

STATE OF NORTH CAROLINA
COUNTY OF WAKE

Prepared by: Return to NGHK-C, PO Box 51579 Durham NC 27717
Rob Belo

BK625870616

PRESENTED
FOR
REGISTRATION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF SIMMS BRANCH/ANSON GROVE

ENC 33 2:11:35
KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

THIS DECLARATION, made this 18th day of July 1993, by Perry
Real Estate Holdings, Inc., (hereinafter referred to as
"Developer"),

WITNESSETH:

WHEREAS, Developer is the owner of all of that tract of real property located in Falls of the Neuse Township, Wake County, North Carolina, and being more particularly shown and described on (i) "Exhibit A" attached hereto and on that certain map or plat entitled Simms Branch/Anson Grove Subdivision, recorded in Book of Maps 1004, at Page 1246, in the Office of the Register of Deeds of Wake County, reference to said plat being hereby specifically made, and, (ii) certain real property in the surrounding environs as set forth on "Exhibit B" attached hereto (the "Development Area"), and

WHEREAS, Developer proposes to sell and convey certain lots shown on the aforesaid plat to be used for residential purposes and to develop said lots, and additional property within the Development Area which may be acquired by Developer, into a well planned community; and,

WHEREAS, Developer, prior to selling and conveying the aforesaid residential lots, desires to impose upon such lots certain mutual and beneficial restrictions, covenants and conditions and charges (hereinafter collectively referred to as "Restrictions") for the benefit and complement of all of the residential lots in the subdivision in order to promote the best interests and protect the investments of Developer and the purchaser or purchasers who own fee simple title to such lots, (the "Owners");

NOW, THEREFORE, Developer hereby declares that all numbered lots shown on the aforesaid plat entitled Simms Branch/Anson Grove Subdivision and any additional property within the Development Area as may by subsequent amendment be added to and subjected to this Declaration, are held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to this Declaration and to the following restrictions (the "Restrictions") This Declaration and the Restrictions shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereof subject to this Declaration. The Developer reserves in each instance the right to add additional restrictive covenants in respect to lands to be conveyed in the future within the Development Area, or to limit therein the application of this Declaration.

ARTICLE I**DEFINITIONS**

As used herein,

A. "Articles" means the Articles of the Incorporation of Simms Branch/Anson Grove Homeowner's Association, Inc.

B. "Corporation" means Simms Branch/Anson Grove Homeowner's Association, Inc., a North Carolina non-profit corporation. The "Board of Directors" or "Board" shall be the elected body governing the Corporation and managing the affairs of the Corporation.

C. "By-laws" means the Bylaws of Simms Branch/Anson Grove Homeowner's Association, Inc.

D. "Common Areas" means all real and personal property, together with those areas within dedicated portions of the Development Area and the subdivision, which may be deeded to or acquired by the Corporation for the common enjoyment of the members of the Corporation and the Corporation shall accept the deed or other instrument conveying such Common Area to it.

E. "Common Expenses" means and includes the actual and estimated expenses of maintaining and operating the Common Areas as more particularly set forth under "Community Expenses" in Article 5 hereof and operating the Corporation for general purposes, which expenses are the sole responsibility of the Corporation, including any reasonable reserves, all as may be found to be necessary and appropriate by the Board of Directors pursuant to this Declaration, the Bylaws and the Articles of Incorporation of the Corporation.

F. "Dedication" means the act of committing a portion Development Area or the subdivision to the purposes of Declaration by the recording of a plat showing such area.

G. "Developer" means Perry Real Estate Holdings, Inc., its successors, or assigns or any legal entity acquiring ownership of portions of the Development Area heretofore not dedicated with the intent and for the purpose of further development.

H. "Lot" means a separately numbered tract of land lying within the subdivision or other dedicated portion of the Development Area and which, according to the plat of that portion recorded at the dedication thereof, may be conveyed by the Developer and owned in fee by the Grantee thereof, and held for such uses as are consistent with this Declaration and the Restrictions covering the area wherein the tract is located. No tract of land shall become a "Lot" as that word is used herein until the area on which the same is located is "dedicated." The Owner of all of a numbered Lot may combine such numbered Lot, with a part or parts of another such numbered Lot which he owns and

which is adjacent thereto and the aggregate shall be considered as one Lot for the purpose of these Restrictions.

I. "Member" means all those owners who are members of the Corporation.

J. "Subdivision" means Simms Branch/Anson Grove and any portion of the Development Area which has been dedicated pursuant to this Declaration.

ARTICLE 2

APPLICABILITY

These Restrictions shall apply to all Common Areas, all subdivided numbered Lots shown on the aforesaid plat or map, and all additional plats or maps of subdivisions of the Development Area, (hereafter referred to as "Lot" or "Lots"), which Lots are for residential purposes only. These Restrictions shall not be applicable to any unnumbered lands or lands designated on the plat as "Reserved" or other lands of Developer, and Developer is withholding these parcels from these Restrictions pursuant to its general scheme of development, the absence of Restrictions thereupon being intended to allow Developer maximum flexibility in the determination of the development of such parcels.

