot in height shall be permitted. No in-ground swimming pools shall be permitted except upon approval by the Architectural Committee.

Section 11. Erosion Control. During the period of lot grading and construction of the residential structure and thereafter, each Owner shall exercise and maintain such erosion control measures, including the erection of silt fences, as may be required by the Declarant in order to minimize erosion and runoff. Compliance with the applicable erosion control ordinance shall not constitute automatic approval by Declarant, and Declarant reserves the right to impose requirements and standards in excess of those required by law.

ARTICLE VIIUSE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Area.

Section 2. Use of Properties. No portion of the Properties (except for a temporary office of the Declarant maintained for development and sales purposes and the Common Area) shall be used except for residential purposes incidental or accessory thereto.

(a) Outside clothes lines shall not be permitted upon any Lot at locations where they can be viewed from any street or an adjacent Lot.

(b) No commercial signs, with the exception of a "For Sale" or "For Rent" sign no more than two feet in width and three feet in height, shall be erected or maintained on any Lot. Such signs as allowed hereunder, being temporary in nature, shall not be subject to any setback requirement imposed by Article VI, Section 3. Builders may erect signs as are authorized by the Declarant.

(c) No house trailers shall be permitted on any Lot. Boats, trailers, campers, not including those attached to the body of a truck, tents or temporary buildings shall not be permitted on any Lot except in areas where they can not be viewed from the streets.

(d) No lumber, brick, stone, cinder block, concrete or any other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot

in an exposed location except for the purpose of construction on such Lot and shall not be stored on such Lot for longer than the length of time reasonably necessary for the construction in which same is to be used.

(e) No exposed above-ground tanks will be permitted for the storage of fuel or water or any other substance, except that such tanks may be placed above-ground provided they are kept in a screened enclosure which must exceed in height by at least one (1) foot any such tank as may be placed therein.

Section 3. Hobbies and Activities. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles, which might tend to cause disorderly, unsightly or unkept conditions, shall not be pursued or undertaken on any part of any Lot at locations where they can be viewed from any street or upon any portion of the Common Area.

Section 4. Animals and Pets. No stable, poultry house or yard or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any Lot without the express written permission of the Association first had and obtained. However, a reasonable number of household pets as determined by the Board of Directors of the Association shall be permitted, provided they are not raised for commercial purposes.

Section 5. Prohibited Activities. Noxious, offensive or loud activities shall not be carried on upon any Lot. Each Owner

shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. Each Owner shall keep and maintain his Lot in a neat, orderly and well kept manner.

Section 6. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Properties shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, 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 or hereafter imposed by the provisions of this Declaration. Failure by the Association, Declarant or 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 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or Bylaws of the Association, the Declaration shall control.

Section 4. Assignment by Declarant. Declarant shall be entitled to assign to any party by a separate recorded instrument or instruments all or a portion of the rights and benefits contained in this Declaration which are reserved to the Declarant. In the event of any assignment, said party shall be deemed to be "Declarant" to the extent of the rights and benefits hereunder which are assigned. Any such rights and benefits of the Declarant contained herein shall not be assignable or transferable without an express assignment hereof by Declarant. Such assignments may transfer rights and benefits exclusively or non-exclusively.

Section 5. Duration and Amendment. The covenants, conditions 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, unless a recorded instrument signed by the then Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to terminate this Declaration. The Declarant reserves the right and power and each Lot Owner by acceptance of a deed to a Lot is deemed to and does grant to the Declarant a Power of Attorney coupled with an interest which shall run with the title to the lot, and shall be irrevocable except by Declarant for a period of five (5) years from the date hereof, to amend this Declaration to

the extent necessary to conform to any requirements imposed or requested by any governmental agency, public authority or financial institution (including the U.S. Department of Housing and Urban Development, the U.S. Veteran's Administration, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or similar agency), without the approval of the Lot Owners, or to the extent necessary to enable Declarant to meet any other reasonable need or requirement in order to complete the development of the Properties or to facilitate the making and marketing of first mortgages upon any of the Lots. This Declaration may also be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the then Lot Owners. Any amendment must be recorded.

Section 6. Amendment Form. If any amendment to these covenants, conditions and restrictions is so approved, each such amendment shall be delivered to the Board of Directors of the Association. Thereupon, the Board of Directors shall within thirty (30) days, do the following:

(a) Reasonably assure itself that the amendment has been validly approved by the Owners of the required number of Lots. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to any Lot to be examined).

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association

in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS,
CONDITIONS AND RESTRICTIONS OF
RIGGSBEE FARM

By authority of its Board of Directors, Riggsbee Farm Homeowners Association, Inc., hereby certifies that the foregoing instrument has been duly approved by the Owners of _____ percent of the Lots of Riggsbee Farm and is, therefore, a valid amendment to the existing covenants, conditions and restrictions of Riggsbee Farm.

This the ____ day of _____, 1995.

RIGGSBEE FARM HOMEOWNERS
ASSOCIATION, INC.

President

ATTEST:

Secretary

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of their recordation in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots.

Section 7. Annexation of Additional Properties. At any time during the effective term of this Declaration, Declarant may propose that the Association annex additional properties which have been or will be developed in conformity with the general plan of development for Riggsbee Farm as follows:

(a) Additions by Declarant. Additional land within the area described in Exhibit C attached hereto, may be annexed by the Declarant without the consent of Members within five (5) years from the date of this Declaration provided that the FHA, FNMA or VA, as the case may be, determine that the annexation is in accord with the general plan heretofore approved by them.

The additions authorized under this and the succeeding subsection, shall be made by filing of record an amendment with

respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property or by adopting this Declaration in whole or in part by reference.

