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WAKE COUNTY, NC 444
LAURA M RIDDICK
REGISTER OF DEEDS
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HOLD FOR: SMITH DEBNAM, BOX 182

BOOK:012105 PAGE:02548 - 02570

NORTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
BRACKENRIDGE ESTATES SUBDIVISION

WAKE COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this 8th day of August, 2006 between JWM Developers LLC, a North Carolina limited liability company (hereinafter called "Declarant") and all parties hereafter acquiring any of the described property.

WITNESSETH:

WHEREAS, Declarant is the owner of Lots 101, 102, 103, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120 and 121 within a subdivision in the County of Wake, State of North Carolina, known as Brackenridge Estates Subdivision as shown by map and survey recorded in Book of Maps 2006, Pages 1347, Wake County Registry.

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the property be established; and

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WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property in Wake County; and for the continued maintenance and operation of such recreational and common area.

NOW, THEREFORE, in consideration of the premises, the Declarant agrees with all parties hereafter acquiring any of the property hereinafter described, that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which shall be binding on all parties acquiring any right, title or interest in any of the properties and which shall inure to the benefit of each owner thereof.

ARTICLE I

Section 1. The property which shall be held, used, transferred, sold, conveyed and occupied subject to this Declaration is located in Wake County, North Carolina, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Declarant hereby subjects the property, more particularly described on Exhibit A attached hereto and incorporated hereby by reference, to this Declaration and the jurisdiction of the Association and any additions thereto.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Brackenridge Estates Homeowners Association, Inc., its successors and assigns.

Section 2. "Common Area" shall mean all property owned by the Association, or such other property which the Association may hold subject to the provisions of the Declaration. Common Areas shall be defined and bounded on the plat(s) as "Common Areas" or "Common Open Space". Common Areas

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in each phase shall be conveyed to the Association in accordance with Article III, Section 3 prior to deeding the first Lot in the phase. Common Areas shall specifically include but shall not be limited to: (a) all water lines and sewer lines which serve the Properties and are located outside of any public street right-of-way or any utility easement (excluding those lines serving a single Lot); and (b) all storm drainage pipes which serve the Properties that are located outside of any public street right-of-way, (excluding those pipes serving a single Lot); (c) all storm water control measures which serve the Property that are located outside of any public street right of way; and (d) open space identified on recorded plats.

Section 3. "Common Expense" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expense of the Common Area and administration, maintenance, repair, or replacement of the Common Areas;
- (c) Expenses declared to be Common Expenses by the provisions of this Declaration or the By-laws;
- (d) Hazard, liability, or such other insurance premiums as the Declaration or the By-laws may require the Association to purchase;
- (e) Ad valorem taxes and public assessment charges lawfully levied against Common Areas;
- (f) Expenses agreed by the Members to be Common Expenses of the Association.
- (g) Utilities used in connection with the Common Areas.
- (h) Escrow payments made to any governmental entity pursuant to a written Storm water Escrow Protection and Access Maintenance Agreement.
- (i) Exterior lawn maintenance on all Lots.

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Section 4. "Declarant" shall mean and refer to JWM Developers, LLC, a North Carolina limited liability company, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties, with the exception of the Common Area. Detached single family Lots shall be used to construct detached single family dwellings.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Property" shall mean and refer to that certain real property hereinbefore described in Exhibit A, and such additions thereto as may hereafter be made subject to the provisions of this Declaration.

Section 8. "Storm Water Control Measures" shall mean and refer to any detention ponds, drainage easements and all other storm water measures, including storm drainage pipes, which serve the Property that are located outside public street rights of way (excluding those pipes and measures serving a single Lot).

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area and Over the Common Area for access, ingress and egress from and to public streets, walkways and parking areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

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

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(b) The right of the Association to fine Owners for non-compliance with these Covenants, suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Members has been recorded.

(d) The right of the Association to limit the number of guests of Members;

(e) The right of the Association, with the assent of two-thirds (2/3) of all Class A Members and two-thirds (2/3) of all Class B Members, and in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the Members and the Association hereunder;

(f) The right of the Association to adopt, publish and enforce rules and regulations as provided in Article III.