ARTICLE 3

A. A Corporation named Simms Branch/Anson Grove Homeowner's Association has been or will be formed pursuant to rules and requirements of the Nonprofit Corporation Act (Chapter 55A) of the General Statutes of North Carolina as an association of the Owners of Lots. Its purposes are to own, manage, maintain and operate the Common Areas and facilities located upon the Common Areas; to enforce restrictions contained herein; and to make and enforce rules and regulations governing the Owners' use and occupation of Lots.

B. Each record Owner of each Lot within the Subdivision and the Developer, its successors and assigns shall be a member of the Corporation. The Declarant, by this Declaration, and the owners of individual Lots by the acceptance of individual deeds thereto, covenant and agree with respect to the Corporation:

1. That for so long as each is an Owner of a Lot within the Subdivision, each will perform all acts necessary to remain in good and current standing as a member of the Corporation;

2. That each of them shall be subject to the rules and regulations of the Corporation with regard to ownership of a Lot; and

3. That any unpaid assessment, whether general or special, levied by the Corporation in accordance with these Restrictions, the Articles or the Bylaws shall be lien upon the Lot upon which such assessment was levied, and shall be a personal obligation of the Owner of the Lot at the time the assessment fell due.

C. Each membership in the Corporation shall relate to and have a unity of interest with an individual Lot which shall not be separated from ownership of said Lot.

D. The Corporation shall have one (1) regular type of voting membership and one (1) type of special voting membership which provides the Developer, its successors and assigns with the power to elect a portion of the Board of Directors. The Corporation shall have one (1) regular voting class of members (Type "A" members) who shall all be Owners. Each member of such class shall be entitled to one vote for each Lot owned; provided, however, when more than one person holds an interest in any Lot, all such Persons shall be members and, the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot and there shall be no fractional voting. The Corporation shall have one (1) special voting class who shall be the Developer (Type "B" member). This Type B voting class provides the Developer with certain powers to elect a portion of the Board of Directors as set forth in Article IV of the By-Laws.

ARTICLE 4

MANAGEMENT AND ADMINISTRATION

The management and administration of the affairs of the Common Areas of the Subdivision shall be the sole right and responsibility of the Corporation. The management shall be carried out in accordance with the terms and conditions of these Restrictions, the Articles and the Bylaws of the Corporation, but may be delegated or contracted to managers or management services.

ARTICLE 5

COMMUNITY EXPENSES

The Community Expenses of the Subdivision include:

A. All amounts expended by the Corporation in operating, administering, managing, repairing, replacing and improving the Common Areas of the Subdivision; all amounts expended by the Corporation in insuring the Common Areas in the Subdivision to the extent and in the amounts required by the applicable City of Raleigh Code in effect from time to time; all amounts expended by the Corporation in legal, engineering, or architectural fees; all

similar fees which may be incurred by the Corporation from time to time in performing the functions delegated to the Corporation by these Restrictions; and all amounts expended in any form by the Corporation in enforcing these Restrictions, the Articles or the Bylaws.

B. All amounts expended by the Corporation in carrying out any duty or discretion as may be required or allowed by these Restrictions, the Articles or the Bylaws.

C. All amounts declared to be Community Expenses in the Bylaws or in these Restrictions.

D. All taxes and special assessments which may be levied from time to time by any governmental authority upon the Common Areas in the Subdivision.

ARTICLE 6

ANNUAL GENERAL ASSESSMENT

A. The Declarant for each Lot owned, hereby covenants and each Owner of any Lot by acceptance of a deed for same (whether or not it shall be so-expressed in such deed) is deemed to covenant and agrees to pay to the Corporation annual general assessments or charges as hereinafter provided. The annual general assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and lien on the land and, subject to the provisions of the Paragraph 6 of this Article, shall be a continuing lien upon the property against which each such assessment is made. Furthermore, each such assessment, together with interest, costs, and reasonable attorneys, fees, shall also be the personal obligation of the person who was the owner of the Lot at the time when assessment fell due. The personal obligation for delinquent assessments shall not pass to a successor in title to a Lot unless expressly assumed by them but, subject to the provisions of this Declaration, delinquent assessments shall continue to be a lien upon such Lot.

B. Until June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment shall be One Hundred Ninety-Five and No/100 Dollars (\$195.00) per Lot.

1. From and after June 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased each year not more than five percent (5%) above the assessment for the previous year or the increase in the Consumer Price Index from the base thereof in 1994 without any vote of the membership.

2. From and after June 1 of the second year immediately following the conveyance of the first Lot to an Owner, the maximum annual general assessment may be increased an amount greater than ten percent (10%) of the assessment for the previous year, provided the proposed increase is approved by a vote of two-thirds (2/3) of the members who are voting in person or by a proxy at a meeting duly called for this purpose.

