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PRESENTED FOR REGISTRATION
97 JUL 22 AM 10:40
LAURA M. RIDDICK
REGISTER OF DEEDS
WAKE COUNTY

Prepared by and hold for:
James S. Warren, Attorney
Kathryn S. Drake, Attorney 000136
Warren, Perry & Anthony, P.L.L.C.
Post Office Box 1187
Wake Forest, NC 27588-1187

NORTH CAROLINA

WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS FOR EMERALD POINTE SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS, made this 2nd day of July, 1997 by JERRY GOWER CONSTRUCTION COMPANY, INC., a North Carolina corporation, hereinafter called "Declarant",

W I T N E S S E T H :

WHEREAS, Declarant is the owner of the real property described on attached Schedule "A".

WHEREAS, the Declarant desires to create a "Consolidated Open Space Development" with certain active and passive recreational facilities and those structures necessary for the operation of a water and a waste water system more particularly described as Common Properties for the benefit of said community and for the benefit of all the lots set forth hereinabove; and

WHEREAS, the Declarant desires to provide for the preservation of the value, amenities and conceptual intent of the said community and for the maintenance of the said Common Properties; and, to this end, desires to subject the said real property above described, together with such additions as may hereafter be made, to the covenants, restrictions, easements, affirmative obligations, charges and liens, hereinafter set forth, each and all of which is and hereby declared to be for the benefit of said property and each and every owner of any and all parts thereof; and

WHEREAS, Declarant has caused or will later cause to be incorporated under the Laws of the State of North Carolina, as a non-profit corporation, EMERALD POINTE HOMEOWNERS' ASSOCIATION, INC., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth.

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the Declarant declares that the real property described above, and such additions thereto as may hereinafter be made, is and shall be subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens (referred to as "The Covenants") hereinafter set forth, and said covenants shall run with the land and be binding on all persons claiming under and through the Declarant.

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ARTICLE 1

DEFINITIONS:

Section 1. The following words and terms, when used in this Declaration, or any Supplemental Declaration, shall have the following meanings:

(a) "Association" shall mean and refer to the Emerald Pointe Homeowners Association, Inc., a North Carolina non-profit corporation.

(b) "Owner" shall mean and refer to the record owner, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any tract situated upon the Properties, but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee, its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an owner.

(c) "Properties" shall mean and refer to that certain real property heretobefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, as are subjected to this Declaration or any Supplemental Declaration.

(d) "Open space" shall mean and refer to a parcel or parcels of land within a tract, or a combination of land and water, designed and intended primarily for open space preservation, and preserved as farm or forest land or designed for the active or passive recreational use and enjoyment of the residents or employees of the development.

(e) "Consolidated Open Space Development (COSD)" shall mean and refer to a tract of land under single or common ownership, developed according to a comprehensive design for the entire tract. COSD's are exempted from lot area and setback requirements of the applicable zoning district so that the COSD design may cluster structures on a portion or portions of the tract, as appropriate for the site, in order to consolidate open space on large portions of the tract. Clustering may consist of clustering attached or multifamily dwelling units, or clusters of single-family detached houses on lots which are smaller that normally applicable by the zoning district (or districts) in which the COSD is located.

(f) "Permanent common open space" shall mean and refer to a portion of open space (as defined herein) that will be permanently reserved for the use and enjoyment of the residents or employees of the development.

(g) "Lot" shall mean and refer to any improved or unimproved parcel of land, shown upon any recorded subdivision map of the Properties, intended for the construction of a detached single family dwelling, excluding any "Common Properties", as heretofore defined.

(h) "Member" shall mean and refer to all owners as heretofore defined.

(i) "Declarant" shall mean and refer to Jerry Gower Construction Company, Inc., a North Carolina corporation, its successors and assigns.

ARTICLE II

PROPERTY:

Section 1. Existing Property. The real property which is subject to these covenants is located in Wake County, North Carolina, and is particularly described on Schedule "A". All of the real property shall be referred to as "Existing Property".

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions. The Declarant, its successors and assigns, including the Association, shall have the right to bring within the plan and operation of this Declaration, additional properties, whether currently owned or hereafter acquired, at future stages of the development.

