Prepared By and Hold For:
Bowen & Nunley, PLLC #4
590 New Waverly Place,
Ste. 120
Cary, NC 27511

Wake County,NC 109
Laura M Riddick, Register Of Deeds
Presented & Recorded 05/13/2002 09:53:27
Book : 009413 Page : 00001 - 00010

DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS FOR SMITH FARMS – PHASE 1 & PHASE 1A

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS made this the 11th day of April, 2002, by TIN, INC., a North Carolina Corporation, having his principal office in Wake County, NC, hereinafter referred to as "Declarant", and CENTRAL CAROLINA BANK AND TRUST COMPANY, a North Carolina Corporation;

WITNESSETH:

WHEREAS, Declarant is the owner and developer of certain property in the County of Wake, State of North Carolina, which is described hereinbelow;

WHEREAS, it is the intent of the Declarant hereby to cause such land to be subjected to this Declaration of Covenants, Conditions and Restrictions;

WHEREAS, Declarant hereto is the owner of the real property or a lien thereon described in Article I of this Declaration and Declarant is desirous of subjecting said real property to the covenants, restrictions and conditions hereinafter set forth, each and all of which is a and are for the benefit of such property and for such owner thereof, and shall inure to the benefit of and pass and run with said property and each and every lot or parcel thereof, and shall apply to and bind the successors in interest and any owner thereof;

NOW, THEREFORE, the Declarant hereby declares that all of the property described hereinbelow shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, such real property and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
PROPERTY

The real property which is, and shall be held, transferred, sold and conveyed subject to the protective covenants set forth below is located in the County of Wake, State of North Carolina, and is more particularly described as follows:

BEING all of Lots 1 through 19, SMITH FARMS, PHASE ONE as recorded in Book of Maps 2002, Page 396, Wake County Registry, reference to which is hereby made for greater certainty of description.

BEING all of Lots 50-53, SMITH FARMS, PHASE 1A as recorded in Book of Maps 2002, Page 448, Wake County Registry, reference to which is hereby made for greater certainty of description.

No property other than described above shall be deemed subject to this Declaration until specifically made subject thereto. The Declarant may from time to time subject additional real property to the protective covenants and restrictions herein set forth by appropriate reference hereto.

ARTICLE II
PURPOSE

The real property hereinabove described is subjected to the protective covenants and restrictions hereby declared to insure the best use and the most appropriate development and improvement of each lot thereof; to protect the owners of each lot thereof; to protect the owners of lots against such improper use of surrounding lots as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and

best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on lots; to prevent haphazard and inharmonious improvement of lots; to secure and maintain proper setbacks from streets and adequate free spaces between structures, and in general to provide adequately for a high type and quality of improvement in said property, and thereby to enhance the values of investments made by purchasers of lots therein.

ARTICLE III
RESTRICTIONS

SECTION 1. LAND USE AND BUILDING TYPE.

No Lot shall be used except for single-family residential purposes. No dwelling shall be erected, altered, placed or permitted to remain on any lot other than one, built-on-site, detached single family dwelling not to exceed two (2) stories in height (exclusive of basement and attic), a private garage for not more than three (3) cars, which garage may not contain servants quarters.

SECTION 2. BUILDING SETBACKS/LOCATION.

No dwelling shall be erected on any lot nearer than 30 feet from the front lot line, nor nearer than 20 feet from the rear lot line, nor nearer to the side lot line than 8 feet; provided however, that on corner lots the dwelling may face either street and may be located not nearer than 18 feet to one street. For the purpose of this covenant, eaves shall be not be considered a part of the dwelling; provided however, that this shall not be construed to permit the portion of a dwelling on a lot to encroach upon another lot. Where Town of Fuquay-Varina ordinances require greater setbacks or eliminate exclusions from measurement, the Town ordinances shall control.

SECTION 3. DWELLING SIZE. No dwelling shall be erected or allowed to remain on a lot having an area of the main structure, exclusive of open or screened porches, basements, attics, garages and decks, of less than 2,100 square feet of finished living area for a one-story dwelling. Declarant shall have the right to waiver violations of the square footage requirement up to 10%.

