

WAKE COUNTY, NC 497
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
06/24/2004 AT 15:11:07

WAKE COUNTY, NC 397
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
06/21/2004 AT 13:21:54

BOOK:010888 PAGE:01655 - 01670

BOOK:010881 PAGE:02377 - 02391

Hold: Clifton & Single
NORTH CAROLINA, WAKE COUNTY

RE-RECORDED TO INSERT BOOK OF MAPS REF ON
PAGE ONE AND TO CORRECT EXHIBIT "A"

Lulu

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
RIVERBROOKE II SUBDIVISION - BOOK OF MAPS 2004, PAGE 939-942, WAKE
COUNTY REGISTRY**

THIS DECLARATION, made on the date hereinafter set forth by Riverbrooke Development, LLC., a North Carolina limited liability corporation, Owner, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the ~~City of Raleigh~~
St. Mary's Township, County of Wake, State of North Carolina, which is more particularly
described as follows:

See attached Exhibit "A" for legal description of lots subjected to these covenants.

AND WHEREAS, Declarant will convey the said properties, subject to certain protective
covenants, conditions, restrictions, reservations, liens and charge as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declared that all of the properties within the
boundaries of property shown as lots, streets and common area on a map of Riverbrooke II
Subdivision, recorded in Book of Maps 2004, Page 939, Wake County Registry, shall
be held, sold and conveyed subject to the following easements, restrictions, covenants, and
conditions, all of which are for the purpose of enhancing and protecting the value, desirability and
attractiveness of the real property. These easements, covenants, restrictions and conditions shall run
with the real property and shall be binding on all parties having or acquiring any right, title or interest
in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

SECTION 1. "Association" shall mean and refer to Riverbrooke II Homeowners Association, Inc., its successors and assigns.

SECTION 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdictions of the Association.

SECTION 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of all members or designated classes of members of the Association, including greenways and recreational areas.

SECTION 4. "Lot" shall mean and refer to any plot of land shown upon the last recorded subdivision map of the Properties on which such plot appears (provided said map has been approved by Declarant), with the exception on the Common Area, privately owned recreation areas and non residential areas.

SECTION 5. "Lot in Use" shall mean and refer to any lot on which a dwelling unit has been fully constructed and occupied as a dwelling unit.

SECTION 6. "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 7. "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 8. "Declarant" shall mean and refer to Riverbrooke II Development, LLC and those of its successors and assigns, if any, to whom the rights of Declarant hereunder are expressly transferred hereafter, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

SECTION 9. "Amenities" shall mean the facilities constructed, erected, or installed on the Common Area for the use, benefit and enjoyment of Members.

ARTICLE II ANNEXATION OF ADDITIONAL PROPERTIES

SECTION 1. ANNEXATION BY MEMBERS. Except as provided in Section 2 of this Article, additional lands may be added and annexed to the Properties only if both two-thirds (2/3) of all of the votes entitled to be cast, in the aggregate, by Class A members and also two-thirds (2/3) of all of the votes entitled to be cast by Class B members, if any, are cast in favor of annexation. A meeting shall be duly called for this purpose, written notice of which shall be sent to all members

of the Association, setting forth the time, place and purpose of the meeting, not less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

For the purpose of such meeting, the presence thereof of members or proxies entitled to cast sixty (60%) percent of the votes of the Class A members and sixty (60%) percent of the votes of the Class B members, if any, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and the majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority either of the Class A or of the Class B votes, or both, required for approval of the annexation, and it appears that the required two-thirds (2/3) majority of either class may be achieved if the members not present or voting by proxy assent to the annexation, then and in that event, the members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within 120 days following the date of the meeting at which the vote was taken. Each member so assenting or dissenting shall be deemed to have cast, respectively, all of the votes to which he is entitled under Article V of this Declaration either in favor of or against the annexation. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of all votes entitled to be cast by the Class A members, in the aggregate, and by the Class B members, the annexation shall stand approved.

