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 Alamance, NC
 DAVID J.P. BARBER REGISTER OF DEEDS
 BK **2380** PG **705-730**

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 Return to: Tarheel Land Company, P. O. Box 1060, Oxford, NC 27565



NORTH CAROLINA
 ALAMANCE COUNTY

DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS
 CANE CREEK SUBDIVISION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made and entered into this 1st day of March, 2006, by Tarheel Land Company, a North Carolina corporation, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of the residential subdivision described on Exhibit "A" hereto attached and incorporated by reference; and

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

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property; and for the continued maintenance and operation of any recreational and/or common properties.

NOW, THEREFORE, in consideration of the premises, Declarant hereby declares that all of the property described on Exhibit "A" shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, all of which shall run with the title to the 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:

Handwritten signature/initials

ARTICLE I
DEFINITIONS

Section 1. "Articles" shall mean the Articles of Incorporation of the Association as filed with the Secretary of State of North Carolina, as the same may be from time to time be amended.

Section 2. "Association" shall mean and refer to Cane Creek Homeowners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean those persons elected or appointed and acting collectively as the Board of Directors of the Association.

Section 4. "Builder" as used herein shall mean Anderson Homes, Inc., any entity to which it assigns its interest in its lot purchase contract with Declarant and any building contractor that purchases and owns a Lot within the Subdivision for the purpose of constructing upon it a residence to be sold.

Section 5. "Building" shall mean and refer to a residential structure, single outbuilding or detached garage constructed or erected on said property.

Section 6. "Bylaws" shall mean the document for governance of the Association as adopted initially by the Board and as amended by the Members.

Section 7. "Common Properties" shall mean all real property and any improvements constructed thereon, if any, owned by the Association for the common use and enjoyment of the Owners or Members of the Association, as may be designated on any subdivision map of the Property, by the Association or by the Declarant.

For maintenance purposes, the Common Properties specifically include the subdivision signs, landscaping and lighting within the signage and landscaping easements at the entrance to the subdivision from Stockard Road, the landscaping on and along the right of way of Stockard Road for the full length of the subdivision frontage on such road and the subdivision streets until they are placed on the NCDOT system for maintenance.

Section 8. "Common Expenses" shall mean and include, as applicable:

- (a). All sums lawfully, assessed by the Association against its members;
- (b). Payments or obligations to reserve accounts established or maintained pursuant to this declaration;
- (c). Expenses of administration, maintenance, repair or replacement of the Common Properties or their elements.

(d). Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

(e). Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase; or as the Association may deem appropriate to purchase;

(f). Ad valorem taxes and public assessment charges lawfully levied against Common Properties.

(g). The expense of the maintenance of private drainage and utility easements and facilities located therein which are within the boundaries of the Property and serve both the Property and lands adjacent thereto;

(h). Any other expenses determined by the Board or approved by the members to be common expenses of the Association.

Section 9. "Declarant" shall mean and refer to Tarheel Land Company, a North Carolina Corporation, its successors and assigns, to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as Declarant may impose.

Section 10. "Lot" shall mean and refer to any plot or Tract of land shown upon recorded subdivision map of the Property, as such map or maps may be from time to time amended or modified, for detached single family residential use; designated for residential use and for separate ownership and occupancy.

Section 11. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 12. "Notice" required to be given herein shall be in writing and mailed by US mail, postage prepaid, first class to the address of any Member on the records of the Association or shall be hand delivered to the Member.

Section 13. "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. A consumer occupant Lot owner is a Lot owner who occupies the residence on the Lot.

Section 14. "Person" shall mean and refer to any individual corporation, partnership, association, trustee or other legal entity.

Section 15. "Property" or "Properties" shall mean and refer to that certain real property described on Exhibit "A" hereto attached, and such additions thereto as may hereafter be brought within the jurisdiction of the Association by the Declarant.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Properties together with and including the right of access, ingress and egress, on and over the Common Properties, all of which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a). The right of the Association to charge reasonable admission and other fees for the use of common properties or its elements.

(b). The right of the Association to suspend the voting rights and the right to use the Common Properties or its elements, if any, 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 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 obligation to pay the assessment;

(c). The right of the Association to convey or grant a security interest in the Common Properties if persons entitled to cast at least eighty percent (80 %) of the votes in the Association agree in writing to that action and subject to the other provisions of Chapter 47F of the N. C. General Statutes.