SECTION 4. MOBILE HOMES, MANUFACTURED HOMES, ETC.

No mobile home, manufactured home, modular home, log home, earthen or underground home, trailer, shell homes, pre-cut, pre-assemble and packaged homes or other like structure shall be located or installed on any Lot. As used in this Section, mobile home, manufactured home or modular home shall mean a structure, assembled in whole or in part, in a location other than on the Lot itself, transportable in one or more sections, any section of which, during transport, is four (4) feet or more in width and ten (10) feet or more in length, which may or may not be built on a permanent chassis and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities.

A storage shed or barn (or both) may be permitted on a lot after a plot plan showing the proposed location and the plans and specifications or a photograph have been approved in writing by Declarant. Said shed or barn shall be constructed of same materials and design of subject home. No metal shed or barn shall be permitted. No boats, travel trailers, unlicensed vehicles or other recreational vehicles may be parked behind the dwelling on any lot covered by these covenants.

SECTION 5. LOT AREA AND WIDTH/RECOMBINATION.

All lots as shown on the recorded map hereinabove referred to are hereby approved. Adjustments may be made, however, in the line between any two lots so long as the area of any lot is not reduced by more than allowed by all applicable Wake County ordinances and regulations and so long as all other restrictions herein set forth are observed. Upon any recombination of lots, the setbacks and side line clearances from new lot lines shall be applicable and setbacks from former lot lines shall no longer be required. No lot or combination of lots shall be re-subdivided in such a manner that will result in there being more than the present number of lots shown on said recorded map.

SECTION 6. WAIVER OF MINOR VIOLATIONS.

The Declarant shall have the right to waive a minor violation of, and allow a minor variance from, the restrictions contained in Section 1 and 2 of this Article, where the same resulted unintentionally or without gross carelessness on the part of any owner (including, without limitation, Declarant) and/or materially harmful to the properties. For the purpose of this Section, a minor variance shall be deemed to be any variance of ten percent (10%) or less. If such waiver is granted in writing, then, thereafter, any matter so waived shall no longer be deemed a violation of these covenants. This section shall also meet all applicable Wake County ordinances, regulations and setbacks.

SECTION 7. VARIANCES. The Declarant or the Board of Directors of the Homeowner's Association in their discretion may allow reasonable variances and adjustments of the restrictions set forth in this Article III in order to alleviate practical difficulties and hardship in the enforcement and operation of these restrictions. Any such variances shall not violate the spirit or the intent of this Declaration to create a subdivision of lots owned in fee by various persons with each such owner having an easement upon common areas owned by the Homeowner's Association. To be effective, a variance hereunder shall be recorded in the Wake County Register of Deeds office, shall be executed on behalf of the Homeowner's Association or Declarant, as applicable, and shall refer specifically to this Declaration. This section shall also meet all applicable Wake County ordinances, regulations and setbacks.

SECTION 8. OUTDOOR STRUCTURES. No fence, wall, hedge or mass planting shall be permitted to extend nearer to the front lot line than the rear of the main dwelling located on the lot, nor nearer a side street than the main dwelling except upon approval in accordance with Article III, Section 2 above. All fences and walls shall be subject to the approval in the same manner as provided for other improvements in Article III, Section 2 above. No metal fences or chain link fences of any kind shall be installed on any lot. No fences shall exceed six (6) feet.

No building, outside lighting, newspaper box, screen planting, fence, or other improvements shall be erected, placed or altered on any lot in said development without the written approval of the Declarant..

SECTION 9. MAIL BOXES. The required mailbox shall be provided by the Declarant and installed by the builder. In the event the mail box is damaged, destroyed or removed for any reason; it shall be replaced by the owner of the lot to match all other existing mail boxes in the subdivision. No mail receptacle shall be erected unless approved by the Declarant. The Declarant has absolute authority to determine the style and location of any mail box post and mail box.

SECTION 10. ROAD MAINTENANCE. The Declarant shall construct the roads within the subdivision to meet specifications required by the North Carolina Department of Transportation for State maintenance of the roads, and Declarant shall maintain the roads in a condition acceptable to the Department until the State agrees to accept the roads for State maintenance.

