

NORTH CAROLINA, Wake County, NC 90
Laura M Riddick, Register Of Deeds
WAKE COUNTY
DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF BAILEYS LANDING
Presented & Recorded 05/10/2000 10:08:03

Book : 008582 Page : 01190 - 01202

THIS DECLARATION, made this 8th day of May, 2000, by R. Kirk Leone Builders, Inc., a North Carolina Corporation, hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in Swift Creek Township, Wake County, North Carolina, and more particularly described as follows:

All of those lots shown on maps of Baileys Landing recorded in Book of Maps 2000, at Pages 620 and 621 Wake County Registry. Well Easement #1 and Well Easement #2 are specifically excepted from this Declaration.

WHEREAS, Declarant will convey the said property, subject to certain protective covenants, conditions, restrictions, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the property described above 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, restrictions, covenants, 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 property 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 Baileys Landing Owners Association, 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 property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property hereinabove described.

Section 4. "Lot" shall mean and refer to: All of those lots to be shown on map or maps of Baileys Landing Subdivision to be recorded in Wake County Registry.

Section 5. "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

Section 6. "Declarant" shall mean and refer to R. Kirk Leone Builders, Inc., a North Carolina Corporation, its successors and assigns.

ARTICLE II

PROPERTY DEVELOPMENT PLAN

Section 1. The Declarant proposes to develop the property as single-family residential building lots.

Section 2. The ownership of easements for installation and maintenance of utilities as reserved herein, are reserved by the Declarant for conveyance to a public or private utility company or companies, to a municipality, or the Association.

Section 3. The responsibility for maintaining the public streets and roadways within the property shall remain with Declarant until such time as said streets and roadways are accepted street system of the City of Raleigh or the North Carolina Department of Transportation (NC DOT), or until all lots are sold, whichever shall first occur. If all lots are sold before the streets and roadways are accepted by the City of Raleigh or the North Carolina Department of Transportation (NC DOT), the owners of lots in the subdivision shall share on a pro rata basis the responsibility for maintaining the public streets and roadways.

ARTICLE III

PROPERTY RIGHTS

Section 1. OWNER'S EASEMENT OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the common areas and facilities now or hereafter established 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 common areas or facilities located on any property transferred to the Association.

(b) The right of the Association to approve regulations for the use and enjoyment of any common areas or facilities now or hereafter established and transferred to the Association, which

regulations may further restrict the use of any common areas or facilities.

Section 2. The Association shall have the responsibility of maintenance of entrance signs, landscape buffers, if any, as required by the City of Raleigh.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to a lien for dues and assessments shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to dues and assessments.

Section 2. The Association shall have two classes of voting membership:

CLASS A: All owners, other than the Declarant, shall be Class A members. Class A members 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 or votes for such lots shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any lot.

CLASS B: The Class B member shall be the Declarant and the Declarant shall be entitled to two 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 first:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) On July 1, 2004.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR DUES AND ASSESSMENTS. The Declarant, for each lot owned within the property, 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 dues and assessments or charges; and

(2) Special assessments for capital improvements, such assessments to be established as hereinafter provided, and

(3) To the appropriate governmental taxing authority, a pro rata share of ad valorem taxes levied against any property owned by the Association and its facilities, and a pro rata share of assessments for public improvements to any common areas conveyed to or owned by the Association, if the Association shall default in the payment thereof for a period of six months, all as hereinafter provided. The annual dues 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 dues and assessment fell due. The personal obligation for the delinquent dues and assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The dues and assessments levied by the Association shall be used exclusively to promote the beauty and desirability of the subdivision and to maintain the landscape buffer and related easements as and where established and for the improvement and maintenance of properties and facilities owned by the Association and used as common areas, including but not limited to the cost of repairs, replacements and additions, the cost of labor, materials, management and supervision, the payment of taxes against any property owned by the Association and its facilities, the procurement and maintenance of insurance in accordance with the bylaws, the employment of attorneys to represent the Association when necessary, for the maintenance of roads and streets if necessary, and for the maintenance and costs in connection with any other entrance signs, lighting or landscaping and for such other needs as may arise.