3. The Board of Directors may fix the annual general assessment at an amount not in excess of the maximum allowed.

4. Once the annual general assessment has been set, notice of the annual general assessment shall be given all members. After the initial notice of the assessment, such assessment shall become due and payable as provided by the Board of Directors.

C. Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 2 above 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 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 such 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.

D. The annual general assessments levied by the Corporation shall be used exclusively to improve, maintain and repair the Common Areas, to pay the expenses of the Corporation, to pay the cost of lighting the Common Areas, to pay the cost of any insurance the Corporation determines to purchase and to promote the recreation, health, safety and welfare of the members and to pay taxes levied upon the Common Areas.

E. The Corporation shall, upon demand, and for reasonable charge, furnish a certificate signed by an officer of the Corporation setting forth whether the assessments upon any specified Lot have been paid. A properly executed certificate of the Corporation as to the status of assessments on a Lot is binding upon the Corporation as of the date of its issuance.

F. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lien therefor, 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.

ARTICLE 7

SPECIAL ASSESSMENTS

Special assessments may be levied against Lots for such reasons as are provided in these Restrictions, the Articles or the Bylaws and on such terms as provided by the Board of Directors or the members. Either the Board of Directors or the members may levy and impose special assessments upon a majority vote. The purposes for which special assessments may be levied include, but are not limited to providing funds to pay extraordinary Community Expenses which exceed the general assessments on hand to pay same and providing a contingency fund for payment of special improvements and extraordinary expenses. Furthermore, certain assessments may be assessed against specific Lots. In the event the Owner of a Lot fails to comply with the provisions of Article 12 hereof, the Corporation may perform such task or remedy such matter and levy the cost of such performance against the Owner of such Lot and such Lot as a special assessment.

ARTICLE 8

LIEN FOR ASSESSMENTS

Any general or special assessment, if not paid within thirty (30) days after the date such assessment is due, together with interest at the maximum rate allowed by law per annum, costs of collection, court costs, and reasonable attorneys fees shall constitute a lien against the Lot upon which such assessment is levied. The Corporation may record notice of the same in the Office of the Clerk of Superior Court of Wake County or file a suit to collect such delinquent assessments and charges. The Corporation may file Notice of Lis Pendens, bring an action at law against the Owner personally obligated to pay the same and/or bring an action to foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein.

ARTICLE 9

COMPLIANCE WITH THIS DECLARATION, THE ARTICLES AND THE BYLAWS OF THE CORPORATION

In the case of failure of a Lot Owner to comply with the terms and provisions contained in this Declaration, the Articles or the Bylaws of the Corporation, the following relief shall be available:

A. The Corporation, an aggrieved Lot Owner or Owners within the Subdivision on behalf of the Corporation, or any Lot Owner on

behalf of all the Lot Owners within the Subdivision shall have the right to bring an action and recover sums due damages, injunctive relief, and/or such other and further relief appropriate.

B. The Corporation shall have the right to remedy the violation and assess the costs of remedying same against the offending Lot Owner as a special assessment.

C. If the violation is the nonpayment of any general or special assessment, including any interest charge or late fees, as the Board shall determine, the Corporation shall have the right to suspend the offending Owner's voting rights and the use by such Owner, his agents, employees and invitees of the Common Areas in the Subdivision for any period during which an assessment against the Lot remains unpaid.

D. The remedies provided by this Article are cumulative, and are in addition to any other remedies provided by law.

E. The failures of the Corporation or any Person to enforce any restriction contained in these Restrictions, the Articles or the Bylaws shall not be deemed to waive the right to enforce such restrictions thereafter as to the same violation or subsequent violation of similar character.

ARTICLE 10

PROPERTY RIGHTS OF LOT OWNER, CROSS-EASEMENTS, AND EXCEPTIONS AND RESERVATIONS BY DECLARANT

A. Every Owner of a Lot within the Subdivision, as an appurtenance to such Lot, and the Developer shall have a perpetual easement over and upon the Common Areas and other open spaces within the Subdivision for each and every purpose or use to which such Common Area were intended as determined by their type, or for which Common Areas generally are used. Such easements shall be appurtenant to and shall pass with the title to every Lot located within the Subdivision, whether or not specifically included in a deed thereto, subject to the following provisions:

1. The Corporation shall have the right to promulgate reasonable rules and regulations respecting the use of same.

2. The Corporation shall have the right to suspend the voting rights of a Lot Owner and his right to use the Common Areas within the Subdivision for any periods during which any due assessment against such Owner's Lot remain unpaid as is provided in Article 9 hereof, and for a period to exceed sixty (60) days for any infraction of its published Rules and Regulations.

3. The Corporation shall have the right to charge reasonable admission and other fees to members for certain uses of any recreation facility situated upon the Common Areas.