SECTION 11. TOTAL LOSS.

In the event of a total loss of the structure, the owner may elect not to replace it; however, the site shall be cleared of all debris, graded level with the contour of the land and grassed or strawed.

All telephone, electrical and other utility lines and connections between the main utility lines and the dwelling or other structures shall be located underground so as not to be visible.

SECTION 12. PARKING.

Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles owned by such owner and no parking shall be permitted on the streets. All vehicles shall be currently licensed, inspected, insured and maintained to remain on the property.

ARTICLE IV
BUSINESS, MANUFACTURING, COMMERCIAL AND PROFESSIONAL USES PROHIBITED; NUISANCES PROHIBITED

No part of the said property shall be used for manufacturing, commercial or business enterprise of any kind, nor shall such be maintained on, in front of, or in connection with the properties, nor shall such property in any way be used for other than strictly residential purposes. No noxious or offensive trade or 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. No signs or billboards shall be erected or maintained on the premises other than temporary "for sale" signs. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a trade or professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop, gift shop or automobile repair shop shall be carried on upon any lot. No trade materials or inventories may be stored or regularly parked on the premises. In-house businesses may be conducted so long as (1) the business is conducted solely by the homeowners or occupants, (2) no outside signs or other advertising is done and (3) the business is not visited by customers or suppliers.

Each lot owner shall provide receptacles for garbage in any are not visible from the front of the dwelling located on each lot.

ARTICLE V
PETS

No animals, livestock or poultry of any kid shall be raised or kept on any lot, except as stated within this Article. Dogs, cats and other household pets may be kept and maintained only if the pets are:

1. not kept for business or commercial purposes;
2. are kept within the boundaries of the lot of the pet's owner and are not allowed to run free and unrestricted upon other lots and streets of the subdivision; and
3. are kept under supervision and control so as to not cause or create any disturbances or nuisance to persons within the subdivision.

ARTICLE VI
EASEMENTS

Easements, to the extent provided by plats recorded in the Wake County Registry, are reserved over the rear five (5) feet of any lot and over each side five (5) feet of any lot. The Declarant reserves the right to subject the real property in this subdivision to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting and entrance sign lighting, which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the owner of each building unit. Easements for installation and maintenance of utilities are reserved along and over each lot.

Within these easements, no structures, planting or other material shall be placed or permitted to remain which may damage or otherwise interfere with the intended purpose of such easements 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 or lots except for those improvements for which a public authority or a utility company is responsible.

ARTICLE VII
LOT OWNER'S RESPONSIBILITY

It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on such lots which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. Non-operating cars, unused objects or apparatus, or any portion thereof, shall not be permitted to remain on any lot. All lots shall be kept clean and free of garbage, junk, trash, debris, or breeding and habitation of snakes, rats, insects, etc. Each lot owner shall cause his lawn to be

regularly mowed as needed, cause the maintenance and protection of landscaping, insuring proper drainage of the lot so as to prevent soil erosion, and cause the appropriate maintenance of the residence and any other structures and improvements located on his lot.

Each lot owner shall participate in the maintenance cost of the entrance sign to Smith Farms equally.

ARTICLE VIII
TEMPORARY STRUCTURES

No trailer, tent, shack, barn or other outbuilding, except an accessory building or structure as authorized by the provisions of ARTICLE III, shall be erected or placed on any lot covered by these covenants. No detached garage shall at any time be used for human habitation either temporarily or permanently.

ARTICLE IX
HOMEOWNERS ASSOCIATION

Any and all authority delegated to the Declarant by these covenants, at the Declarant's option, shall be transferred to a Homeowner's Association, that will be known as "SMITH FARMS HOMEOWNERS' ASSOCIATION". Such transfer shall take place in the Declarant's discretion or when the last lot is conveyed by the developer of the subdivision, provided such association has been formed. If no association has been formed at the time of the last conveyance by the developer, the transfer shall automatically take place upon the formation of such an association. Should owners of more than 50% of the lots in the subdivision form such an association, then all lots shall be subject to the provisions of the homeowners agreement and bylaws as they may be approved by the voting members of the association.