SECTION 2. ANNEXATION BY DECLARANT. The Declarant may annex additional lands to the Properties in the following manner:

(A) If, within ten (10) years of the date of incorporation of the Association, the Declarant should develop additional lands such additional lands may be annexed to said properties without the assent of Class A members. Detailed plans for the development of additional lands may be submitted to the County of Wake prior to such development if such submission is required by ordinances of the County of Wake.

(b) The Declarant may annex to the Properties the additional lands described in Subsection (A) of this Section 2 by recording in the Wake County Registry a declaration of annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration either by reference or by fully setting out all provisions therein. The additional land shall be deemed annexed to the Properties on the date of recordation of the declaration of annexation, and no action or consent on the part of the Association or any other person or entity shall be necessary to accomplish the annexation.

(c) Subsequent to recordation of the declaration of annexation by the Declarant, the Declarant shall deliver to the Association one or more deeds conveying any Common Area within the lands annexed as such Common Area is developed.

ARTICLE III MEMBERSHIP

SECTION 1. MEMBERS. The Declarant, for so long as it shall be an Owner, and every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessments by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership, and no Owner shall have more than one membership, except as expressly provided hereinafter. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this subdivision.

ARTICLE IV VOTING RIGHTS

SECTION 1. The Association shall have two classes of voting membership:

CLASS A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article IV. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot and no fractional vote may be cast with respect to any Lot.

CLASS B. The Class B member shall be the Declarant. The Class B member shall be entitled to Three (3) votes for each Lot in which it holds a fee or undivided fee interest, provided that 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) within four months after the total votes outstanding in Class A memberships equal the total votes outstanding in Class B membership; or

(b) on January 1, 2011.

SECTION 2. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and according to the provisions of Article V, Section 1(c).

ARTICLE V PROPERTY RIGHTS

SECTION 1. Members' Easement of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed lot, subject to each of the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage the Common Area, or any portion thereof, and the rights of such mortgage in said Properties shall be subordinate to the rights of the homeowners hereunder; provided, however, that if any Common Area is mortgaged while the Class B membership is in existence, the execution of such mortgage shall require the same approval of the membership which is required for Special Assessments for Capital Improvements as set forth in Article VI, Section 4 of this Declaration.

(c) The right of the Association to suspend the voting rights and right to the use of the recreational facilities by a Member or any person to whom he has delegated his right or enjoyment for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days, for any infraction of its published rules and regulations;

(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 approved by members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance.

The instrument effecting such dedication, transfer or conveyance shall be sufficient if executed by appropriate officers of the Association, and contains a recital of the approval of the members;

(e) The right of the Association to formulate, publish and enforce rules and regulations as provided in Article VIII.

SECTION 2. Delegation of Use. Any member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

SECTION 3. 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 as shown on recorded map to the Association, free and clear of all encumbrances and liens on or before the date which the total votes outstanding in Class A memberships equal the total votes outstanding in Class B membership. Similarly, Declarant will convey to the Association common areas which are part of Riverbrooke

II Subdivision as those portions are annexed in the future until all common areas as shown on the plans approved by the City of Raleigh have been conveyed to the Association.

SECTION 4. The Association may regulate the parking of boats, trailers, and other such items on the Common Area (including the provision of special facilities for which a reasonable charge may be made).

ARTICLE VI COVENANT FOR ASSESSMENT

SECTION 1. Creation of the Personal Obligation of Assessments. Notwithstanding any provisions or inference in this Declaration to the contrary, no Lot shall be subject to any annual or special assessments until and unless such Lot becomes a Lot in Use, except as follows: Following approval of each area by the County of Wake and either the Veterans Administration or the Federal Housing Administration and the annexation of each such area by the Declarant, and before the sale of any Lot in the area annexed, the Common Area of such annexed area shall be conveyed to the Association. The obligation to pay the annual assessment as to all Lots in each annexed area shall accrue from the first day of the first month following annexation.

