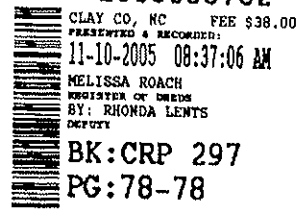


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Rhonda Lents, Deputy

**STATE OF NORTH CAROLINA
COUNTY OF CLAY**

**DECLARATION OF CONDITIONS, COVENANTS, EASEMENTS,
LIENS, AND RESTRICTIONS**

OF

SHELTON SPRINGS SUBDIVISION

This Declaration, made this the 1st day of November, 2005, by:

**RUTHERFORD HILLS, L.P.,
A GEORGIA LIMITED PARTNERSHIP,**

(hereinafter called or referred to as "DECLARANT" AND/OR "DEVELOPER")

WITNESSETH:

WHEREAS, Declarant is the owner of a certain tracts or parcels of land more particularly shown on the plat of survey by W.W. Land Surveying dated October 28, 2005 entitled "Survey for Rutherford Hills, L.P Shelton Springs ." which said survey depicts Lots 1 through 42 and rights of way and is recorded in Plat Cabinet 4 at Slide 1164 consisting of 3 pages, in the Office of the Register of Deeds of Clay County, N.C., reference to which is made for a more complete description of said lands.

WHEREAS, it is the desire and intention of Declarant to develop and sell the above described real property, and to impose upon it mutual restrictions, conditions, easements, covenants, agreements, liens, and charges under a general plan or scheme of development and improvement for the benefit of all the said land and future owners of said land;

NOW THEREFORE, Declarant declares that all of the property described above is held and shall be held, conveyed, encumbered, leased, rented, used, occupied, and improved subject to the following provisions, restrictions, conditions, easements, covenants, agreements, liens, and charges (hereinafter collectively referred to as "Covenants"), all of which are declared and agreed to be in furtherance of a plan for subdivision improvements and sale of said real property. Said Covenants are established and agreed upon for the purpose of enhancing and protecting the value, desirability, and attractiveness of said real property and every part thereof, all of which shall run with the land, be appurtenant thereto, shall be considered as part of the consideration of any tract sold by Developer within said Subdivision and which shall be binding on all parties having acquired any part thereof.

**PART ONE
DEFINITIONS**

The following terms as used in this Declaration and any future Supplemental Declaration are defined as follows:

- (a) "Association" shall mean or refer to the Shelton Springs Subdivision Owners Association; "Association" shall also mean Developer until such time as the Property Owners' Association is organized.

- (b) "Board" means the Board of Directors of the Association, if any, as subsequently adopted.
- (c) "Bylaws" means the Bylaws of the Association, if any, as subsequently adopted.
- (d) "Covenants" means the conditions, easements, liens, restrictions, and other provisions pertaining to Shelton Springs Subdivision, as defined in this Declaration.
- (e) "Declarant" means, Rutherford Hills, L.P. and/or those entities or parties acquiring Declarant's interests.
- (f) "Declaration" means this Declaration of Conditions, Covenants, Easements, Liens, and Restrictions, and any amendments hereto.
- (g) "Developer" means, Rutherford Hills, L.P. and/or those entities or parties acquiring Developer's interests.
- (h) "Development" means all real property described above, situate in Hayesville Township, Clay County, North Carolina, as described on said Plat of Survey hereinabove referred to, and all other property which may be annexed thereto as provided herein.
- (i) "Improvements" means all buildings, out-buildings, streets, roads, driveways, parking areas, fences and retaining walls, or other walls, poles, and other structures of any type or kind.
- (j) "Lot" means any numbered or unnumbered lot or parcel of land within the Development as shown on the recorded plat of survey of Shelton Springs Subdivision.
- (k) "Owner" means any person, firm, corporation, trust, or other legal entity, including Developer, who holds fee simple title to any lot.
- (l) "Supplemental Declaration" means any Declaration filed for record in Clay County, North Carolina, subsequent to the filing of record of this document; or, in the event of real property being annexed to the Development, the recorded Supplemental Declaration which incorporates the provisions of this Declaration therein by reference. In either event, the Supplemental Declaration shall include a description of the real property in the Development subject to the provisions of this Declaration and shall designate the permitted uses of such property.