The additions authorized under this and the succeeding subsection, shall be made by filing of record Supplementary Declarations of Covenants for Common Properties with respect to the additional property which shall extend the operation and effect of these Covenants to such additional property.

The Supplementary Declarations may contain such complementary additions and modifications of the covenants contained in this Declaration as may be necessary or convenient, in the judgment of the Declarant, to reflect the different character, if any, of the added properties.

(b) Other Additions. Upon approval in writing of the Association pursuant to two-thirds of the vote at a duly called meeting, the owner of property other than the Declarant who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may record a Supplementary Declaration of Covenants with respect to the additional property which shall extend the operation and effect of the covenants to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants contained in this Declaration as may be necessary or convenient, in the judgment of the Declarant, to reflect the different character, if any, of the added properties.

(c) Mergers or Dissolution. Upon a merger or consolidation of the Association with another association as provided for in the Bylaws of the Association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights and obligations of another association may, by operation of

law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration, together with the covenants and restrictions established upon any other properties as one plan. No such merger or consolidation, however, shall effect any revocation, change of or addition to the Covenants established by this Declaration as herein provided. If the association is ever dissolved with no successor in interest to carry on its affairs, the properties, rights and obligations of the association shall be transferred to the Town of Knightdale.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION:

Section 1. Membership. The Declarant and every person or entity who is a record owner of a fee simple or undivided fee simple interest in any lot which is subject to the Covenants is a member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not 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 assessment by the Association.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

CLASS "A" - Class A members shall be all those owners as defined in Section One (1) of this Article III, as they shall be entitled to one (1) vote per lot owned.

CLASS "B" - The Class B member shall be the Declarants. The Class B member shall be entitled to one vote for each vote held by a Class A member; this right of an additional vote for each vote held by a Class A member shall terminate on the happening of either of the following events, whichever occurs earlier: a) when the Declarants have sold seventy-five (75%) percent of all lots affected by these Covenants or b) January 1, 2000. Thereafter, the Declarants shall be entitled to one (1) vote per lot owned.

The total vote of the Association shall consist of the sum of the votes of Class A members and the votes of Class B members. 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 may more than one vote be cast with respect to any lot owned by Class A members. When one or more co-owners sign a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before a vote is counted. If co-owners disagree as to the vote, it shall be split

equally among the co-owners.

Section 3. Change in Open Space Use. Use of any portion of the open space for uses not specified herein or on the plat or by appropriate County ordinance shall be allowed only with the written consent of seventy-five percent (75%) of the owners in the COSD.

The owners/developers of the COSD project or their successors in interest shall have no votes under this Subsection. The weight of an individual owner's written consent shall be measured as follows:

1. One (1) vote per dwelling (as defined in the Town of Knightdale Zoning Ordinance).

2. One (1) vote per each lot approved for single-family dwelling building purposes on the recorded COSD plat, where said dwelling has not yet been built.

3. For each lot or parcel approved for duplex or multifamily dwelling building purposes on the recorded COSD plat, where said building has not yet been built, one (1) vote for each dwelling unit approved.

The voting rights defined by this Subsection shall be separate and distinct form any voting rights granted through the homeowners association.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES:

Section 1. Use of Permanent Common Open Space. Permanent common open space shall be reserved for the use of residents and their guests only, or as this use is modified by agreements between the property owner or homeowners association and public recreational agencies. Such space shall remain as permanent common open space as long as the COSD exists as defined and permitted by the provisions of the Town of Knightdale Zoning Ordinances.

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

Section 3. Title to Common Properties. The Declarant hereby covenants, for itself, its successors and assigns, that it shall convey, bargain and sell, free and clear of all outstanding liens and encumbrances, the Common Properties to the Association on or before the date the Declarant has sold all the lots as shown, or to be shown, on the recorded maps of the subdivision.

Section 4. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties.

(b) The right of the Association to take such steps as are

reasonably necessary to protect the above-described properties against foreclosure.

(c) The right of the Association, as provided in its Bylaws, to suspend the enjoyment of rights of any member or any tenant of any member for any period during which any assessment remains unpaid; and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment.