(g) The right of the Association to exchange Common Area in accordance with the applicable governmental land use ordinance.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract

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purchasers who reside on the property, but such delegate shall be subject to the limitations of subsections (a) through (g) of Section 1 above.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except utility and storm drainage easements, prior to the conveyance of the first Lot of each phase of development.

Section 4. Parking. The Association may regulate the parking of boats, trailers and other such items on the Common Area and individual Lots. In particular, outdoor storage or parking of any unlicensed vehicles, campers, boats, trailers or any vehicles that are not licensed automobiles, vans and sport utility vehicles is prohibited. No motor vehicles may be parked or stored on any Lot or any of the subdivision streets while on jacks or while being repaired. Motor vehicles may not be parked or kept on any street in the subdivision for more than one (1) twenty-four (24) hour period during a thirty (30) day period. Parking or storage of motor vehicles on the grass area of any Lot is prohibited.

Section 5. TV Antennas and Cablevision. Exterior equipment including, but not limited to, communications, telecommunications, microwave, television, cable television dishes, satellite dishes, and antennae, shall not be placed or installed by Owner, its agents, licensees, or representatives on the exterior front wall or on the exterior sidewalls of any structure erected or placed upon a Lot that is within twenty feet (20') from the front wall of the house or at any place on the premises that is parallel to said front wall or sidewalls. In a location where the rear wall or a sidewall faces a street, the same restriction shall apply to the entire rear wall or the entire sidewall that faces a street and the areas of the premises that are parallel to said rear wall or sidewall. Under no circumstances may installed exterior dishes or receivers have a

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circumference larger than eighteen inches (18"). The Association may further regulate or prohibit the erection of television antennas and satellite dishes on individual Lots.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Membership in the Association as defined hereinabove shall be mandatory for each original Lot Owner and each successive Owner of a Lot.

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

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned provided that, when Class B membership terminates as set forth below, the Declarant shall be a Class A member for each Lot it then owns. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot, and in no event shall fractional votes be allowed.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier.

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in Class B membership or:
- (b) on December 31, 2012; or
- (c) Upon the surrender of all Class B membership by the holder thereof.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement and maintenance of the Common Areas, including the maintenance, repair and reconstruction of driveways, walks and parking areas situated on the Common Area, maintenance and upkeep of storm sewer pipes and impoundment structures, the cutting and removal of weeds and grass, the removal of trash and rubbish or any other maintenance of Common Areas and maintenance and landscaping of the of the Common Areas, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments levied against the Common Area, the payment of Common

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Expenses, the procurement and maintenance of insurance in accordance with this Declaration or bylaws, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving and any other expense for which the Association is responsible, and such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund or funds for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular or special assessments for Common Expense for the Owners of the kind of Lots that require the reserve fund or funds.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum yearly assessment for detached single family Lots shall be Three Hundred Dollars (\$300.00) per Lot. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessments may be increased effective January 1 of each year without a vote of membership by up to 10% of the previous year's assessment.

(b) From and after January 1 of the year immediately following the conveyance of the First Lot to an Owner, the maximum annual assessment for Lots may be increased above the increase permitted in Section 4(a) above by a vote of two-thirds (2/3) of Class A and B Members who are voting in person or by proxy, at a meeting duly called for this purpose.

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(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice and Quorum for any Action authorized under Sections 4 and 5. Written Notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 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 votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on a monthly basis. Provided, however, that the assessment for Lots owned by Declarant for which no certificate of occupancy has been issued shall be twenty-five percent (25%) of the regular assessments for other Lots.

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Section 8. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to Lots for which a certificate of occupancy has been issued and have been sold to an Owner on the first day of the month following the conveyance of the Common Area. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein.

Section 9. 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 the maximum rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. Foreclosure is to be in the same manner as that of Deeds of Trust, foreclosed under power of sale under Chapter 45 of the North Carolina General Statutes. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

Section 10. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such mortgage

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foreclosure or any proceeding in lieu thereof, 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.