ARTICLE X
ASSESSMENTS

ANNUAL ASSESSMENTS. The maximum annual assessment shall be two hundred forty dollars ($240.00) per Lot, and may be collected in monthly installments of twenty dollars ($20.00) per Lot. The maximum annual assessment for calendar year 2003 and for each calendar year thereafter shall automatically increase by the greater of ten percent (10%) per year over the maximum annual assessment for the previous year or the percentage increase in the U.S. Department of Urban Price Index – All Urban Consumers (1982-84=100) when comparing the two most current years for which such index is available. If at any time such index is no longer computed or published, the Executive Board of the Association shall select a comparable index reflecting the increase of costs incurred by the Association. The maximum annual assessment may be increased without limit by a vote of the Members entitled to cast at least sixty-seven percent (67%) of the votes of each class of Members who are voting, in person or by proxy, at a meeting duly called for this purpose.

RATE OF ASSESSMENTS. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis.

DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following, the date such Lot is sold from the Declarant to the purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due dates shall be established by the Declarant or, the first of the month. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting, forth whether the assessments on a specified Lot have been paid.

WORKING CAPITAL ASSESSMENTS. In addition to the annual assessments authorized above, at the time of the closing, of the first sale of each Lot, the purchaser(s) thereof shall pay to the Association an amount equal to seventy-five dollars ($75.00). Such funds shall be used by the Association to establish a Working Capital Fund, the purpose of which is to insure that the Association will have sufficient monies available to meet its initial operational needs. No such payments made into the Working Capital Fund shall be considered to be an advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be

held and administered by the Association in accordance with the terms of the Declaration and the Bylaws.

EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a per annum rate from time-to-time established by the Executive Board of the Association not to exceed the lesser of (i) that per annum rate charged by the Internal Revenue Service on delinquent taxes or (ii) eighteen percent (18%) per annum. In addition, the Association may charge a reasonable late fee, the amount of which shall be established from time to time by the Executive Board, for assessments not paid within thirty, (30) days after the due date. After notice and an opportunity to be heard as set forth in the Bylaws, the Association may suspend privileges or services provided by the Association (except rights of access to Lots) during any period that assessments or other amounts due and owning, to the Association remain unpaid for a period of thirty (30) days or longer which suspension may continue without further hearing until the delinquency is cured. The Association may bring an action at law against the Owner personally obligated to pay, the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of a mortgage or deed of trust on real estate under power of sale, and interest, late fees, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the Common Elements or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

ARTICLE XI
MISCELLANEOUS

SECTION 1. No residence shall have a standard television or radio antenna, which antenna shall be actually attached to the residence. Television or radio reception "disks" are specifically not included in the definition of "standard television or radio antenna" and no such disks are allowed unless approved by adjoining owners of lots in the subdivision and Declarant. No satellite dishes of more than 2 feet in diameter shall be installed so as to be visible from any street or recreational area.

SECTION 2. No residence shall have any outside clotheslines. Lawn ornaments are prohibited unless approved by the Declarant.

SECTION 3. No residence shall have any window air-conditioning unit.

SECTION 4. No owner shall park any boat, camper, trailer, commercial truck, tractor, van or similar vehicle on any street or permit the same to be stored or regularly parked upon any lot within the subdivision except in a garage, well-screened enclosure located and constructed in accordance with other provisions of this Declaration, or in the back yard and stored and screened in such a manner as to not be visible from the street. No tractor-trailer trucks, either with or without the trailer, shall be parked overnight anywhere in the subdivision.

SECTION 5. FUEL TANKS, ETC. No fuel tanks or similar storage receptacles shall be exposed to view; i.e., they must be installed only within the main dwelling house, within another approved structure or buried underground in a safe and approved container.

SECTION 6. ENFORCEMENT. If the parties hereto, or any of them or their heirs, successors, or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situated in said subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent it, her, him or them from so doing or to recover damages or other dues for such violation.