4. The Board of Directors of the Corporation shall have the power and authority to mortgage the property of the Corporation and to pledge any revenues of the Corporation as security for loans made to the Corporation, which loans shall be used by the Corporation in performing its authorized functions and services; provided that any such mortgage is with the prior consent of two-thirds of the Members of the Corporation, which consent may be evidenced by petition or by an affirmative vote of two-thirds (2/3) of the Members of the Corporation. Notwithstanding any mortgage being placed on the property of the property of the Corporation, the documents comprising such mortgage shall provide that the mortgagee's rights in and to the use of the property are subordinated to the rights of the homeowners.

B. The Corporation hereby reserves the right to (and hereinafter may) grant easements for ingress, egress and regress over" under, above, around or through the Common Areas for utilities for the purposes for the benefit of the Subdivision and any Lots now or hereafter located thereon. Provided, however, that no such grant of easement shall have a material adverse effect upon the use, enjoyment or value of any Lot.

C. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

D. Developer shall have the right, at its election, for a period of seven (7) years from the date of recordation of this Declaration, without the consent of any owner or owners, to bring within the coverage and operation of these Restrictions additional properties within the Development Area as may be developed in the future. The addition to property authorized hereby shall be made by filing of record in the Office of the Register of Deeds of Wake County, North Carolina, a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property. The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or appropriate in the sole judgment of the Developer to reflect the different character, if any, of the added properties and as are not inconsistent with the plan, intent and spirit of this Declaration.

E. Easements and rights of way over and upon each Lot and the Common Areas for drainage and the installation and maintenance of utilities services are reserved exclusively to Developer for

such purposes as Developer may deem incident and appropriate to its overall development plan, such easements and rights of way being shown or noted on the aforesaid recorded plat of the Subdivision, which plat is incorporated by reference and made a part hereof for a more particular description of such easements and rights of way. The easements and right of way areas reserved by Developer on each Lot and the Common Areas pursuant hereto shall be maintained continuously by the owner but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope rations or create erosion problems. Improvements within such areas also shall be maintained by the respective owner except those for which a public authority or utility company is responsible.

F. The rights of the use of utility and service easements and right of way areas as provided and defined herein for any type of cable transmission system is reserved exclusively to Developer, and no other cable transmissions service company or organization shall be permitted to service any Lot or combination of Lots except with the expressed permission of Developer.

ARTICLE 11

ARCHITECTURAL STANDARDS AND ARCHITECTURAL STANDARDS COMMITTEE

All initial approval or disapproval with respect to architectural and aesthetic construction matters shall be vested in the Developer, who shall approve or disapprove such matters in conjunction with the standards set forth in (A) - (H) below and any other standards Developer, in its sole discretion, may wish to implement. Upon the earlier of (i) the time the Developer no longer owns any portion of the Development Area or (ii) the Developer no longer desires to hold such authority or control, the Developer shall delegate and assign its rights to the Architectural Standards Committee (the "Committee"). Such Committee shall consist of five (5) members who will be appointed by the Board of Directors. All five (5) members of the Committee shall be appointed and removed, at any time and without cause, by the Board of Directors (During the period of time that Developer exercises its rights under this Article 11, any reference to "Committee" in (A) - (H) below shall mean, where applicable, the Developer.)

A. No construction, which term shall include within its definition clearing, excavation, grading, exterior painting and other similar work, shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Committee has been obtained.

B. The Committee shall have exclusive jurisdiction over all original construction on any Lot and later changes or additions after initial approval thereof, together with all modifications, additions or alterations subsequently to be constructed on any Lot or made to any improvements initially approved including without limitation fences and outbuildings. The Committee shall prepare and, on behalf of the Board of Directors, shall promulgate architectural standard guidelines ("guidelines") and application and review procedures ("procedures"). The guidelines and procedures shall be those of the Corporation and the Committee shall have the sole and exclusive authority to prepare and to amend the guidelines and procedures available to owners, builders and developers who seek to engage in development of or construction upon the Lots and who conduct their operations strictly in accordance therewith.

C. The Committee shall have the absolute and exclusive right to disapprove any plans, specifications or details submitted to it in the event the same are not in accordance with any of the provisions of these Restrictions or the guidelines; if the design, color scheme or location upon such Lot or Lots of the proposed improvements are not in harmony with the general surroundings or adjacent structures; if the plans and specifications submitted are incomplete; or in the event the Committee deems the plans, specifications or detail, or any part thereof, to be contrary to the best interests, welfare or rights of all or any part of the real property subject to the Declaration or the owners thereof.

D. The Committee shall approve or disapprove plans or specifications and details submitted in accordance with procedures within thirty (30) days from the receipt thereof and the decisions of the Committee shall be final and not subject to appeal or review. Provided, however, that plans, specifications and details revised in accordance with Committee recommendations may be resubmitted for determination by the Committee. In the event that the Committee fails to approve or disapprove plans or specifications and details within thirty (30) days after submission of the same to the Committee, approval, for the purposes of this Article, shall be deemed to have been given by the Committee.