Upon transfer of lots to any builders, the amount of assessment on each Lot which is not a Lot in Use shall be one-fourth (1/4) of the assessment applicable to a Lot in Use. The Declarant, at no time, will be responsible for assessments on an lots within its possession which are not in use.

The Declarant, for each Lot in Use owned within the Properties, hereby covenants, and each Owner of any Lot in Use, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, 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 fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments on Lots in Use and the annual assessments on lots which are not Lots in Use, together with such interest thereon and costs of collection thereof, as hereinafter provided, including without limitation, reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made and shall be the personal obligation of the person who was the Owner of such property for the period of such person's ownership. The personal obligation shall not pass to his successors in title unless expressly assumed by them. All assessments relating to Common Area shall be shared equally by the owners of each Lot in Use.

Notwithstanding the foregoing, the Declarant may, at its election, postpone, in whole or in part, the date on which the assessment shall commence provided that the Declarant maintains the Common Areas for which no assessment is being collected during the period of such postponement.

If any person shall purchase land within the boundaries of the Property and shall apply to the secretary of the Association, or such person who has been designated by the Association for the maintenance of payment records, for information as to whether assessments applicable to the land being purchase is subject to any past due assessments, it shall be the duty of the secretary or other

person in charge of assessment records to immediately issue a written statement as to whether the land being purchased is subject to past due assessments. If such issued statement indicates the status of past due assessments, the purchaser of land shall be entitled to rely upon the accuracy of such statement and shall purchase free of any lien for past due assessments not shown on such statement.

SECTION 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the beautification of the Properties, the recreation, health, safety, and welfare of the residents in the in the Properties, the enforcement of these Covenants and the rules of the Association, and, in particular, for the improvement and maintenance of the Properties and providing the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area. Nothing herein shall mean that assessments may not be used for the beautification of areas within the subdivision but which are not part of the Common Areas, such as entrance signs, access easements crossing private property, median strips within public streets or the interior of cul de sacs.

SECTION 3. Basic and Maximum Annual Assessments. To and including December 31, 2004, the basic (and maximum) annual assessment shall not be in excess of \$360.00 per Lot in Use, except as otherwise provided herein, the exact amount of which shall be determined from time to time as provided in subsection (c) of this Section 3.

(a) From and after December 31, 2004, the basic annual assessment may be increased by the Board of Directors of the Association effective January 1 of each year, without a vote of the membership, by a percentage which may not exceed the greater of five (5%) percent per year or the percentage increase reflected in the U. S. City average, Consumer Price Index-United States and selected areas for urban wage earners and clerical workers, all items most recent index and percent changes from selected dates (published by the U. S. Bureau of Labor Statistics, Washington, D. C.) or such Index as may replace said Consumer Price Index, for the twelve-month period ending the immediately preceding July 1; such increased assessment shall be the maximum annual assessment.

(b) After December 31, 2004, the basic annual assessment may be increased by an affirmative vote of two-thirds (2/3) of the members or proxies who are entitled to vote at a meeting called for such purpose, and the increased basic annual assessments shall be the basic annual assessment and be thereafter adjusted pursuant to subparagraph (a) of this Section 3. Written notice of such meeting shall be given by the Board of Directors to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the date, time, place and purpose of the meeting. The provisions of this subsection shall not apply to nor be a limitation upon any change in the basic and maximum assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) After consideration of the current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximums as determined in subsection (a) of this Section 3.

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 new construction, reconstruction of described capital improvements or unexpected repair or replacement of described capital improvements upon the Common Area, including the necessary fixtures and personal property related thereto: provided that any such assessments shall be adopted by a two-thirds (2/3) affirmative vote of each class of members voting in person or by proxy 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 time, place and purpose of the meeting.

SECTION 5. Uniform Rate of Assessments. Both annual and special assessments relating to the Common Area must be fixed at a uniform rate for all Lots in Use and may be collected on either a monthly, quarterly, or annual basis. Similarly, annual assessments relating to the Common Areas must be fixed at a uniform rate for all other Lots and may be collected on a monthly, quarterly, or annual basis. Assessments may be collected in advance or in arrears.