SECTION 7. TERM. The covenants and restrictions of this Declaration shall run with the land and bind each lot, and shall inure to the benefit of, and be enforceable by all parties 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.

SECTION 8. AMENDMENT. These covenants may be altered, amended or revoked, in whole or in part, by written agreement of the Declarant as long as Declarant has some ownership interest. Otherwise, these covenants may be altered, amended or revoked, in whole or in part, by written agreement of the owners of record of ninety percent (90%) of the lots comprising the subdivision.

SECTION 9. NOTICE. Any notice required to be sent to any lot owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given when mailed, postpaid, to the last known address of the person who appears on public record as the lot owner. Notice to one co-owner of a lot shall constitute notice to all co-owners.

SECTION 10. SEVERABILITY. Should any covenant or restriction herein contained, or any sentence, clause, phrase, or term be unenforceable, for any reason, by adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. In addition, if there is any contradiction between these restrictions and any governmental ordinances, laws or regulations of a federal, state or local agency, the latter shall prevail.

IN WITNESS WHEREOF, the Declarant and the remaining parties have caused this instrument to be executed in their names, if by a corporation, by order of the Board of Directors duly given, as of the day and year first above written.

TIN, INC.

_____(seal)
President

SOUTHLAND ASSOCIATES, INC.

_____(Seal)
President

ATTEST:

Secretary

CORPORATE SEAL

CENTRAL CAROLINA BANK AND TRUST COMPANY

_____(Seal)
SR Vice President

ATTEST:

Secretary

CORPORATE SEAL

RAY HICKS BUILDERS:

_____(Seal)
RAY H. HICKS

_____(Seal)
VIRGINIA R. HICKS

NORTH CAROLINA WAKE COUNTY

I, ELIZABETH WARD BOWEN, a Notary Public of the County and State aforesaid do hereby certify that JOSEPH V. IANNONE personally appeared before me this and acknowledged that he is President of TIN, INC. and that by authority duly given and as an act of the corporation the foregoing instrument was duly given and as an act of the corporation the foregoing instrument was signed in its name by him as President.

WITNESS my hand and notarial seal this the 11th day of APRIL, 2002.

Notary Public

My Commission Expires: 10/6/06
Notarial Seal

NORTH CAROLINA WAKE COUNTY

I, WENDY J. GALLOVITCH, a Notary Public of the County and State aforesaid do hereby certify that ANDY RAWLS personally appeared before me this and acknowledged that HE is ASST. Secretary of CENTRAL CAROLINA BANK and that by authority duly given and as an act of the corporation the foregoing instrument was duly given and as an act of the corporation the foregoing instrument was signed in its name by its VICE President, sealed with its corporate seal and attested by SELF as its ASST Secretary.

WITNESS my hand and notarial seal this the 10TH day of MAY, 2002.

Notary Public

My Commission Expires: 3-5-05
Notarial Seal

NORTH CAROLINA WAKE COUNTY

I, WENDY J. GALLOVITCH a Notary Public of the County and State aforesaid do hereby certify that DARRIN WILLIAMS personally appeared before me this and acknowledged that HE is ASST Secretary of SOUTHLAND ASSOCIATES, Inc., Trustee and that by authority duly given and as an act of the corporation the foregoing instrument was duly given and as an act of the corporation the foregoing instrument was signed in its name by its VICE President, sealed with its corporate seal and attested by SELF as its ASST. Secretary.

WITNESS my hand and notarial seal this the 10TH day of MAY, 2002.

Notary Public

My Commission Expires: 3-5-05
Notarial Seal

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, ELIZABETH WARD BOWEN, a Notary Public of the County and State aforesaid, certify that RAY F. HICKS dba RAY HICKS BUILDER and wife, VIRGINIA R. HICKS personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 10th day of APRIL, 2002.

Notary Public

My Commission Expires: 10/6/06

SEAL

Laura M Riddick
Register of Deeds
Wake County, NC

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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

North Carolina - Wake County

The foregoing certificate 5 of Elizabeth Ward Bowen
Wendy J. Gallovitch

_____ 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 page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: _____ DEPUTY
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
10 # of Pages