Section 3. MAXIMUM ANNUAL DUES. Until July 1, 2000, the maximum annual assessment shall be \$25.00 per lot.

(a) The maximum annual dues for the year beginning July 1, 2000 and for each calendar year thereafter shall be established by the Board of Directors and shall be increased by the Board of Directors without approval by the membership by an amount not to exceed five (5%) percent of the maximum annual dues of the previous year.

(b) The maximum annual dues for the calendar year 2000 and for each calendar year thereafter may be increased without limitation by a vote of 2/3 of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual dues at an amount not in excess of the maximum, subject to the provisions of this Article.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual dues authorized above, the Association may levy, in any calendar year a special assessment for the purpose of defraying in whole or in part the cost of any construction, repair or replacement of a capital improvement within the common areas now or hereafter established and owned by the Association and its facilities, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of 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. All special assessments shall be fixed at a uniform rate for all lots and may be collected on a monthly basis.

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 of this Article shall be sent to all members not less than fifteen (15) 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 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 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. RATE OF ANNUAL ASSESSMENTS. Both annual dues and special assessments must be fixed at a uniform rate for all lots.

Section 7. DATE AND COMMENCEMENT OF ANNUAL DUES: DUE DATES. the annual dues and special assessments, if any, provided for herein shall be collected on an annual basis and shall commence on the first day of the month following the conveyance of the lot by Declarant to an owner. The first annual dues and assessments shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual dues period, the Board of Directors shall fix the amount of annual dues to every owner subject thereto. The due dates shall be 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 dues and assessments on a specific lot have been paid.

Section 8. EFFECT OF NONPAYMENT OF DUES AND ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any dues or assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve (12%) percent per annum. The

Association may bring an action at law against the owner personally obligated to pay the same or a proceeding to foreclose the lien against the property in the same manner as the foreclosure of deeds of trust, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of such dues and assessments. No owner may waive or otherwise escape liability for the dues and assessments provided for herein by non-use of any common area and its facilities, or abandonment of his lot.

Section 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY THE ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against any properties owned by the Association or its facilities or assessments for public improvements to any of such common areas and its facilities, which default shall continue for a period of six months, each owner of a lot in the development shall become personally obligated to pay the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of lots in the development. If each sum is not paid by the owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the lot of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the lot of the owner.

Section 10. The liens provided for herein shall be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust. Sale or transfer of any lot shall not affect the lien or liens provided for in the preceding Section. However, the sale or transfer of any lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish such lien as to the payment thereof which becomes due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any dues or assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any mortgage, mortgages, deed of trust or deeds of trust.

Section 11. EXEMPT PROPERTY. The following property, individuals, partnerships, or corporations subject to this Declaration shall be exempted from the dues and assessment charge and lien created herein:

(a) The grantee in conveyances made to utility companies for wells, tanks, pipelines, treatment plants and dispersion fields,

lines, pumping stations and maintenance facilities, or for the purpose of creating utility easements.

(b) All properties exempted from taxation by the laws of the State of North Carolina, upon the terms and to the extent of such exemption.

(c) All vacant lots owned by Declarant so long as it owns more than 1/10 of all lots on recorded maps now recorded or hereafter recorded for Baileys Landing or any of its Phases and any additional lands annexed as herein provided. The Declarant will, however, make contributions to the Association for the purpose of defraying maintenance and upkeep costs so long as it is exempt from assessments. After its lot ownership drops below 1/10, its unsold lots will be subject to assessment on the same basis as vacant lots acquired by an individual.

