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Instr# 200400007921
Rutherford County, NC
Faye H. Huskey Register of Deeds

NORTH CAROLINA
RUTHERFORD COUNTY

**DECLARATION OF BK 875 PG 791-797
RESTRICTIVE COVENANTS
FOR INDIAN FOREST SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS that whereas ROBERT MELLNIK AND MORRIS SMITH (hereinafter the "Declarants") are the owners of all the lots in the development known as INDIAN FOREST SUBDIVISION (hereinafter the "Development"), a map of which is recorded in Plat Book 26, Page 128, Rutherford County Registry, N. C.; and whereas the Declarant desires to impose certain restrictions and conditions upon the present and future owners of said lots;

NOW, THEREFORE, Robert Mellnik and Morris Smith, the Declarants, do hereby covenant and agree, for themselves and their heirs and assigns, with all persons, firms corporations, or other parties hereafter acquiring title to lots in the aforesaid Development, that all of the said lots are hereby subjected to the following restrictions to be appurtenant to and to run with all of the lots in said Development, by whomsoever owned.

1. **USE OF LOTS:** No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached single-family residence and its customary accessory buildings and uses.

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 development; there shall be no hunting within the development, no discharging of firearms, and no operation of motorcycles within the development.

2. **SUBDIVISION OF LOTS:** No lot subject to this Declaration shall be subdivided, except that two (2) lot owners may subdivide a lot between them, but only one residence shall be built on the combined lot and subdivided portion of any lot.

3. **DWELLING RESTRICTITONS:** Any dwelling house built in this Development shall be new, stick-built construction, constructed on the premises and shall comply with all State, County and local building standards and codes, including specifically those standards for plumbing, septic, and electrical work. Single-wide mobile homes, double-wide mobile homes and manufactured homes are specifically prohibited. All buildings, including dwelling houses and outbuildings shall be constructed of natural wood, stone or brick materials, including but not limited to brick, stone, log, clapboard, shingle, or high quality composite materials with the same appearance as natural wood materials. In no event shall aluminum, vinyl siding, or cinder block be used on any dwelling house or outbuilding. The minimum square footage of one thousand (1000) square feet, of heated space, will be required for all dwelling houses or residences constructed in the development. Any residence that has more than one level, the ground floor or first floor level shall have at least seven hundred (700) square feet of heated floor space.

4. **ANIMALS:** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats, horses, or other household pets may be kept provided that

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they are not kept, bred, or maintained for any commercial purposes and provided they are not permitted to become a nuisance to the neighborhood.

5. **GARBAGE AND REFUSE DISPOSAL**: No lot shall be used or maintained as a dumping ground for refuse or rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

6. **PARKING**: The parking of wrecked, junked, disabled or otherwise unregistered or unlicensed vehicles for more than twenty-four (24) hours shall not be permitted upon any lot or upon the roadway in front of any lot. No discarded tires, automobile parts or other discarded material, waste or rubbish shall be permitted to remain on any lot.

7. **TEMPORARY STRUCTURES**: No structure of a temporary character, trailer, camper, basement, tent, shack garage, barn, or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently. Campers and recreational vehicles may be used for temporary camping purposes but in no event shall any camper or recreational vehicle be connected to any permanent or semi-permanent electrical connection, septic connection, or other utility service connection of any kind. No camper or recreational vehicle of any kind shall be permitted to remain upon any lot for more than six months.

8. **OWNERS ASSOCIATION**: Each lot owner(s), by acceptance of a deed, shall be a member of the Indian Forest Owners Association, a nonprofit corporation organized and existing under the laws of the State of North Carolina or its successors and assigns (hereinafter the "Association"). Membership in the Association shall be subject to the following rights, terms, and conditions.

- (a) **Membership**. Every person or entity who is a record owners of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, subject to and bound by the Association's Articles of Incorporation, Bylaws, and rules and regulations, if any. Ownership of record shall be the sole qualification for membership.
 - (1) During any period in which a member shall be in default in the payment of any annual, special or other periodic assessment levied by the Association, the voting rights of such member(s) may be suspended by the Board of Directors of the Association until such assessment is paid.
 - (2) No membership fee shall be charged, nor shall members be required to pay at any time any amount to carry on the business of the Association except to pay when due the charges, assessments and special assessments levied upon each member's lot as specified in the Declaration or as the members of the Association may from time to time hereafter adopt.