SECTION 6. Quorum for any Action Authorized Under Sections 3 and 4. At the first meeting called for the purpose stated in Sections 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 3 and 4, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Such subsequent meeting shall be held within sixty (60) days following the preceding meeting.

SECTION 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots in Use and other Lots then existing as of date of transfer to owner, unless postponed by the Declarant. The first annual assessments shall be adjusted according to the number of months remaining in the fiscal year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. If the Board of Directors of the Association shall determine that it would be inequitable to require the payment of the full amount of annual assessment as might be the case if only a portion of the amenities are available for the use of members the Board may waive payment of any portion of the assessment. The due dates and appropriate penalties for late payment shall be established by the Board of Directors. The Association upon demand at any time shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made to defray the actual cost of furnishing such certificate. Such certificate shall constitute conclusive evidence of payment of any assessment therein stated to have been paid.

SECTION 8. Effect of Nonpayment of Assessment: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessments are not paid within

thirty (30) days after the due date, assessment shall bear interest from the date of delinquency at the lesser of the highest lawful rate or twelve (12%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment 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 mortgage. Sale or transfer of any Lot shall not affect the assessment lien; provided, however, that the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

Except as amended herein the Declarations remain unchanged and in full force and effect.

ARTICLE VII USE RESTRICTIONS

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

SECTION 2. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties which may be or may become a nuisance or annoyance to the neighborhood.

ARTICLE VIII EASEMENTS

All of the properties, including Lots and Common, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines and other public utilities as shall be established by the Declarant or by his successors in title, prior to the conveyance of Lots to subsequent owners or the conveyance of Common Area to the Association; 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.

ARTICLE IX RIGHTS OF FIRST MORTGAGES AND INSURERS OF FIRST MORTGAGES

SECTION 1. Notice of Default to First Mortgagees and Insurers of First Mortgages. In the event that any Member is in default in any obligation hereunder which remains unpaid for a period of sixty (60) days, every lender who is a first mortgagee as to the Lot of the defaulting Member and the insurer of such first mortgage, shall be immediately notified of such default, provided that such

lender and/or insurer shall have given notice to the Association that it is a first mortgagee or insurer as to the Lot of such Member and shall have requested the notice of default as herein set forth.

SECTION 2. Right to inspect Books of the Association. Every first mortgagee and/or insurer of a first mortgage of the Lot of a Member of the Association shall have the right during regular business hours to examine the books and records of the Association.

ARTICLE X GENERAL PROVISIONS

SECTION 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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. Invalidity of any of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

SECTION 3. Exchange of Common Area for other Portions of the Properties. Notwithstanding any provision herein to the contrary, except as provided in Section 9 of this Article X, it is expressly provided that the Association may convey to the Declarant, a well as any other member, in exchange for other portions of the Properties conveyed by the Declarant or other members of the Association, any portion of the Common Area therefore conveyed to the Association, all as provided in the Articles of Incorporation of the Association. Upon such conveyance, the area thus conveyed to the Declarant shall become Common Area and subject to the Provisions of these Covenants relating to Common Area. The following hypothetical is by way of illustration and not of limitation: Due to a surveying error or the erroneous plotting of topo lines, a greenway intended to extend along a drainage area is incorrectly located. Thereafter, upon discovery of the error subsequent to the tie of the conveyance of the greenway to the Association, such error could be corrected by an exchange of land between the Declarant and the Association.

SECTION 4. Amendment. The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of this Declaration may be amended during the thirty-year (30) period by an instrument signed by the Owners of not less than ninety (90%) percent of the Lots existing at the time of such amendment, and thereafter by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots; provided, however, that the Board of Directors of the Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing, or reproduction without action or consent of the Owners, and such amendment shall be certified as an official act of the Board and recorded in the Wake County Registry.