PART TWO PRINCIPAL USES

This Declaration shall designate the principal uses and land which shall be subject to this Declaration. If a use other than that set out herein is designated on a recorded plat, the provisions relating to permissible uses may be set forth in a Supplemental Declaration. The provisions for residential use of a lot are set forth below:

Article I. Residential Dwelling

Except as to those areas which may be designated on a plat or otherwise for a common enjoyment and use by all lot owners, lots in Shelton Springs Subdivision be used for single family dwelling purposes only and shall not be higher than two (2) stories exclusive of basements.

Article II.
Minimum Size

No residence shall be constructed upon Lot 1 through Lot 42, inclusively which has less than 1500 square feet of heated floor space, exclusive of any carport, garage, basement, deck, patio, porch, whether heated or unheated.

Parking

Necessary parking shall be provided by each individual lot owner in a manner that will not obstruct road traffic.

Number of Building per Lot

Each owner of lots may place no more than one dwelling and no more than one additional outbuilding on each one(1) acre of lot, such outbuilding may include a garage with a mother-in-law suite. The plans and materials for such out building and additional living space must be approved by the Developer, in no event shall any metal structures may be used as an outbuilding.

Article III.
Temporary Structures and Vehicles

No modular home, house trailer, motor homes, mobile home, camper, tent, commercial vehicle (including tractor trailers an semi-tractor trailers) , travel trailer, and/or other temporary type of residence shall be used for permanent or temporary residences on any lot. No commercial vehicles (including tractor trailers and semi-tractor trailers) shall be permitted to be stored on parked on any lot within the subdivision.

The exterior of all houses and other structures shall be completed within eight (12) months after the commencement of construction of the same. All building debris shall be cleaned up and removed from the lot and a reasonable amount of landscaping (such as the removal of excess dirt, leveling or terracing of yards) shall be done within a twelve (12) month period and the yards reasonable maintained thereafter.

Article IV.
Residential Dwelling - Permissible Materials

All house plans, fencing and exterior facade covering must be approved by the Developers or committee appointed by the Property Owners Association. All construction material used shall comply with and meet the North Carolina Building Code in all respects. No bare masonry or concrete block walls shall be allowed, and must be covered with brick, stone or stucco. Exterior siding shall be of all natural material such as stone, wood, Hardee Board or artificial stone. No aluminum, vinyl or masonite siding shall be used as exterior siding.

Article V.
No Nuisances

No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the neighborhood or other lot owners. All lots shall be kept free of accumulation of trash, junk, waste building materials, unused or inoperable automobiles and vehicles.

No unlicensed, unregistered, unused, discarded, junked, or salvaged motor vehicles, or any part thereof, and no unusable or salvaged household appliances, or parts thereof, shall be placed or left anywhere on any lot outside of any enclosed building, or on the right-of-way of any subdivision road.

Article VI.
Trash Receptacles

Lot owners shall not allow accumulation of garbage, refuse or trash on any lot except in a concealed trash receptacle.

Article VII.
Animals

No livestock , including but not limited to swine, fowl, sheep, cattle or like farm animals, may be kept or raised on the property. Customary household pets such as dogs and cats are permitted so long as they are not kept or raised for commercial purposes.

No pets or other animals, as allowed herein, shall be allowed to run at large within Shelton Springs Subdivision, nor shall said animals create a nuisance to other lot owners.

Article VIII.
Further Division of Lots

No lot as shown on the recorded plat of Shelton Springs Subdivision may be further subdivided. **EXCEPTING, HOWEVER, LOT TEN (10) may be subdivided into not more than three (3) one acre lots and from the date of division shall be treated as separate lots for the purpose of association dues and set back requirements.**

Article IX.
Setback Restrictions

No residence or other building shall be constructed closer than ten (10) feet from any interior or rear lot boundary line, nor closer than Thirty (30) feet from the centerline of any subdivision road, or 10 feet from any external boundary line of the subdivision.

Article X.
Rights-of-Way and Easements

The lots in Shelton Springs Subdivision do not abut a public road and will be served by private roadways. The Declarant reserves unto itself, its grantees, successors, and assigns, a perpetual, alienable, releasable, and non-exclusive road and utility right-of-way for purposes of ingress, egress, regress, and utilities over, on, and across all roadways, whether existing or not, shown on any plat of said subdivision for the benefit of properties now owned or hereafter acquired by Declarant. Declarant further reserves the right to grant said right-of-way unto additional properties owned by third parties or Declarant in its sole discretion. Said easement and right-of-way shall be as depicted and shown on the plats of Shelton Springs Subdivision. Said easement(s) and right-of-way(s) will be shown on plats recorded in the Office of the Register of Deeds or set forth in an instrument recorded in the Office of the Register of Deed of Clay County, N.C.