- (b) **Voting and Voting Rights.** The voting and voting rights of the membership shall be appurtenant to the ownership of lots. The ownership of each lot by a person other than Declarants shall entitle its owner to one (1) vote. The Declarants shall be entitled to one (1) vote for each lot owned by the Declarants, provided that the Declarants may, at their option, withdraw from membership in the Association upon the sale by Declarants of seventy five percent (75%) of all lots subject to the Declaration.
- (c) **Board of Directors.** The Board of Directors of the Association shall be elected and determined pursuant to the provisions of the Bylaws of the Association.

9. **RIGHTS TO PRIVATE ROADS:** Every owner (by virtue of membership in the Association) shall have a nonexclusive right and easement of access and enjoyment in and to the private roads and common areas, if any, which shall be appurtenant to and shall pass with the title for every lot subject to the provisions of this Declaration.

10. **TITLE TO PRIVATE ROADS:** The Declarants hereby covenant for themselves their successors and assigns, that they will convey fee simple title to the private roads and common areas, if any, shown in the aforementioned recorded plat as well as those roads and common areas, if any, which are part of this development as those portions are annexed in the future.

11. **MAINTENANCE ASSESSMENTS:** For each lot subject to the Declaration, every owner covenants, and each subsequent owner of any such lot, by acceptance of a deed therefore, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay the Association for certain expenses of maintenance in accordance with this Declaration. Annual assessments or charges shall be established in amounts as determined by the Board of Directors of the Association. Special Assessments as approved by the Association may be established and collected as hereinafter provided.

- (a) **Payment.** The annual assessments provided for herein for the Association shall be payable in advance on an annual basis by every owner of each lot, unless the Association decides by a majority vote to have the assessment payable monthly. The annual assessment shall be due on January 1 of each year except for the first year of ownership by an owner. At the closing of a purchase of a lot by an owner, the assessment shall begin to accrue and the owner shall pay to the Association the owner's pro-rata share of the annual assessment for the remainder of the year.
- (b) **Purpose.** The assessments levied by the Association shall be used to provide funds for such purposes and common expenses as are for the benefit of the owners of the property within the area overseen and administered by the Association. The purposes presently contemplated include maintenance, repair, landscaping and beautification of the roadways providing access to the lots subject to this Declaration. Other purposes may be benefited by the assessment as may be adopted by a majority of the members of the Association.

- (c) Creation of lien and personal obligation. In accordance with the terms and provisions hereof, and in order to secure payment at and after the due date, as each assessment becomes due there shall arise a continuing lien and charge against each lot, the amount of which shall include costs and reasonable attorneys fees to the extent permitted by law. Each such assessment, together with such interest, costs and reasonable attorneys 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.
- (d) Annual assessments and maximums. The annual assessment imposed by the Association shall be set each year by the Association as set forth herein or as provided for in the Bylaws of the Association. 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.
 - (1) Lots are owned by the Declarants shall not be subject to assessments until any such lot is conveyed to an owner other than the Declarants.
 - (2) In addition to the annual assessment imposed by the Association set forth above, the Association may levy, in any assessment year, a special assessment applicable to that year only.
 - (3) The annual assessments provided for herein for the Association shall be payable on January 1 of each year. The assessment shall begin to accrue as to all lots at the time of closing and conveyance of a lot to an owner other than the Declarants. At least thirty (30) days before January 1 of each year, the board of Directors of the Association shall establish the amount of the annual assessment imposed by the Association against each lot and in the event the Board of Directors of the Association elects not to fix such assessment rate as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any changed assessment rate shall be sent to every owner of the Association.
- (e) Effect of nonpayment. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum legal rate and to the extent allowed by law.
- (f) Subordination of the lien to mortgages. The liens provided for herein shall be subordinate to the lien of any first lien deed of trust on any lot if, but only if, all such assessments with respect to such lot having a due date on or prior to the date such mortgage is filed for record have been paid. The lien and permanent charge hereby subordinated is only a lien and charge as it relates to assessments authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such

mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged property pursuant to a sale under power contained in such mortgage.