ARTICLE VI

RESERVATION OF RIGHT TO ANNEX ADDITIONAL PROPERTY

The Declarant reserves the right to annex or add additional property whose owners shall have the same property rights and obligations as described herein, by recording an instrument in writing subjecting such additional property to this Declaration of Covenants, Conditions and Restrictions.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. REVIEW AND APPROVAL OF SPECIFICATIONS FOR CONSTRUCTION OF STRUCTURES, ADDITIONS, ALTERATIONS OR CHANGES TO STRUCTURES AND LANDSCAPING. No building, structure, fence, mailbox, outside lighting, newspaper box, screen planting, swimming pool, or landscaping shall be erected, placed or altered on any building site until the plans, specifications and plot plans showing the location of such improvements, the nature, kind, shape, height and materials of said improvements have been submitted to and approved in writing as to conformity and harmony of external design and external materials with existing structures in the area and as to location with respect to the surrounding structures and topography, by an architectural committee (herein called the "Architectural Committee") which said committee shall initially be the Declarant. In the event the Architectural Committee fails to approve or disapprove such design or location within ninety (90) days after plans and specifications have been submitted to it, approval will not be required. The Declarant shall be the sole member of the Architectural Committee until January 1, 2004, or until such time as the Declarant shall resign, whichever shall first occur. The Declarant may appoint an advisory committee composed of lot owners in the subdivision or other knowledgeable

people to assist in evaluating the architectural effect of new construction in the subdivision. Upon resignation by the Declarant, the Board of Directors of the Association shall designate and appoint three persons to serve on the Architectural Committee. Members of the Architectural Committee shall not be entitled to any compensation for services performed pursuant to this covenant. Nothing herein contained shall be construed to permit interference with the development of the property by the Declarant so long as said development follows the general plan of development of the property.

Section 2. ARCHITECTURAL REQUIREMENTS. The Architectural Committee shall make the determination of approval of plans based upon the compatibility and conformity of the design of the proposed residence, building, wall, fence, swimming pool or other improvement.

ARTICLE VIII

USE RESTRICTIONS

Section 1. BUILDING UNIT. A building unit shall consist of each lot shown on a map or maps of Baileys Landing recorded in Wake County Registry. The owners of said lots or building units may vary the line of said lots, but except as might be otherwise provided herein, shall not re-subdivide the lots in such manner that the number of lots within the subdivision will be increased.

Section 2. LAND USE AND BUILDING TYPE. No building unit shall be used except for residential purposes and no part of said property shall be used for business, manufacturing or commercial purposes. No part of any lot or building unit shall be used for street purposes except with the prior written approval of the Architectural Committee. No building shall be erected, altered, placed or permitted to remain on any building unit other than one detached single-family dwelling, a private garage, and out-buildings incidental to residential use, provided, however, that no buildings other than the dwelling shall be allowed except with the prior written approval of the Architectural Committee. Construction of homes must be completed within twelve months after construction is begun.

Section 3. DWELLING SIZE. No dwelling shall be permitted on any building unit which dwelling has a total finished heated living space of less than 2400 square feet for a one-story dwelling, nor less than 2600 square feet for a one and one half-story dwelling, nor less than 2800 square feet for a two-story dwelling. For purposes of these covenants, basements, porches, garages and storage areas shall not be considered as a part of the finished heated living area.

Section 4. BUILDING LOCATION. No building shall be located on any lot nearer to the front lot line, side street line, side line or rear line than as shown on the recorded map or as a minimum the setbacks required by the City of Raleigh. For the purposes of this covenant, eaves, steps and open porches shall not be considered as a part of any building, but this may not be construed to permit any portion of a building or building unit to encroach on another building unit.

Section 5. PROHIBITED STRUCTURES. Mobile homes, shell homes, precut, pre-assembled and package homes and all other similar type buildings are expressly prohibited on any lot in the subdivision, except that the Architectural Committee may, without being required to do so, approve a home or other out-building on any lot with some of its components being precut.

Section 6. MINOR VIOLATIONS. The Architectural Committee shall have the right to waive any minor violations of the requirements of Sections 3 and 4 of this Article VIII. A minor violation shall be deemed to be any violation which is not more than ten (10%) percent of the requirement for square footage or setback as contained in Sections 3 and 4 hereunder.