SECTION 5. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions and restrictions other than an amendment by the Board to correct an error or inconsistency in drafting, typing, or reproduction shall be delivered following execution by the Owners, to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(a) Reasonable assure itself that the amendment has been executed by the Owners of the required number of Lots as provided in Section 4 of this Article. (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 RIVERBROOKE II SUBDIVISION

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

This the _____ day of _____, _____.

RIVERBROOKE II HOMEOWNERS ASSOCIATION, INC.

BY: _____

(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 recordation in the Wake County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of this Association. When an 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 the Owners of all Lots in Riverbrooke II Subdivision.

SECTION 6. Amendment of Declaration Without Approval of Owners. The Declarant, without the consent or approval of any other owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property or to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made by, guaranteed by, sponsored by or insured by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to,

sponsored by, or under the substantial control of, the United States Government or the State of North Carolina, regarding purchase or sale in such lots and improvements, or mortgage interest therein, as well as any other law or regulation relating to the control of the Property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration (VA), U. S. Department of Housing and Urban Development (HUD), the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requiring an amendment as a condition of approval, of such amendment of VA, HUD and/or such corporation or agency.

No amendment made pursuant to this Section shall be effective until duly recorded in the Wake county Registry.

SECTION 7. Right of Declarant or Association to Amend to Achieve Tax-Exempt Status. The Declarant, for so long as it shall retain control of the Association, and, thereafter, the Board of Directors of the Association, may amend this Declaration as shall be necessary, in its opinion,; and without the consent of any Owner, in order to qualify the Association or the Properties or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

SECTION 8. Protective Covenants for Lots. Nothing herein shall affect the Declarant's right to establish from time to time appropriate protective covenants governing the use of Lots and the size and location of building thereon. Further, nothing herein shall be deemed to grant to the Association any right to govern the Use of any Lot by its owner, except for the exercise of easements rights owned by the Association which are located on the Lots of Owners.

SECTION 9. FHA/VA Approval. Notwithstanding any provision in this instrument to the contrary, as long as there is a Class B membership, the following actions shall be allowed if Declarant desires to qualify sections of Riverbrooke II Subdivision for Federal Housing Administration or Veterans Administration approval (but not otherwise), and only if the actions have received the prior approval of the Federal Housing Administration or the Veterans Administration; (a) annexation of additional properties, and dedication of additional Common Areas; (2) exchange of Common Area for other portions of the properties; (3) amendment of this Declaration of Covenants, Conditions and Restrictions.

SECTION 10. Other Associations. Nothing herein shall affect the Declarant's right to establish other associations and in connection therewith designate common areas solely for the benefit of members of such association. The annexation to Riverbrooke II Homeowners Association of areas within such associations shall not entitle the members of Riverbrooke II Homeowners Association to the use of Common Areas established for the benefit of members of such other associations.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument on this the 17 day of June, 2004.

RIVERBROOKE II DEVELOPMENT, LLC

BY: H. D. Moye member/manager

BY: D. Stewart Marlowe member/manager

NORTH CAROLINA
WAKE COUNTY

I, the undersigned Notary Public, do hereby certify that Howard D. Moye and D. Stewart Marlowe, Members/Managers of Riverbrooke II Development, LLC personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal this 17th day of June, 2004

Deenna T. Carpenter
Notary Public

My Commission Expires: 1/6/08

DEENNA T. CARPENTER
Notary Public
Wake County, NC

Exhibit "A"

Legal description of Lots subjected to covenants

BEING all of Lots 1–124, Riverbrooke II Subdivision, containing 22.342 acres, all that 3.707 acres shown and designated as Private Open Space (Permanently Preserved Undisturbed Open Space) , all that 6.049 acres shown and designated as Acreage in R/W, all that 4.602 acre parcel shown and designated as Greenway Easement (Included in Acreage shown as Area Reserved by Owner) and all of that 15.317 acre area shown and designated as Area Reserved By Owner (Reserved by Owner for Dedication as Conservation Area), all as shown recorded in Book of Maps 2004, Pages 939-942, Wake County Registry.