Said road and utility rights-of-way are for the benefit, use, and enjoyment of the Declarant, lot owners, and their heirs, successors, and assigns, and every conveyance of the lands herein restricted shall be deemed to be subject to said easements while conveying to the Grantee under said conveyance a similar right appurtenant to his lands for the benefit, use, and enjoyment of said easements in common with the undersigned Declarant, their successors, and assigns; and further, said road right-of-way and easement is established to provide access to the Bristol Public Road, NC State Road 1319.

Developer hereby gives notice to all prospective and future lot owners that said roads have not and will not be constructed to meet state standards for inclusion in the state highway or road system, and, therefore, will not be maintained at public expense.

Further, Developer agrees to construct and maintain the subdivision roads shown on the plat of Shelton Springs Subdivision until such time as sixty percent (60%) of the total acreage served by said roads is sold. Thereafter, expenses of road maintenance, including gated access, shall be maintained by the Shelton Springs Subdivision Owners Association in accordance with the following Articles of this Declaration, and Developer shall be considered as a "lot owner" for purposes of assessments as set forth hereinafter.

Article XI.
Property Owners Association

All owners of lots in this subdivision shall become members of the Shelton Springs Subdivision Owners Association (hereafter "Association") upon the execution, delivery, and recordation of a deed of conveyance of title to any lot or lots at the office of the Register of Deeds of Clay County.

Each owner of a lot subject to these covenants and restrictions shall maintain One (1) membership and One (1) vote per lot; provided, however, that any lot owner who is delinquent on any assessment or fee due the Association shall not be entitled to vote until all such fees or assessments are paid in full. All lot owners shall abide by the Bylaws of the Association as may be amended from time to time and further agree to pay the Association an annual maintenance charge as hereinafter set forth.

SECTION ONE
Assessments

Upon obtaining of a building permit on any lot, the owner of said lot shall pay to the Property Owners Association (or the Developer, if the property Owners Association has not yet been formed) the sum of Four Hundred Dollars (\$400.00) as an impact fee to defray the impact of construction on the roads in said subdivision. The Declarant/ Developer and its successors in interest, including the Association as herein provided shall, pursuant to these Declarations, have the power to levy assessments as herein provided for the purpose of financing the operations of the Association, maintaining gated access, roads, and other improvements or services within or for the benefit of subdivision lots, including roads, water, or utility easements of the subdivision in accordance with the formula herein set forth.

SECTION TWO
Creation of Lien and Personal Obligation for Assessments

Each lot is and shall be subject to a lien and permanent charge in favor of the Developer, or the Association in the event of transfer by the Developer to the Association of any and all rights and responsibilities it has under and pursuant to the terms of this document, for the annual and special assessments set forth in Section Two and Three of this Article. Each assessment, together with interest thereon and cost of collection thereof as hereinafter provided, shall be a continuing lien upon the lot or lots against which it relates, and shall also be the joint and several personal obligation of each lot owner at the time the assessment becomes due and payable, and upon such owner's successors in title if unpaid on the date of the conveyance of the lot. Each and every owner covenants to pay such amounts to the Developer or Association when the same shall become due and payable.

SECTION THREE
Annual Assessments

No later than December 1 of each calendar year, the Developer, or the Association as assignee of any and all rights and responsibilities of Developer, shall establish the annual assessments reasonably required to meet road maintenance and other obligations or common expenses of Shelton Springs Subdivision for the up-coming calendar year. The assessment for road maintenance for each lot served by or abutting a subdivision road shall not be less than **ONE HUNDRED DOLLARS (\$100.00) per unimproved lot, and TWO HUNDRED FIFTY DOLLARS (\$250.00)** for each improved lot. Assessments may not be increased until January 1, 2007 and thereafter may be increased by the Developer by not more than 15% over the amount charged for the previous year. The Property Owners Association is not limited to the 10% increase per year.

Developer, or the Association as assignee of the Developer as herein provided, shall give written notice of the annual assessment fixed against each respective lot for such immediately succeeding calendar year to each owner of each lot.

The annual assessments levied by the Developer or the Association as herein provided shall be collected by Developer, or the Treasurer of the Association, as provided in Section Five of this Article.