E. The Committee or its agent, shall have the right to inspect all construction to ensure that it is performed in strict accordance with the approved plans, specifications and details. Upon completion of the construction in accordance with the approved plans, specifications and details, the Community shall issue a certificate of completion to the owner.

F. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his residence or permitted appurtenant structures, or to paint the interior of the same any color desired.

G. Neither the Developer nor the Committee nor the Board of Directors or any architecture agent thereof shall be responsible in any way for any defects in plans, specifications or details submitted, revised or approved in accordance with the provisions contained herein or in the guidelines, nor for any structural or other defect in any construction.

H. The requirements of this Article shall constitute a lien or encumbrance on any Lot on which construction is completed, and any subsequent purchaser thereof who allows a violation to be a continuing violation shall continue to be subject to such lien or encumbrance. The requirements of this Article shall not apply to Developer with regard to the original erection or construction of a dwelling on a Lot.

ARTICLE 12

RESTRICTIONS ON USE AND OCCUPANCY

A. No Lot shall be used except for single family residential purposes. No structure shall be erected, placed or permitted to remain on one numbered Lot other than one (1) detached, single family residence dwelling and such outbuildings as are usually accessory to a single family residence dwelling, including a private enclosed garage with space for not more than three (3) automobiles and, if permissible by local code and/or ordinance, a second story for guests and/or servants quarters, which garage shall not be rented separately for remuneration. Unenclosed carports, or similar storage structures, shall not be erected, placed or permitted to remain on any Lot.

B. Any dwelling constructed on a Lot subject to these Restrictions shall contain not less than twelve hundred (1200) square feet of fully enclosed and heated floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages and any outbuildings).

C. No above-grade structure (except approved fences or walls) may be constructed or placed on any Lot except within the minimum building set back lines as set forth by the applicable development / zoning ordinances relating thereto.

An owner of a Lot and a portion or all of an adjoining and contiguous Lot or Lots may, if permitted by local code and/or ordinance, construct a dwelling and/or other structures permitted hereunder upon and across the dividing line of such adjoining and contiguous Lots, all such structures to comply with the minimum building setback lines from the actual boundary lines of the subject owner's property, and thereafter such combinations of Lots or portions thereof shall be treated for all purposes under these Restrictions as a single Lot.

D. All plumbing fixtures and sources of sewerage located on a Lot shall be connected to a sewer system owned and operated by governmental authorities. No outside toilet shall be constructed or permitted on any Lot except during construction as herein expressly provided.

E. The design, size and location of containers for the collection and removal of garbage, trash and other like household refuse shall be subject to and shall require the approval of the Committee.

F. The following general prohibitions and requirements shall apply and control the improvement, maintenance and use of all Lots:

1. No mobile home, trailer, camper, tent, or temporary house, temporary garage or other temporary outbuilding shall be placed or erected on any Lot, providing, however, that the Committee may grant permission for temporary structures for storage of materials during construction. No such temporary structure as may be approved shall be used at any time as a residence.

2. Once construction of a dwelling or other improvement is started on any Lot, the improvements must be substantially completed in accordance with the approved plans and specifications within twelve (12) months from commencement.

3. All dwellings and permitted structures erected or placed on any Lot shall be constructed of material of good grade, quality and appearance, and all construction shall be performed in good workmanlike manner and quality. The exterior of all dwellings and permitted structures shall be either natural wood, stone, masonite, stucco, brick, and any other exterior material the Developer deems appropriate. The covering for all roofs shall be wood shake shingles or Architectural style shingles or, if approved by the Committee, similar dimensional and style shingles. No used structures shall be relocated or placed on any Lot and no structures shall have an exterior constructed of concrete blocks, asbestos or asphalt siding. Any permitted outbuilding shall be of the same material, quality, general appearance and workmanship as the dwelling on the Lot. The requirements of the Committee shall control all improvements to any Lot as is therein specified.

4. Except structures erected by the Developer, no structure erected upon any Lot may be used as a model exhibit or house unless prior written permission to do so shall have been obtained from the Committee.

5. All Lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted.

6. No trash, ashes, garbage or other refuse shall be dumped or stored or accumulated on any Lot or other area in the subdivision.

7. Any dwelling or improvement on any Lot which is destroyed in whole or in part by fire or other casualty must be rebuilt or all debris removed and the Lot restored to a sightly condition with reasonable promptness, provided, however, that in no event shall such debris remain on such Lot longer than three (3) months.

8. No stripped, partially wrecked or junked motor vehicle, or part thereof, shall be permitted to be parked or kept on any Lot. All motor vehicles of any type kept on any Lot shall have current registration and inspection certificates.

9. No vehicle of any Member of any type shall be parked on any street in the subdivision. No truck nor other vehicle of any Member in excess of a one ton load capacity nor any mobile home, trailer, camper, similar vehicle or boat shall be parked or kept overnight or longer, on any Lot, in such a manner as to be visible to the occupants of other Lots or the users of any street or recreation area.