Section 7. EASEMENTS. Easements for installation and maintenance of utility and drainage facilities and infiltration areas are reserved as shown on the recorded plat and over the rear 10 feet of each lot and 5 feet on each side line unless shown in excess of such distances on the recorded plat, in which case the plat shall control. Within these easements, no structure, fence, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities and drainage facilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Section 8. NUISANCES. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

Section 9. TEMPORARY STRUCTURES. No structure of a temporary kind, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently. A boat or recreational vehicle, or one of each, may be placed on the lot, provided that any and all of such vehicles shall be screened from view of the streets and from adjoining properties, and provided

that no such vehicle shall be occupied by any person, either temporarily or permanently.

Section 10. PETS. No animals, livestock or poultry of any kind, shall be raised, bred, kept on any lot, except that dogs, cats, or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose, and provided that the owner of any such pet shall not allow such animal to be at large in the subdivision. No person shall keep or maintain or permit the keeping of, on any lot in the subdivision, any animal or fowl otherwise permitted to be kept which, by habitual or frequent sound, cry, howling, barking, squawking, meowing, or other noise, shall disturb the quiet, comfort or repose of any person in the subdivision.

Section 11. VEHICLES. No boats, campers, trucks, junked, dismantled, wrecked, unlicensed or abandoned vehicles, mobile homes or trailers shall be placed or permitted to remain on a street or in front of any dwelling constructed on the property.

Motorized vehicles shall be operated only upon the paved portion of streets within the subdivision, driveways of individual lots, or parking areas specifically provided. No unlicensed motor vehicle shall be operated at any time upon the streets, shoulders or at any other place within the subdivision.

Section 12. SATELLITE DISHES. No satellite dishes, amateur radio antennas or towers or any other electronic receiving or sending device shall be placed or permitted to remain on any lot in the subdivision except as allowed by appropriate governmental authorities.

Section 13. UNDERGROUND UTILITIES. The Declarant reserves the right to subject the property to a contract with a North Carolina public utility holding a franchise with the State of North Carolina, for the installation of underground water, sewer and electric lines to the property which may require an initial payment and/or a continuing monthly payment to the public utility by the owner of each lot.

ARTICLE IX

GENERAL PROVISIONS

Section 1. ENFORCEMENT. Enforcement of these covenant, conditions and restrictions shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain violation or to recover damages. Failure to enforce any covenant, condition 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 any part thereof by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect, and the failure of any person or persons to take action to enforce these covenants and restrictions shall not be construed as a waiver of any enforcement rights and shall not prevent the enforcement of such covenant or covenants in the future.

Section 3. TERM AND AMENDMENT. These covenants, conditions and restrictions shall run with the land and be binding upon all parties and persons claiming under them for a period of twenty-five (25) year from the date these covenants are recorded, after which time, these covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change or terminate said covenants in whole or in part. No amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, nor shall it affect any lien for the payment thereof established herein. This Declaration may be amended by two-thirds of the owners of recorded lots in Baileys Landing.

Section 4. TRANSFER OF AUTHORITY. Any and all authority delegated specifically to the Declarant shall be transferred to the Association when all lots have been sold.

IN WITNESS WHEREOF, R. Kirk Leone Builders, Inc., a North Carolina Corporation has caused this instrument to be executed by its duly authorized officers, the day and year first above written.



R. Kirk Leone Builders, Inc

BY: [Signature] (SEAL)
President

ATTEST:

BY: Margaret C. Leone (SEAL)
Secretary

NORTH CAROLINA

WAKE COUNTY

I, a Notary Public of the county and state aforesaid, certify that Margaret C. Leone personally came before me this day and acknowledged that she is Secretary of R. Kirk Leone Builders, Inc., a North Carolina Corporation and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its Secretary.

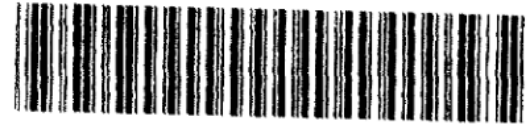
WITNESS my hand and official stamp or seal this 8th day of May, 2000.

Zulphia M. Adcock
Notary Public

My Commission Expires: 10/18/04

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



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

The foregoing certificate___ of _____
Zilphia M. Cook

____ Notary(ies) 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