(d) The right of the Association to mortgage, sell, lease or otherwise convey all or any part of the Common Properties for such purposes and subject to such conditions as may be agreed to by the members, provided that no such mortgage or conveyance shall be effective unless authorized by the vote of two-thirds (2/3) of the Class A members at a duly called meeting and unless written notice of the proposed action is sent to every Class A member at least twenty (20) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken and a certificate of mailing executed by the Secretary of the Association thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument affecting the Common Properties, prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

(e) The right of the Association to give, sell or lease all or any part of the Common Properties to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the members, provided that no such gift, sale or lease shall be effective unless authorized by the vote of two-thirds (2/3) of the vote at a duly called meeting and unless written notice of the proposed action is sent to every member at least twenty (20) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken and a certificate of mailing executed by the Secretary of the Association thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument affecting the Common Properties, prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS:

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot shall, by acceptance of a deed

therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of these Covenants and to pay to the Association: (1) Annual assessments or charges; (2) Special Assessments for the purposes set forth in Section 4 of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the property against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. In the case of co-ownership of a lot, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvement, maintenance, and operation of the Common Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereof, and for the cost of labor, equipment, materials, management and supervision thereof and any other additions, replacements and repair of structures used for the common benefit of Emerald Pointe Subdivision. The Special Assessments shall be used for the purposes set forth in Section 4 of this Article.

Section 3. Maximum Annual Assessment. The maximum annual assessment for the calendar year 1997 shall be Two Hundred Fifty and No/100 ($250.00) Dollars per lot.

(a) After calendar year 1997, the maximum annual assessment may be increased each calendar year not more than ten percent (10%) above the maximum assessment for the previous calendar year without a vote of the membership.

(b) After calendar year 1998, the maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. However, the Board of Directors may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year at a lesser amount, but such action shall not constitute a waiver by the Association of its right to revert to the full assessment for future years as provided above.

Section 4. Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 4, the Association may levy special assessments for the

purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto or addition to the Common Property. Any such assessment shall have the assent of two-thirds (2/3) of the vote at a duly called meeting, written notice of which shall be sent twenty (20) days in advance and shall set forth the purpose of the meeting. For the purpose of acting under this Section 4, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of the total vote of the Class A membership shall constitute a quorum. For the purposes of this subsection only, no vote shall be cast under Class B.

Section 5. Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence on the date (which shall be the first day of the month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessment shall be made for the balance of the calendar year and shall be payable in full within thirty (30) days after the first day of the month fixed for commencement. The assessments for any year after the first year, shall similarly be payable in full within thirty (30) days after the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereto, as the remaining number of months in the year bear to twelve. The same reduction in the amount of assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

The pro-rating of any annual or special assessment due to change in ownership of any lot during a calendar year shall be the responsibility of the individuals involved and not the Association.

Section 6. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against all lots for each assessment period and shall at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any owner.

Written notice of the assessment shall thereupon be sent to every owner subject thereto.

The Association shall upon demand at any time furnish to any

owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 7. Effect of Non-Payment of Assessment, The Personal Obligation of the Owner, the Lien; Remedies of Association. If the annual assessment or any special assessment is not paid on the date when due (being the dates specified in Section 5 hereof), then such assessment shall become delinquent and shall, together with interest thereon at the rate of ten (10%) percent per annum from the due date and cost of collection thereof as hereinafter provided, thereupon become a charge and continuing lien or the land and all improvements thereon, against which each assessment is made, in the hands of the then owner, his heirs, devisees, personal representatives, successors in title and assigns.

If the annual assessment or any special assessment is not paid within thirty (30) days after the due date, the Association may bring an action at law against the owner personally and/or foreclose the lien against the property, and there shall be added to the amount of such assessments the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or Deed of Trust now or hereafter placed upon the properties subject to assessment.

Section 9. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

(a) The grantee in conveyances made for the purpose of granting utility easements;

(b) All Common Properties as defined in Article I, Section 1, hereof;

(c) All properties exempted from taxation by the Laws of the State of North Carolina, upon the terms and to the extent of such legal exemptions;

(d) All properties owned by Declarant.

(e) Properties owned by builders, who acquired such lots for the purpose of engaging in the business of constructing residential buildings, for a period of one year from the date the Deed to the builder is recorded or upon resale by builder, whichever shall first occur.