Such amendment may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration.

(b) Other Additions. Annexation of additional properties not set forth on Exhibit C shall require the assent of two-thirds ($2/3$) of the votes of the Class A membership of the Association and two-thirds ($2/3$) of the votes of the Class B membership of the Association, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of Members or of written proxies entitled to cast sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be the same. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds ($2/3$) of the Class A membership or two-thirds ($2/3$) of the Class B membership

are not present in person or by proxy, Members not present may give their written assent to the action taken thereat.

Section 8. Addition of Recreational Facilities. The Declarant shall not add any recreational facilities as amenities for the Association without first obtaining the written consent of a majority of the Class A Members.

Section 9. Contract Rights of Association. As long as there is a Class B membership, any contract entered into by or on behalf of the Association shall contain a provision giving the Association or the other party thereto the right to terminate such contract upon the giving of not more than thirty (30) days written notice to the other party or parties.

Section 10. Lender's Notice. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage.
- (b) Any sixty (60) day delinquency in the payment of assessments owed by the Owner of the Lot on which it holds the mortgage.
- (c) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action that requires the consent of a specified percentage of mortgage holders.

(e) The Association's financial statement for the immediately preceding fiscal year.

Section 11. Limitation Of Town's Liability. The maintenance responsibility of private streets and drives, if any, shall rest with the Association and in no case shall the Town of Cary or any agency thereof which provides emergency or regular fire, police or other public service to and for the Properties, be responsible for failing to provide any such service to the Properties or any of its occupants when such failure is due to the lack of access to such area due to inadequate design or construction, blocking of access routes, or any other factor within the control of Declarant, the Association, or any occupants.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14th day of November, 1995.



(Corporate Seal)

Attest:

Deborah D. Davis
Secretary

Zaring Homes, Inc.,
an Ohio corporation

By:

Anna L. McCarthy
President

STATE OF North Carolina
COUNTY OF Wake

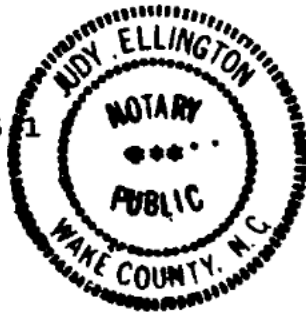
I, a Notary Public of the County and State aforesaid, certify that Deborah H. Davis personally came before me this day and acknowledged that she is Secretary of Zaring Homes, Inc., an Ohio corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary. Witness my hand and official stamp or seal, this the 14th day of November, 1995.

My Commission Expires: 12-15-96

Judy Ellington
Notary Public

(SEAL)

A:WHW95 1



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of _____

Judy Ellington

Notary Public is

(are) 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.

KENNETH C. WILKINS, Register of Deeds

By

Meta N. Haus
Asst./Deputy Register of Deeds

EXHIBIT A

BEING all of Lots 1-4, 32-37 and 221-223 as shown on Boundary and Subdivision Map of Riggsbee Farm, Phase 1, recorded in Book of Maps 1995, Page 1124, Wake County Registry.

BEING all of Lots 16-26 and 98-102 as shown on Boundary and Subdivision Map of Riggsbee Farm, Phase 1 - Map 2, recorded in Book of Maps 1995, Page 1410, Wake County Registry.

BEING all of that certain parcel containing 2.994 acres as shown on Subdivision Map of Riggsbee Farm, Recreation Area, recorded in Book of Maps 1995, Page 1291, Wake County Registry.

riggsbee.1

EXHIBIT B

BEING all of that certain parcel containing 2.994 acres as shown on Subdivision Map of Riggsbee Farm, Recreation Area, recorded in Book of Maps 1995, Page 1291, Wake County Registry.

EXHIBIT C

BEGINNING at an existing axel located in the eastern line of the William B. Upchurch Property, said axel marking the southwestern corner of the James Carl Edwards, Jr. Property; thence along the southern line of the James Carl Edwards, Jr. Property S 88° 47' 51" E 2308.39 feet to a point located in the western margin of Davis Drive (SR 1613) (60' R/W) said point marking the southeastern corner of the James Carl Edwards, Jr. Property; thence along the western margin of Davis Drive (SR 1613) S 07° 59' 31" E 44.22 feet, S 10° 59' 58" E 99.97 feet, S 13° 28' 05" E 100.67 feet, S 14° 42' 13" E 99.09 feet and S 14° 51' 15" E 942.43 feet to a new iron pipe marking a new corner; thence leaving the western margin of Davis Drive (SR 1613) a new line S 76° 45' 02" W 132.16 feet to an existing iron pipe marking the northeastern corner of the Crossroads Express Mart, Inc. Property; thence along the northern and western lines of the Crossroads Express Mart, Inc. Property S 65° 02' 03" W 335.01 feet and S 18° 59' 21" W 391.91 feet to an existing iron pipe; thence along a new line with Peggy Stone Riggsbee N 80° 29' 15" W 472.03 feet to a new iron pipe, S 74° 54' 00" W 826.51 feet to a new iron pipe, S 86° 39' 37" W 431.68 feet to a new iron pipe and N 80° 30' 27" W 406.06 feet to a new iron pipe located in the eastern line of the William B. Upchurch Property; thence along the eastern line of the William B. Upchurch Property N 00° 56' 05" E 1933.06 feet to the point and place of beginning containing 102.563 acres according to a plat entitled "Boundary Survey of Peggy Stone Riggsbee Property" dated 5/20/94 prepared by Kenneth Close, Inc., Land Surveyor.

LESS AND EXCEPT those Properties described on Exhibit A to this Declaration, which have already been subjected to this Declaration.