Section 11. Exempt Property. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 12. Working Capital Fund. At the time of closing of the sale of each Lot by the Declarant, a sum equal to at least one years assessment for each Lot shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Association Board will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 13. Dues Paid In Advance. The annual assessments provided for herein shall commence as to Lots being purchased at the time of recordation of a deed from the Declarant to a new owner, pro rated to the first day of the month following said recordation. An amount equivalent to one annual assessment (prorated to the end of the Association's fiscal year), plus any working capital collections, shall be collected at the time of closing to the ultimate consumer referred to in this Section. Such annual assessments shall be paid ratably on an annual basis and shall be collected at the time of purchase.

ARTICLE VI

ARCHITECTURAL CONTROL

(a) No dwelling building, fence, wall or other structure of any kind shall be commenced, erected

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or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made (including changes or alterations in the color exterior paint, vinyl siding, masonry or shutters) until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to 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 designated committee, fails to approve or disapprove such design and location within thirty (30) days after said completed 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. Residences shall be erected with a minimum of 1,750 square feet of heated living area on the first story, exclusive of porches and garages, with a total square footage of at least 3,500 square feet of heated living space. Single story residences shall contain not less than 3,000 square feet of heated living area, exclusive of porches and garages. No trailer, tent, shack, barn or other building shall be erected or placed on any Lot covered by these covenant. No detached garage shall at any time be used for human habitation temporarily or permanently. Temporary structures are prohibited.

(c) No additional driveways or sidewalks may be installed on any Lot without the prior written approval of the Architectural Committee of the Association.

(d) Mailboxes shall not be altered in any way, with the exception of repairs to restore these items to their original appearance if damaged or discolored.

(e) Grass shall be mowed every week and flowerbeds shall be kept free of weeds. Any landscaping of the front yard, rear yard or side yards must be approved in writing in advance by the Architectural Committee of the Association.

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(f) No yard art, including plastic flowers, which is visible from the street may be displayed on any Lot without the prior written approval of the Architectural Committee of the Association.

(g) No household furniture intended for interior use may be kept or stored on porches or yards.

(h) All garbage or refuse shall be kept in the rear yard of all Lots; not in the front or side yards and may not be visible from the public street.

(i) Clothes lines, including temporary or retractable lines, are prohibited on any Lot.

(j) Upon the recordation of a deed from the Declarant to a builder, said builder shall be responsible for upkeep and cleanliness (including mowing of any grass on the Lot) of Lots for which no structure has been commenced.

(k) No noxious or offensive trade, activity, or language 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. Except for unit identification numbers required by the County of Wake, no billboards shall be erected or maintained on the premises. No more than one sign not larger than five square feet in size is to be placed on any lot; only for sale or for rent signs are permitted. No trade materials or inventories may be stored upon the premises and no trucks or tractors may be stored on the premises. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a doctor's office or professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop or gift shop shall be carried on upon any Lot.

ARTICLE VII

INSURANCE

Section 1. Insurance coverage on the Property shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies covering the Common Areas shall be

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purchased by the Association for the benefit of the Association and the Members. All insurance policies covering Single Family Lots shall be owned by the individual Owners thereof and shall be fully paid by such owners.

(b) Coverage. All buildings and improvements upon the Common Areas and all personal property included in the Common Areas shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement,

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land, and

(iii) Such policies shall contain clauses providing for waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than Two Million Dollars (\$2,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to single Owner. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense and charged to the Owners as an assessment according to the provisions above.

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Members. The sole duty of the Association shall be to receive such proceeds as are paid and to hold the same for the purposes stated herein or stated in the By-laws.

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All policies shall be written with a company authorized to do business in North Carolina.

By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon. Each Owner further covenants and agrees that in the event of a partial loss or damage (defined as cost of repair less than 50% of the current tax value), resulting in less than total destruction (defined as cost of repair valued at greater than or equal to 50% of the current tax value) of structures comprising his Lot, the Owner shall proceed, within 60 days of the casualty, to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration. The Owner shall pay any costs or repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner, within 45 days of the casualty, shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the community-wide Standard.

ARTICLE VIII

USE RESTRICTIONS

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, amend, publish, and endorse reasonable rules and regulations concerning the use and enjoyment of the Common Areas and individual Lots. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. Use of Properties. No portion of the Properties (except for temporary office of the

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Declarant and/or model used by Declarant) shall be used expect for residential purposes and for purposes incidental or accessory thereto.