(d). The right of the Association in accordance with its Articles of Incorporation or Bylaws to impose rules and regulations for the use and enjoyment of the Common Properties and improvements thereon and to limit the number of guests of Members.

(e). The right of the Owners of Lots on additional lands annexed to the Property initially, or subsequently, to the easements of enjoyment and rights of ingress, egress and access, as specified above, to the initial Common Property and all the Common Properties included in subsequent phases.

(f). The right of the Association to exchange Common Properties in accordance with the provisions of the N. C. Planned Community Act, Chapter 47F of the N. C. General statutes.

(g). Other rights and powers granted to the Association and its Members under the provisions of the N. C. Planned Community Act, Chapter 47F of the N. C. General Statutes.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Properties to the members of his family, his tenants, or contract purchasers who reside on the Property, but may not delegate or assign responsibility for the actions of those to whom such right is delegated.

Section 3. Title to the Common Properties. Declarant hereby covenants for itself, its heirs and assigns, that prior to the conveyance of the first Lot it will convey fee simple title to the Common Properties located within the Property, as shown on each map of the subdivision recorded and to be recorded in the Alamance County Registry, to the Association, free and clear of all encumbrances and liens, except for the encumbrance of utility, service, access, storm drainage and other similar service or utility easements. Similarly, the Declarant will convey to the Association, Common Properties which are a portion of any property as the same is annexed in the future at the time of conveyance of the first Lot located on that additional property. If such conveyance is made, such additional property will become Common Property belonging to the Association.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every record 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.

Section 2. Classification of Membership. 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 Builder, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the vote for such Lot shall be exercised as they among themselves determine or as set forth in the Bylaws, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B. The Class B Members shall be the Declarant and Builder, who shall be entitled to six (6) votes for each lot owned. Declarant and Builder shall also be entitled to six (6) votes for each lot which may be developed in later phases of the subdivision and added to the Properties. 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 or exceed the total votes outstanding in the Class B membership; however, the Class B membership shall be reinstated if thereafter, and before the time stated in subparagraph (b) below, additions are made to the Properties sufficient to give the Class B membership a total number of votes to exceed those of the Class A membership; or,

(b). Ten (10) years from the date this Declaration is recorded in the Office of the Register of Deeds of Alamance County, North Carolina.

Section 3. Suspension of Voting Rights. The right of any member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations and the Articles and Bylaws of the Association for any period during which an assessment against his Lot remains unpaid and for a period not to exceed 60 days for any infraction of its rules and regulations, it being understood that any suspension for either non-payment of any assessment or breach of rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and Builder, for each Lot owned within the Property, hereby covenant, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, and agree to pay to the Association: (1) annual assessments or charges which are Common Expenses, and (2) special assessments for extraordinary maintenance and capital improvements. The annual and special assessments, together with interest and costs, and reasonable attorney's fees for collection, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them. Each Lot Owner must notify the Association of any change in personal mailing address other than that which is on record at the Alamance County Tax Office.

The Association shall also have the authority through the Board of Directors to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from breach by such Owner of any of the provisions of this Declaration that necessitate the expenditure of time, money or both by the Association for repair or remedy.

Each Owner covenants for himself, his heirs, successors and assigns, to pay each assessment levied by the Association on the Lot described in such conveyance to him within ten (10) days of the due date as established by the Board, and further covenants that if said assessment shall not be paid within thirty (30) days of the due date, the payment of such assessment shall be in default and the amount thereof shall become a

lien upon said Owner's Lot as provided herein and shall continue to be such lien until fully paid. The Board of Directors may authorize a billing agent to collect the assessments provided for herein.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the paying of Common Expenses, enforcing these covenants and rules of the Association and improving and maintaining the Common Properties.

Section 3. Amount of Assessment.

(a). Initial Maximum Annual Assessment. To and including December 31, 2006, the maximum annual assessment shall not exceed two hundred forty dollars (\$240.00) per individual Lot .

(b). Increase by Association. From and after December 31, 2006, the annual assessment imposed by this Association, initially \$240.00, effective for any subsequent year may be increased the succeeding year by the Board of Directors, without a vote of the membership, by a percentage which may not exceed ten percent (10%) above the maximum assessment for the previous year.