ARTICLE VI

UTILITIES:

Section 1. Electrical Service. The Declarant has entered into a Contract with Carolina Power & Light Company for the installation of underground electric cables which required an initial contribution and for the installation of street lighting which will require a continuing monthly payment to Carolina Power & Light Company by the owners of each lot. Both the initial contribution and continuing monthly payment to Carolina Power & Light Company shall be the sole responsibility of each individual homeowner.

Section 2. Water and Waste Water Utility Service. The Town of Knightdale is duly franchised by the North Carolina Utilities Commission and will be providing water utility service to the homeowners in Emerald Pointe Subdivision. CAC Utilities, Inc. is a North Carolina corporation, duly franchised by the North Carolina Utilities Commission to operate as a public utility and to provide waste water treatment service to the homeowners in Emerald Pointe Subdivision.

Because of the difficulty of disconnecting a homeowners' sewer service for non-payment of the monthly sewer utility charge, the Declarant has agreed with The Town of Knightdale and CAC Utilities, Inc., and/or their successors and assigns, that in the event a homeowner fails to pay its monthly sewer utility charge, as approved by the North Carolina Utilities Commission, then the sewer utility company may, at its election, require the water utility company to disconnect and discontinue water service to the delinquent homeowner until such time as the monthly utility charge has been paid in full. All costs of reconnecting the water service shall be the sole responsibility of the homeowner.

ARTICLE VII

ARCHITECTURAL CONTROL:

Section 1. Review and Approval of Landscaping Specifications for Additions, Alterations or Changes to Structures. No building, wall, fence, swimming pool, or other improvement shall be commenced, erected, or maintained upon the Common Properties or elsewhere for the common benefit of Emerald Pointe Subdivision, nor shall any landscaping be done, nor shall any exterior addition to any such existing structure or change or alteration therein, be made until the plans and specifications therefor showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the surrounding structures and topography, by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designed committee, fails

to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with; provided, however, that all decisions under this section shall be the sole responsibility of Declarant until such time as Declarant shall no longer vote as a Class B member of the Association.

ARTICLE VIII

USE RESTRICTIONS:

1. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one-half stories and a private garage for not more than three cars.

2. The ground floor area of the main structure exclusive of one-story open porches and garages, shall not be less than 1,100 square feet or the ground floor area of a two-story structure shall not be less than 700 square foot. Variations equal to or less than eight percent (8%) of the required minimum square footage may be approved by the Architectural Committee.

3. No building shall not be located on any lot nearer to the front lot line than thirty (30) feet nor nearer to any side street line than twenty (20) feet. No building shall be located nearer than eight (8) feet to an interior side unit line or twenty (20) feet from the rear lot line. Detached buildings shall be located at least twenty (20) feet apart. The Architectural Committee reserves the right to approve deviations from building line restrictions but in no event shall detached buildings be located less than twenty (20) feet apart.

4. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on Exhibit "A" attached hereto and made a part hereof.

5. No noxious or offensive activity shall be carried upon any lot, nor shall anything be done thereof which may become an annoyance or nuisance to the neighborhood.

6. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

7. No sign of any kind shall be displayed to public view on any lot, provided: one professional sign of not more than one square foot may be placed and one sign not exceeding six square feet advertising this property during the construction and sale period may be utilized.

8. 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 may be kept provided they are not kept, bred or maintained for any commercial purposes and further provided they do

not constitute a nuisance or annoyance to the neighborhood. No dog pens or dog runs shall be allowed.

9. No lot shall be used or maintained as a dumping ground for rubbish or trash. Garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

10. All clotheslines, satellite dish, and playground equipment, including, but not limited to, swings, swing sets, merry-go-rounds, play pens, and sandboxes, toys, etc., shall be located in the rear yard of the home and not in the front yard and must be kept in neat order.

11. No inoperable or unlicensed motor vehicles shall be parked on any lot or dedicated subdivision street for more than thirty (30) days, the purpose of this restriction being to prohibit any junk cars being located in the subdivision.

12. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded, after which time such covenants shall be automatically extended for 10 years, unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

13. Enforcement shall be by proceedings at law or in equity against any person or person violating or attempting to violate any covenants, either to restrain violation or to recover damages.

14. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

ARTICLE IX

INSURANCE

The Association shall obtain a public liability policy insuring the association and its members for all damage or injury caused by the negligence of the Association, any of its members or agents. The policy shall have at least a One Million Dollar ($1,000,000.00) combined single limit per occurrence and aggregate as respects bodily injury and property damage.