SECTION FOUR Special Assessments

In addition to the annual assessments, the Association as herein provided, may levy, in any calendar year, special assessments for the purpose of supplementing the annual assessments if the latter are inadequate to pay common expenses, and for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of improvements on any common lot, road or appurtenances thereto; provided, however, that any such special assessment by the Association shall have the assent of the majority of the votes represented, in person or proxy, at a meeting at which at least 10% of lot owners are present in person or by proxy, duly called for the express purpose of approving such expenditure(s), written notice of which shall be sent to all lot owners not less than Ten (10) days nor more than Sixty (60) days in advance of such meeting, which notice shall be set forth the purpose of the meeting. Any special assessments shall be fixed against all lots in general, or the specific lot or lots for which an expenditure is appropriated. The period of the assessment and manner of payment shall be determined by the Board of Directors of the Association. No special assessment for any road repair shall be assessed against any lot served only by a public road and not adjoining a subdivision road.

SECTION FIVE Date of Commencement of Annual Assessments - Due Dates

Assessments are due in annual installments on or before January 1 of each calendar year, or in such other reasonable manner as the Developer, or the Board of Directors of the Association as assignee or agent of the Developer, by and through its Treasurer, shall designate.

The annual assessment(s) provided for in this Article shall, as to each lot, begin to accrue upon the first to occur of (1) the execution and delivery of, or, (2) the recordation of a deed of conveyance for a lot ("commencement date").

Pro-ration for the first annual installment for each such lot shall be an amount (rounded to the nearest whole dollar) equal to the then current annual payment divided by the total number of days in the current annual payment period and then multiplied by the number of days then remaining in such current annual payment period. The purchaser of each lot shall pay their pro-rata share of the annual assessments for road maintenance at the time of closing of each lot.

The Developer, or the Association as assignee of Developer, shall, upon demand at any time, furnish to any lot owner liable for any such assessment, or any Closing Attorney or Settlement Agent responsible for the closing of a sale of a lot, a certificate in writing stating whether the current annual payment or prior year's payments have been paid. Such certificate shall be conclusive evidence of any payment of any assessment therein stated to have been paid.

SECTION SIX Effect of Non-Payment of Assessments

If an assessment is not paid on the date when due as hereinabove provided, then such assessment, together with any interest thereon and any cost of collection, including reasonable attorney fees as hereinafter provided, shall be a charge and continuing lien upon the respective lot to which it relates and shall bind such property in the hands of the owner, his heirs, legal representatives, successors, and assigns for payment thereof. The personal obligation of the then owner to pay such assessment and related costs shall remain his or her personal obligation; and further, if his successor in title assumes this personal obligation, such prior owner shall nevertheless remain as fully obligated as before to pay the Developer, or the Association as assignee, any and all amounts which said lot owner was obligated to pay immediately preceding the transfer of title thereto. Such prior lot owner, and his successor in title who may assume such liability, shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such lot owner and his

successor in title creating the relationship of principal and surety as between themselves other than one by virtue of which such prior lot owner and his successor in title would be jointly and severally liable to make any lot assessment payment.

Any such assessment not paid by the due date for such payment established by the Developer of owner's Association, shall bear interest at the rate of Eight (8%) percent per annum from such date ("delinquency date"), and shall be payable in addition to the basic assessment amount then due and payable.

The Developer, or assigns, including the Association, may institute legal action against any owner personally obligated to pay any assessment, or may foreclose its lien against any lot to which it relates or pursue either such course at the same time or successively. In such event, the Developer, or assigns, including the Association, shall be entitled to recover attorney's fees actually incurred, and any and all other costs of collection, including, but not limited to, actual court costs. And further, without in any way limiting the foregoing grant of authority, legal action for collection of assessments, or for foreclosure of a lien against a lot, may be prosecuted by any means allowed under the General Statutes of North Carolina.

The acceptance by a lot owner of a deed or other conveyance for a lot in the subdivision vests the Developer or its assigns, including the Association as herein provided, the right and power to institute all actions against said owner personally for the collection of such charges as a debt, and to foreclose the aforesaid lien in appropriate proceeding at law or in equity.

The Developer and its assigns, including the Association as herein provided, shall have the power to bid on any lot at any foreclosure sale and to reacquire, hold, lease, mortgage, and convey any lot purchased in connection therewith.

No owner shall be relieved from liability from any assessment provided for herein by abandonment of his lot or lots.