10. All fuel storage tanks shall be buried below the surface of the ground and all outdoor receptacles for ashes, trash, rubbish or garbage shall be installed underground, screened or so placed and kept as not to be visible to the occupants of other Lots or the users of any street or recreation area.

11. All outdoor poles, clotheslines and similar equipment shall be screened or so placed as not to be visible to the occupants of other Lots or the users of any street or recreation area.

12. All recreational equipment and personal property other than automobiles or bicycles must be stored in such a manner as not to be visible from any street or to the occupants of other Lots.

13. No mail or paper box or other receptacle of any kind for use in the delivery of mail or newspapers or magazines or similar material shall be erected or located upon any Lot except such receptacle of standard design as shall have been approved by the Committee.

14. No sign (excluding typical "For Sale" and building identification signs or similar signs), billboard or other advertising structure of any kind may be erected or maintained upon any Lot or Common Area; provided, however, that construction identification signs approved by the Committee showing the Lot

number and name of the builder may be exhibited upon the Lot during the period of construction.

15. No radio station or short wave operator of any kind shall operate from any Lot or residence without the prior written approval of the Committee. All radio and television antenna installations shall be approved in writing by the Committee before the antenna is installed.

16. All dwelling connections for all utilities including, but not limited to, water, electricity, gas, telephone and television shall be run underground from the proper connection points to the dwelling structure in such manner as may be acceptable to the appropriate utility authority.

17. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets in a reasonable number may be kept provided they are not kept, bred or maintained for any commercial purpose, and provided, further, that such pets do not constitute a danger or nuisance to other Lot owners or to the neighborhood as determined by the Board of Directors.

18. The erection of fences, swimming pools and outbuildings, shall require approval of the Committee as provided in Article 11 hereof.

19. Entrances to enclosed garages may face in any direction provided that all such garages shall have a door or doors that completely close off the garage entrance and such door or doors shall remain completely closed except during periods of actual use of such garage entrance.

20. No window air-conditioning units shall be installed in the side of any structure in such manner as to be visible from any street or recreational area.

21. No noxious, offensive or illegal trade or activity shall be carried on upon any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to other Lot owners or the neighborhood.

Notwithstanding any of the foregoing, the Developer reserves, in its sole and exclusive discretion, the right to waive any and all violations of the restrictions contained in this Article 12.

ARTICLE 13

AMENITIES AND FACILITIES

Every park, recreation area, recreation facility, dedicated access and other amenities appurtenant to the Subdivision, whether

or not shown and delineated on any recorded plat (other than greenways dedicated to the City of Raleigh) of the Subdivision, shall be considered private and for the sole and exclusive use of the Owners of Lots within the Subdivision. Neither Developer's execution nor the recording of any plat nor any other act of Developer with respect to such areas is, or is intended to be, or shall be construed as a dedication to the public of any such areas, facilities or amenities.

Greenway areas dedicated to the City of Raleigh shall be for the use of the general public. Notwithstanding any other provisions of these Declarations, the Association, Owners, Members, tenants of Members, Members' guests or invitees, or families of Members shall not, within any portion of the Common Area which is greenway area dedicated to the City of Raleigh, without the prior written consent of the City of Raleigh:

- (a) Grant easements of any nature whatsoever;
- (b) Remove any trees or vegetation;
- (c) Erect gates, fences or other structures;
- (d) Place any garbage receptacles;
- (e) Fill or excavate;
- (f) Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the City of Raleigh may erect trails, trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Corporation and Lot Owners may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City and may enter into such agreements with the City of Raleigh as is deemed appropriate to ensure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

ARTICLE 14

WAIVER

No provision contained in these Restrictions, the Articles or the Bylaws, shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce them on the part of any

Person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

ARTICLE 15

VARIANCES

The Board of Directors in its discretion and subject to local law or ordinance may allow reasonable variances and adjustments of these Restrictions in order to alleviate practical difficulties and hardship in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lots owned in fee by various persons with each such Owner having an easement upon areas owned by the Corporation.

To be effective, a variance hereunder shall be recorded in the Wake County Register of Deeds Office; shall be executed on behalf of the Corporation; and shall refer specifically to this Declaration.

ARTICLE 16

DURATION AND AMENDMENT

A. The covenants and Restrictions contained in 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 one (1) year and shall inure to the benefit of and be enforceable by the Corporation, the Developer or the Owner of any land subject hereto, their respective legal representative, heirs, successors and assigns. This Declaration may be amended in full or in part by an instrument signed by not less than sixty-six and 2/3 percent (66 2/3%) of the Lot Owners, provided, that no amendment shall alter any obligation to pay Community Expenses to benefit the Common Areas, as herein provided, or affect any lien for the payment of same, provided, further, that any amendment must be reviewed by the Raleigh City Attorney's Office. Any proposed amendment shall be provided in writing to the City Attorney's Office. Failure to receive written response from the City Attorney's Office to said proposed amendment within 30 days of receipt thereof shall constitute approval by said office of such amendment. To be effective any amendment must be recorded in the office of the Register of Deeds of Wake County, North Carolina and a marginal entry of same must be signified on the face of this document. So long as the Developer, as a Type "B" member, is entitled to elect a majority of the Board of Directors of the Corporation, no Amendment of this Declaration shall be made without the consent of Developer.