Section 3. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling. Household pets are limited to one (1) household cat and one (1) domesticated dog. Said pet(s) may be kept or maintained provided that they are not kept or maintained for commercial purposes. Pitt Bulls and Rottweilers are not permitted. All pets must be kept under the direct control of the owner by fence, leash or harness and may not run freely at any time. Pet owners are required to clean up after their dog when in the Common Areas. Violations will be subject to a fine and/or legal action.

ARTICLE IX

EASEMENTS

Section 1. All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking area, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the conveyance of the individual lots to Owners and the Common Area to the Association; and the Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant, contractors, and its agents and employees an easement and right of ingress, egress and regress across all Common Areas, now or hereafter owned by the Association, for the purpose of construction of

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improvements and development of the Properties until such time as Class B membership terminates; provided, that all the Common Areas shall be restored to as near the condition as that which prevailed prior to the use of the easement as is reasonably practicable.

Section 2. All Lots shall be subject to easements for the encroachments constructed on adjacent Lots and Common Areas to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts and walls.

Section 3. An easement is hereby established over the Common Areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water and sewer facilities, electrical telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

ARTICLE X

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. 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.

Section 3. Amendment. The covenants and restrictions of 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

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shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.

Section 4. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within 30 days do the following:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots. (For this purpose, the board may rely on its roster of members and shall not be required to cause any title to any Lot to be examined.)

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that deeds are executed. The following form of certification is suggested:

CERTIFICATION OF VALIDITY OF AMENDMENT TO
CONDITIONS AND RESTRICTIONS OF BRACKENRIDGE ESTATES
HOMEOWNERS ASSOCIATION, INC.

By: _____
President

Section 5. Management and Contract Rights of Association. Declarant shall enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance and management of the property. However, no such contract shall be binding upon the Association except through express adoption, or ratification of the terms and conditions of such

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contract. Any contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract at any time after providing 45 days written notice without justification or penalty after transfer of management by Declarant to the Association.

Section 7. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot will, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representation to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the note securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy, all the above upon request of mortgage holder.

Section 8. Consolidated Open Space Development. The real property described in Exhibit A attached hereto is a part of a consolidated open space development approved by the County of Wake in which residential density transfers are permitted: therefore, even though some lots may appear to contain enough land area to construct additional dwelling units or create additional lots, prior density transfers approved within the consolidated open space development may, in fact, preclude County of Wake approval of additional dwellings or further subdividing of lots.

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ARTICLE XI

ELECTRICAL SERVICE

Declarant reserves the right to subject the above described Property to a contract with Progress Energy of the Carolinas for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy of the Carolinas by either the Association, the Owners or both within said Property.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be executed by its Manager this the 8th day of August, 2006.

JWM Developers, LLC

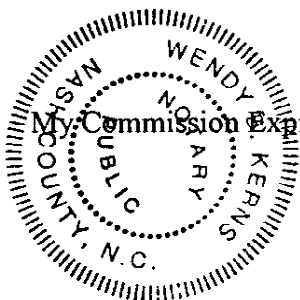
By: [Signature]
W. Thurston Debnam, Jr., Manager

NORTH CAROLINA
NASH COUNTY

I, Wendy B. Kerns, a Notary Public of the County and State aforesaid, certify that W. Thurston Debnam, Jr. personally appeared before me this day and acknowledged that he is the Manager of JWM Developers, LLC, a North Carolina limited liability company, and that by authority duly given and as an act of said limited liability company, the foregoing instrument was voluntarily signed by him on behalf of said limited liability company as its Manager.

Witness my hand and official stamp or seal this the 8th day of August, 2006.

Wendy B Kerns
Notary Public - Wendy B Kerns



My Commission Expires: 9-30-2010

BK012105PG02569

EXHIBIT A

Being all of that certain parcel of land depicted by a map and survey recorded in Book of Maps 2006, Page 1347, Wake County Registry.

SAVE AND EXCEPT Lots 104, 105, 106 and 107 as shown on the aforesaid recorded map.

BK012105PG02570



BOOK:012105 PAGE:02548 - 02570

**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**

This Customer Group
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