SECTION SEVEN Exempt Property-Common Area

Except as herein provided, no lot in Shelton Springs Subdivision shall be exempt from assessments by abandonment, non-use, or otherwise.

Article XII. Enforcement

These Covenants shall run with the land, and shall be appurtenant thereto, and shall be binding on all present or future owners and all parties and all persons claiming under them.

Enforcement of these Covenants may be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. Either the undersigned Developer, or any assignee, or successor in title to the undersigned Developer, or any owner of any property affected hereby may institute such proceedings.

Article XIII. Amendment

These Covenants may be altered, amended, revoked, or repealed at any time by filing in the office of the Register of Deeds of Clay County, North Carolina, an instrument setting forth such amendment, revocation, or modification, executed by the signing and filing of a written consent to such amendment, revocation or repeal by the owners of record of Seventy-Five (75%) percent of the lots subject to these Covenants, as set forth on the records in the office of the Register of Deeds of Clay County, North Carolina, at the time of the filing of such instruments.

Article XIV.

Invalidation

Invalidation of any one of the provisions of this Declaration by a Judgment or Order of a court of competent jurisdiction shall in no way affect the validity of any other provisions which shall remain in full force and effect.

Article XV.

Developer's Obligation(s)

In this Declaration, certain easements and reservations of rights have been made in favor of the undersigned Developer. It is not the intention of the undersigned Developer in making these reservations and easements to create any positive obligations on the undersigned Developer insofar as building or maintaining roads, water systems, sewage systems, furnishing garbage disposal, beginning and prosecuting lawsuits to enforce the provisions of this instrument, or of removing people, animals, plants, or things that become offensive and violate this instrument. Where a positive obligation is not specifically set forth herein, none shall be interpreted as existing as it relates to the Developer.

Article XVI.

Term

The provisions of this Declaration shall run with the land and shall be binding on all parties and all persons claiming under them for a period of Thirty (30) years from the date these Covenants are filed for record at the office of the Register of Deeds of Clay County, North Carolina, at which time said Covenants shall be automatically extended for successive periods of Ten (10) years unless, prior to the beginning of such Ten (10) year period, an instrument, signed by the then Owner(s) of Seventy-Five (75%) percent of lots subject to this Declaration agreeing to terminate, amend, or modify these Restrictions, shall have been recorded in the office of the Register of Deeds of Clay County, North Carolina.

Article XVII.

Governmental Regulations

The property herein described and lots subdivided therefrom, in addition to being subject to this Declaration, are conveyed subject to all present and future rules, regulations, and resolutions of the County of Clay, and the State of North Carolina, if any, relative to zoning and the construction and erection of any buildings or other improvements thereon.

Article XVIII.

Notices

Any notice required to be sent to any member or owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as a member or owner of a lot or lots upon the record(s) of the Association at the time of such mailing.

Article XIX.

Assignment

The Developer may assign any and all rights and responsibilities it has under the terms of this Declaration to the Shelton Springs Subdivision Owners' Association.

Article XX.

Supplemental Declarations and Annexation

The Developer reserves the right to annex additional properties to the terms and conditions of these Covenants by the recordation of a Supplemental Declaration subjecting said properties to these Covenants.

IN WITNESS WHEREOF, The Declarant/Developer has caused this instrument to executed, signed, and sealed, the day, month, and year first above-written.

RUTHERFORD HILLS, L.P., a Georgia Limited Partnership

Richard Kelley (SEAL)
Richard Kelley, Member

Chris Henson (SEAL)
Chris Henson, Member

STATE OF NORTH CAROLINA

COUNTY OF CLAY

I, Suzan C. Wyper, a Notary Public of the County and State aforesaid, certify that **Richard Kelley, Member of RUTHERFORD HILLS, LP, a Georgia Limited Partnership**, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this 8th day of November, 2005.

(NOTARY SEAL)

Suzan C. Wyper
Notary Public

My commission expires: 02/10/08

Notary Public, Clay County, North Carolina
My Commission Expires Feb.10, 2008

STATE OF NORTH CAROLINA

COUNTY OF CLAY

I, Suzan C. Wyper, a Notary Public of the County and State aforesaid, certify that **Chris Henson, Member of RUTHERFORD HILLS, LP, a Georgia Limited Partnership**, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this 8th day of November, 2005.

(NOTARY SEAL)

Suzan C. Wyper
Notary Public

My commission expires: 02/10/08

Notary Public, Clay County, North Carolina
My Commission Expires Feb.10, 2008

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