B. 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.

ARTICLE 17

MERGER

In the event that the Association votes to merge into another similar non-profit association (which association has been approved by the City Attorney) as set forth in Article XII Section 3 of the Bylaws of the Corporation and by such merger, the Subdivision becomes encumbered and governed by the surviving association's covenants, rules and restrictions as if they had existed and encumbered the Properties as of the date of recording hereof, from the date of recordation of any such merger documents, this Declaration shall be deemed to be no longer burdening upon the Properties. Notwithstanding anything contained herein to the contrary, debts due and outstanding by a Member to the Corporation prior to the date any merger effected pursuant to this Article shall survive as a debt of said lot owner to the surviving non-profit association.

ARTICLE 18

TERMINATION

In the event that this Declaration is otherwise declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Corporation is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any Court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, all Common Areas belonging to the Corporation at the time of such adjudication shall (i) be held by a new nonprofit association to be created by the Developer without the consent of members, said association to own and manage the Common Areas for the benefit of lot owners or (ii) be deeded to the City of Raleigh. If the Common Areas are owned by a new nonprofit homeowners association, said association shall own and operate said Common Areas for the use and benefit of Owners within the Properties as set forth below:

(a) Each Lot located within the Properties shall be subject to an annual general assessment which shall be paid by the Owner of each such Lot or Parcel to the association. The amount of such annual general assessment and its due date shall be determined by the association, but the amount of such annual general assessment on any particular Lot shall not exceed the amount actually assessed against that Lot in the last year that assessments were levied by the Corporation, subject to the adjustments set forth in subparagraph (b) immediately below;

(b) The maximum annual general assessment which may be charged by the new association hereunder on any particular Lot may be automatically increased each year by an amount of ten (10*) percent or the percentage increase between the first and last months of the thirteen (13) month period terminating at the end of the third (3rd) quarter of the previous assessment year in the Consumer Price Index, U.S. City Average, All Items (1967-100) (hereafter "C.P.I.") issued by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas", whichever of these two (2) percentage figures is larger. The actual amount of such increase in the maximum annual general assessment on a Lot shall equal the maximum annual assessment on such Lot for the previous year multiplied by the larger of the two (2) percentage factors set forth above. If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

(c) Any past due annual general assessment together with interest thereon at the maximum annual rate allowed by law from the due date and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time of annual general assessment became past due, and it shall also constitute and become a charge and continuing lien on the Lot and all improvements thereon, against which the assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

(d) The new association shall be required to use the funds collected as annual general assessments for the operation, maintenance, repair, and upkeep of the Common Areas. The new association shall not have the obligations to provide for operation, maintenance, repair, and upkeep of the Common Areas once the funds provided by the annual general assessment have been exhausted.

(e) The new association shall have the right to convey title to the Common Properties, and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and by the Raleigh City Code and affirmatively acknowledges its acceptance of the duties imposed hereby.

ARTICLE 19

CAPTIONS

The captions preceding the various Articles of these Restrictions are for the convenience of reference only, and shall not be used as an aid in interpretation or construction of these Restrictions. As used herein, the singular includes the plural and where there is more than one Owner of a Lot, said Owners are

jointly and severally liable for the obligations herein imposed. Throughout this Declaration, references to the masculine shall be deemed to include the feminine, the feminine to include the masculine and the neuter to include the masculine and feminine.

ARTICLE 20

ASSIGNABILITY OF RIGHTS AND LIABILITIES

Developer shall have the right to sell, lease, transfer, assign, license, and in any manner alienate or dispose of any rights, interests and liabilities retained, accruing or reserved to it by this Declaration. Following any such disposition, Developer in no way shall be liable or responsible to any party with regard to any such right, interest or liability or any claim or claims arising out of same in any manner.

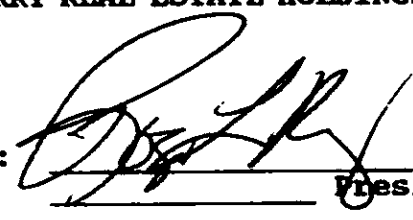
ARTICLE 21

LIBERAL CONSTRUCTION

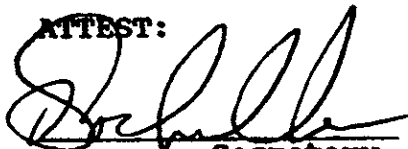
The provisions of this Declaration shall be construed liberally to effectuate its purpose of creating a Subdivision of fee simple ownership of Lots and buildings governed and controlled by rules, regulations, restrictions, covenants, conditions, reservations and easements administered by an Owners' association with each Owner entitled to and burdened with the rights and easements equivalent to those of other Owners.