ARTICLE X

GENERAL PROVISIONS:

Section 1. Duration and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant, or the owner of any land subject to this Declaration, their respective legal representative, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded after which time all covenants shall be automatically extended for successive periods of ten (10)

years unless two-thirds (2/3) of the Board of Directors of the Homeowners' Association at a duly called meeting approves a change in the covenants and restrictions. The covenants may be amended at any time if two-thirds (2/3) of the Board of Directors of the Homeowners' Association approves the proposed amendment.

Section 2. Notices. Any notice required to be sent to any member or 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 as member upon the Association's membership roll or owner on the records of the Association at the time of such mailing; provided, that any notice called for herein may be hand carried and deposited in the mailbox of an owner in lieu of mailing. Notice to one of two or more co-owners of a lot shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any changes of address and it shall be the responsibility of any new member to immediately notify the Association of the date of the transfer of ownership.

Section 3. Enforcement. Enforcement of these Covenants shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these Covenants, and failure by the Association or any owner or the Company to enforce any Covenant herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 4. Severability. Should any Covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, or unenforceable, 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.

Section 5. FHA/VA/FNMA Approval. As long as there is a Class B membership, the following actions will require the prior written approval of FNMA, and the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Properties, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, Jerry Gower Construction Company, Inc., a North Carolina corporation, has caused this instrument to be executed the day and year first above written.

JERRY GOWER CONSTRUCTION COMPANY, INC., a North Carolina corporation - Declarant

By: Jerry Gower
Vice President

(Corporate Seal)

Snowdean G. Hedrick
Secretary asst.

NORTH CAROLINA

WAKE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Snowdean G. Hedrick personally came before me this day and acknowledged that he is Secretary of JERRY GOWER CONSTRUCTION COMPANY, 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 JERRY GOWER as its Secretary.

Witness my hand and official stamp or seal, this 22nd day of July, 1997.

Kathryn S. Drake
NOTARY PUBLIC:

8/3/2000
COMMISSION EXPIRES:

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Kathryn S. Drake

Notar(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.

LAURA M. RIDDICK, Register of Deeds

By Charles A. Rollins
Asst./Deputy Register of Deeds

EXHIBIT "A"

BK7564PG0844

BEGINNING at a stake located in the northeast corner of the Square D Company Property; runs thence with the Square D Company northern land line South 89 degrees 32 minutes West 1734.24 feet to a stake in the Knott property; thence with the Knott land line North 03 degrees 00 minutes East 1319.15 feet to a existing iron; thence North 87 degrees 00 minutes West 510 feet to a new iron; thence North 03 degrees 36 minutes East 480 feet to a stake located in the eastern margin of the State Road; running thence with the center line of said State Road North 08 degrees 45 minutes East 766 feet to an iron pin; thence leaving said State Road and running with the Cozart southern property line North 87 degrees 00 minutes East 1766.0 feet to an existing iron in the run of Mark's Creek; thence with the run of Mark's Creek the following courses and distances: South 19 degrees 38 minutes East 95 feet to a stake; South 23 degrees 22 minutes East 299.70 feet to a stake; South 04 degrees 17 minutes East 267.80 feet to a stake; South 09 degrees 44 minutes East 161.40 feet to a stake; South 00 degrees 14 minutes East 204 feet to a concrete monument in the northeast corner of the D.J. Robertson property; thence with the Robertson northern land line North 87 degrees 00 minutes West 520 feet to a concrete monument; thence South 03 degrees 00 minutes West 472 feet to a concrete monument; thence South 87 degrees 00 minutes East 930.80 feet to a concrete monument in the run of Mark's Creek; thence with said run the following courses and distances South 00 degrees 18 minutes East 308.50 feet; South 16 degrees 58 minutes West 321.20 feet; South 09 degrees 46 minutes East 259 feet; South 39 degrees 55 minutes West 203.60 feet; South 14 degrees 45 minutes East 135 feet to the point and place of beginning and containing 105.65 acres and being designated as Tract No. 1 of "Property Map of B.C. Hodge Estate, Mark's Creek Township, Wake County, North Carolina" by Robert G. Williams, Registered Land Surveyor, dated August 29, 1974.