(c). Increase by Members. From and after December 31, 2006, the annual assessment may be increased by a percentage greater than permitted by subparagraph (b) of this Article by an affirmative vote of two thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for such purpose.

(d). Criteria for Establishing Annual Assessment. In establishing the annual assessment for any assessment year, the Board of Directors shall consider all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of that permitted in Subsection (b) of this Section 3 above, without the consent of members required by Subsection (c).

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

(f). Assessment Billing. Assessment shall be billed annually, quarterly, monthly or on such other basis as may be determined by the Board of Directors. Lot Owners are required to provide the Board of Directors with their current mailing or billing address to avoid the effects of nonpayment as specified in Article IV, Section 11.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments 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, restoration, repair or replacement of any improvement upon the Common Properties, any extraordinary maintenance, including vegetation, fixtures and personal property related thereto and any property for

which the Association is responsible, provided that any such assessment shall have the assent of two thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Replacement Reserve. Out of the Common Expenses assessment, the Board shall create and maintain a reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Properties which the Association may be obligated to maintain.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 15 days nor more than 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 votes of each class membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to a minimum seven (7) day, maximum twenty-one (21) day 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 held more than 60 days following the preceding meeting.

Section 7. Uniform Rate Assessment. Both annual and special assessments must be fixed at an equal rate for all Lots and shall be collected on an annual or other periodic basis established by the Board.

Section 8. Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to all Lots at the date of closing of the sale of a Lot from the Builder. Each Lot Owner shall pay to the Association the prorata amount of the annual assessment from the date of closing on any Lot until the first day of the first calendar year following closing of that sale. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. 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 if it deems appropriate, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of issuance.

Section 9. Working Capital Fund: At the time of closing of sale of a dwelling on a Lot from Builder, a sum equal to one-sixth (1/6) of the annual assessment for such Lot as set out in Section 8 above shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. The purpose of this fund is to insure that the Association will have adequate cash available to meet unforeseen expenses and to acquire additional equipment and services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 10. Declarant/Builder Contributions. Until such time as the Association income and capital reserves are sufficient to carry out its purposes, the Declarant and Builder shall furnish in-kind services and/or subsidize the Association's treasury, according to a formula they will develop, to assure that its obligations are met.

Section 11. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be delinquent, in default, and shall bear interest for the due date at the highest rate then permitted by North Carolina law not to exceed eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same plus interest, costs, late payment charges and reasonable attorney's fees, or foreclose the lien against the Lot. No owner may waive or otherwise escape liability for the assessments provided for herein by non use of the Common Properties or abandonment of his Lot.

The lien herein granted unto the Association shall be enforceable pursuant to Article 2A of Chapter 45 of the General Statutes from and after the time of recording a Claim of Lien in the Office of the Clerk of Superior Court in the County in which the Property is located in the manner provided therefor by Article 8 of Chapter 44 of the North Carolina General Statutes, or other applicable Statute, which claim shall state the description of the Lot encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after thirty (30) days after the due date of the assessment or any installment thereof and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include all assessments which are due and payable when the Claim of Lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of Lien shall be signed by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien the same shall be satisfied of record.

Section 12. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any institutional first mortgage and ad valorem taxes on said Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage or tax 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, but shall not abate the personal obligation of the prior owner. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 13. Exempt Property. Any portion of the Property dedicated to, and accepted by, a local public authority and any portion of the property 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 14. Lot Owner's Maintenance Responsibilities. The maintenance responsibility of the grounds surrounding the improvements on each Lot shall rest with each Lot owner. This maintenance responsibility shall include, without limitation, grounds care such as maintaining grass in grassed areas along public road right-of-ways, shoulders, ditches and slopes adjacent to the Lot, neat cutting of grass and maintenance of shrubs, trees and flowers, with replacement of dead or diseased vegetation as necessary in the opinion of the Association to maintain the grounds surrounding the improvements on each Lot in a neat and attractive manner.

In the event an Owner fails to keep and maintain the grounds on his Lot in a neat and attractive manner, then the Association may maintain, repair, replace or generally keep up the Lot if such has been approved in advance by a vote of two thirds (2/3 rds) of the members present and voting in person or by proxy at a meeting of members duly called for the purpose of making this determination or at any annual meeting at which this matter is announced as an agenda item.