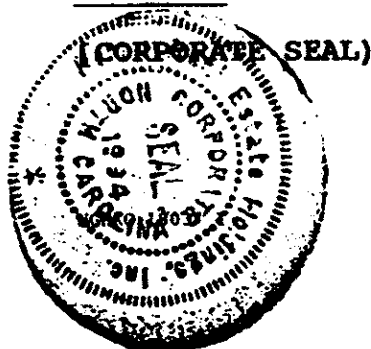
IN TESTIMONY WHEREOF, Perry Real Estate Holdings, Inc. has caused this instrument to be executed in its name and attested by its _____ Secretary and the corporate seal hereto affixed, the day and year first above written.

PERRY REAL ESTATE HOLDINGS INC.

By:  President

ATTEST:


Secretary



STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Cathleen C. O'Connor, a Notary Public of the County and State aforesaid certify that Dennis Rachelle personally came before me this day and acknowledged that he is Secretary of Perry Real Estate Holdings, Inc., a North Carolina 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 his/himself as its Secretary.

Witness my hand and notarial seal, this the 18 day of August, 1994.

My Commission Expires:



Cathleen C. O'Connor
Notary Public

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of

Cathleen C. O'Connor

Notary (y/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 page shown on the first page hereof.

KENNEDY G. WILKINS Register of Deeds

By Rogina K. Cooke
Asst. Deputy Register of Deeds

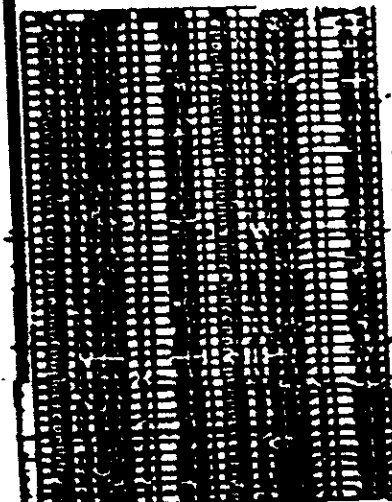
EXHIBIT A

BEGINNING at a point located in the centerline of the 60-foot public right-of-way of Durant Road (also known as State Road 2006), said point of beginning being located South 73° 38' 35" East 2058.38 feet from N.C.G.S. monument "Durant" 1985, NAD 83 COORDINATES, N = 239471.876, E = 645625.956; thence from said point and place of BEGINNING: South 87° 55' 00" West 1116.88 feet to a point in the property line of (now or formerly) N.E. Edgerton; thence South 02° 03' 15" East 789.10 feet to a point in the property line of (now or formerly) CP&L Company; thence along and with said property line North 77° 02' 09" East 272.78 feet to a point; thence continuing with said line North 77° 01' 23" East 243.10 feet to a point; thence continuing with said line North 83° 46' 18" East 332.87 feet to a point; thence along and with the line of (now or formerly) J. James Taylor, North 83° 45' 53" East 697.46 feet to a point; thence South 55° 42' 55" East 574.83 feet to a point; thence South 55° 43' 40" East 287.52 feet to a point in the property line of (now or formerly) the Wake County Board of Education; thence along and with said line, North 34° 08' 46" East 548.62 feet to a point in the southern edge of the 60-foot right-of-way of said Durant Road; thence along and with the edge of said right-of-way along a curve having a radius of 9088.77 feet, a distance of 209.61 feet to a point; thence North 69° 28' 39" West 306.36 feet to a point; thence along and with a curve having a radius of 11452.84, a distance of 35.00 feet to a point; thence North 20° 41' 52" East 45.00 feet to a point in the centerline of said Durant Road; thence continuing along said centerline along and with a curve having a radius of 11407.84 feet, a distance of 520.47 feet to a point; thence North 66° 41' 18" West 518.48 feet to the point and place of BEGINNING, and being 33.28 acres, more or less, the property of (now or formerly) Duke University located on the south side of Durant Road, Wake County and being a portion of PIN #1728.01.37.8677 all as more particularly shown on a survey of "Simms Branch/Anson Grove" dated January 3, 1994 prepared by The John R. McAdams Company, Project No. GWP9211.

EXHIBIT B

All that property deeded to Duke University by Cameron Brown Company by Deed recorded in deed Book 2656, Page 09, Wake County registry on september 5, 1978, and shown on the sketch attached hereto, being approximately 1120 acres , more or less.

052-0639



DUNN RD
(S.R. 2011)

FALLS OF THE
NEUSE ROAD
FALLS OF THE NEUSE RIVER

RAVEN
RIDGE
RD.
(S.R. 2010)

DURANT ROAD
(SR 2006)

PIW #
1728.01.37.8677

PROJECT SURVEY
FALLS RD

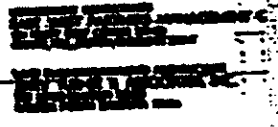


EXHIBIT A TO
EXHIBIT B