12. **DISSOLUTION OR INSOLVENCY OF THE ASSOCIATION**: In the event that the Association becomes insolvent or for any reason whatsoever loses the ownership of any of the private roads or common areas, if any, the owners of lots having an interest in the private roads and/or common areas may, at their election as determined by majority vote of those affected, form a nonprofit corporation as provided for in the Articles and Bylaws of the Association and assign to it the duty and authority to assess on a per lot basis all lots having an interest in such private roads and/or common areas, if any, whereupon such corporation shall maintain such private roads and/or common areas in the same manner that the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

13. **ENFORCEMENT**: Enforcement shall be by proceedings at law or in equity against any person violating or attempting to violate any covenant either to restrain violation or to recover damages. The Declarants and/or any subsequent purchaser of a lot in the Development shall have standing to enforce the terms of the Restrictions pursuant to any remedies that may be available at law or in equity.

14. **RIGHT OF MODIFICATION**: The Declarants have developed this subdivision pursuant to a general plat or scheme of development, and do not intend to abandon this general plan. However, the Declarants reserve the right to cancel, modify or change any of the above restrictions by the written consent of the Declarants which written consent shall be duly executed, acknowledged, and recorded in the Office of the Register of Deeds of Rutherford County, N. C., and which consent may be given or withheld within the controlled and sole discretion of the Declarants as the Declarants may deem best for the general plan or scheme of development.

15. **APPLICABLE PERIOD**: The foregoing covenants, restrictions, and conditions shall remain in full force and effect, unless sooner changed in accordance with Paragraph 14 herein, for thirty (30) years from the above date, at which time said covenants, restrictions, and conditions shall be automatically extended for successive periods of five (5) years unless by a vote of a majority of the then owners of the lots it is agreed to change the said covenants in whole or in part.

16. **DELEGATION AND ASSIGNABILITY**: Declarants shall at all times and from time to time have the right to delegate any and all functions herein reserved to Declarants. Further, notwithstanding any other provision contained herein to the contrary, Declarants shall have the right at all times and from time to time to fully transfer, convey and assign all or any part of its right, title, and interest (whether real or personal) in and to the private roads and common areas, if any, provided, however, that any transferee, grantee or assignee shall be deemed to have assumed the same. In the event of any such sale, transfer or conveyance, Declarants shall not, however, be liable to any person for any injury or loss resulting from failure

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of performance or negligent performance of Declarants' obligations under these covenants arising after such sale, transfer or conveyance.

17. **INTERPRETATION:** No captions or titles in this Declaration shall be considered in the interpretation of any of the provisions hereof.

18. **CONFLICT:** In case of conflict between any of the foregoing provisions and any Zoning Ordinances (or exceptions thereto which may lawfully be made by the Zoning Board of Adjustment) or laws which may be in effect, or which may hereafter be enacted, such zoning ordinances or laws shall control.

19. **SEVERABILITY:** Invalidation of any one of these covenants, restrictions, or conditions by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Robert Mellnik and Morris Smith have hereunto set their hands and seals, by authority duly given, this the 9 day of June, 2005.

By: Morris Smith

By: Robert O. Mellnik

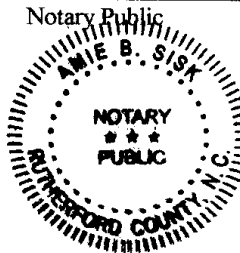
NORTH CAROLINA
COUNTY OF RUTHERFORD

I, a Notary Public of the County and State aforesaid, certify that personally appeared before me Robert Mellnik and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the 9 day of June, 2005.

Amie B. Sisk
Notary Public

My Commission Expires:

May 28, 2009



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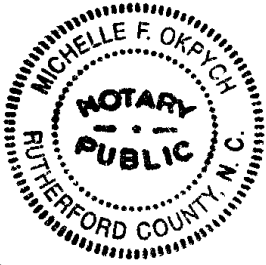
NORTH CAROLINA
COUNTY OF RUTHERFORD

I, a Notary Public of the County and State aforesaid, certify that personally appeared before me Morris Smith and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the 9th day of June, 2005.

Michelle F. Okpych
Notary Public

My Commission Expires:

04-18-2006



STATE OF NC - RUTHERFORD CO

The foregoing certificate is for:

Anna B. Lark, Michelle F. Okpych NP(s)

is/are certified to be correct at the date of recordation shown on the first page thereof.

Faye H. Hunkey, Registrar of Deeds

By: Patricia M. Mose Deputy