In the event the Association must do any maintenance, repair, replacement or upkeep on any Lot, each Lot Owner hereby gives to the Association, and the same is hereby reserved unto the Association, its agents, servants or independent contractors, the right and easement for unobstructed access in, over and on each Lot at all reasonable times to perform such repair or replacement by the Association. Any expenses incurred will become an assessment or lien against that lot.

ARTICLE V

FUNCTIONS AND SERVICES OF THE ASSOCIATION

Section 1. Minimum List of Functions and Services. The minimum list of functions and services which the Association must furnish to its members are as follows:

(a). The Association shall provide or procure the administrative services necessary to carry out the Association's obligations and business under the terms of this Declaration, the Articles of Incorporation of the Association, and the By Laws of the Association, including, but not limited to, legal, accounting, financial and communication services.

(b). The Association shall administer and enforce the covenants and restrictions established in this Declaration, including, but not limited to, the following:

i). The Association shall set Assessments, levy cash Assessments, notify the Members of such Assessments and collect such Assessments;

ii). The Association shall prepare accurate indexes of Members, Votes, Assessments, and the maximum annual Assessment;

iii). The Association shall operate an Architectural Committee if turned over to it by Declarant;

iv). The Association shall maintain and operate all Common Properties.

v). The Association shall hold Annual Meetings, Special Meetings and Referendums as required, hold elections for the Board of Directors as required and give Members "proper notice" as required;

vi). The Association shall prepare Annual Statements and Annual Budgets and shall make the financial books of the Association available for inspection by the Members by appointment.

(c). Should the Declarant appoint the Association its agent for the administration or enforcement of any of the provisions of the general property covenants or any other covenants and restrictions of record, the Association shall assume such responsibility and any obligations which are incident thereto.

(d). Should the Declarant assign to the Association any of the rights reserved unto it in the general property covenants or any other covenants or restrictions of record, the Association shall assume the responsibility of administering and enforcing said rights and shall assume any obligations which are incident thereto.

(e). The Association shall provide appropriate Directors and Officers Legal Liability Insurance and indemnify persons pursuant to the provisions of the Articles of Incorporation of the Association.

(f). The Association shall keep a complete record of all its acts and corporate affairs.

(g). The Association shall provide regular and thorough maintenance and clean up of all Common Properties, including, but not limited to, mowing of grass, fertilization and seeding as needed, landscape maintenance as needed, pick up and disposal of trash, cleaning, painting, repairing or replacing any improvements as needed.

(h). The Association shall pay any and all taxes or public assessments on the Common Properties.

(i) The Association shall be responsible for payment of all charges made by the public utility furnishing street lighting in the subdivision and for water, electric and other utility services furnished to the Common Properties.

Section 2. Obligation of the Association. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. The functions and services which the Association is authorized to carry out or provide may be added or reduced at any time upon the affirmative vote of fifty one percent (51%) of the votes cast by the Members at a duly called meeting of the Association.

Section 3. Maintenance of the Property Not Owned by the Association. The Association shall be authorized to render services of a governmental nature not furnished by the local government in the case of maintenance of property not owned by it.

ARTICLE VI

ARCHITECTURAL CONTROL

The Declarant or its appointed Architectural Committee shall control approvals for all improvements and construction proposed on any Lot for so long as it shall own at least one lot in Cane Creek Subdivision, all phases combined. At such time as Declarant shall no longer hold a Class B Membership, or elects to voluntarily relinquish architectural control, it shall appoint an Architectural Committee of three (3) persons who own lots in the subdivision. Successors to this Committee shall be appointed by the Declarant so long as there is a Class B Membership, or if there is no Class B Membership, then the Architectural Committee shall be appointed by the Board.

No dwelling, building, fence, wall, hedge, mass planting or other structure shall be commenced, erected 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 of exterior paint, 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 Declarant or the Architectural Committee.

Approval or disapproval by the Architectural Committee or Declarant of such plans, specifications or location may be based upon any grounds, including purely aesthetic and environmental, which in the sole discretion of the Architectural Committee or Declarant, it shall deem sufficient. Neither the Architectural Committee nor the Declarant shall be responsible for any defects in the plans and specifications submitted to it or in any structure erected or improvements made on any Lot.

In the event the Declarant or Architectural Committee fails to approve or disapprove such submission made by any Lot Owner within thirty (30) days after said plans and specifications have been received by the Declarant or Architectural Committee,

