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KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

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NORTH CAROLINA
WAKE COUNTY

DECLARATION OF RESTRICTIVE COVENANTS
FOR KILDAIRE ESTATES

THIS DECLARATION is made this 22nd day of November, 1988, by T.R. Smith, Inc., a North Carolina corporation, and Richard D. Barnhill, hereinafter referred to as "Declarants"; and P.M. Homes, Inc., a North Carolina corporation (hereinafter referred to as "PM"), owner of Lots Nos. 5, 7 and 14 of Section 1 of Kildaire Estates, as shown on a map recorded in the Wake County, North Carolina Registry in Map Book 1988, page 1285;

WITNESSETH:

WHEREAS, Declarants, prior to conveying Lots 5, 7 and 14 to PM, were the owners of all of that certain real property in Swift Creek and Holly Springs townships, Wake County, North Carolina, described in deeds recorded in the Wake County Registry in Book 3735, page 825, Book 3954, page 508, Book 3900, page 460 (also see deed recorded in Book 4535, page 920 and Book 4386, page 0721), excluding that portion thereof described in a deed recorded in the Wake County Registry in Book 4052, page 473, all of said deeds being incorporated by reference as if fully set out herein, said real property hereinafter being referred to as the "Property";

AND WHEREAS, Declarants have subdivided the Property into a subdivision known as "Kildaire Estates", consisting of fifty-one (51) single-family residential lots, two (2) well sites, and publicly dedicated streets, all as shown upon maps by Runa A. Cooper, Land Sureyors, P.A., one of which is entitled "Subdivision Plat - Section 1 KILDAIRE ESTATES SUBDIVISION", dated July 5, 1988 and recorded in the Wake County Registry in Map Book 1988, page 1285, and the other of which is entitled "Subdivision Plat - Section 2 KILDAIRE ESTATES SUBDIVISION", dated September 15, 1988

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and recorded in the Wake County Registry in Map Book 1988, page 1452, said maps together being referred to herein as the "Map" and the Property as subdivided and shown on the Map hereinafter being referred to as the "Subdivision";

AND WHEREAS, Declarants previously have conveyed to FM title to Lots Nos. 5, 7 and 14 of the Subdivision;

AND WHEREAS, Declarants desire to subject all of the Subdivision to the provisions of this Declaration in order to establish a general plan of development of the Subdivision, to provide for the preservation of values of Lots in the Subdivision, and to provide for the implementation and enforcement of this Declaration, and FM desires to subject Lots 5, 7 and 14 of the Subdivision to this Declaration for the same purposes;

NOW, THEREFORE, Declarants and FM declare that the Subdivision and the respective Lots and other portions thereof owned by them, is and shall be held, transferred, sold, conveyed, subject to the following covenants, restrictions, easements, charges and affirmative obligations, all of which shall run with each and every portion of the Subdivision and shall be binding upon and inure to the benefit of all present and future owners of any part or all of the Lots and other portions of the Subdivision, and their respective heirs, successors and assigns.

ARTICLE I**DEFINITIONS**

Section 1. Definitions. As used in this Declaration, the following definitions shall apply (other words and terms may be defined in other parts of this Declaration):

(a) "Construct, constructed and construction" shall mean and refer to the initial construction of each Improvement on the Lots in the Subdivision and to all modifications, relocations, reconstructions, alterations and changes thereof. Provided, however, these terms shall not include routine maintenance and repairs, repainting that involve no color change, and replacement of damaged Improvements with new Improvements identical to the ones being replaced. These terms shall also be construed to include the placing or placement of any Improvement on a Lot.

(b) "Declaration" shall mean and refer to this Declaration of Restrictive Covenants For Kildaire Estates, including all amendments hereto.

(c) "Governmental Authority" shall mean and refer to any governmental unit, whether federal, state, county, district, municipal or otherwise, and any court, board, agency, commission, office or authority thereof.

(d) "Improvement" or "Improvements" shall mean and refer to clearing, grading and filling of a Lot, and all construction of

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residence dwellings and other buildings, structures and improvements on a Lot, including, but not limited to, fences, mailboxes, newspaper boxes, outbuildings, landscaping, cutting or removal of trees, plantings of hedges and other screening materials, tanks, poles, towers, masts, antennas, microwave dishes, television antenna dishes, signs, outdoor lighting fixtures detached from the residence dwelling, trash or refuse collection containers or facilities, wells, septic tanks, retention ponds, swimming pools and other recreational facilities. This definition shall not include construction of Improvements that occurs on the interior of any residence dwelling or other enclosed (by walls and roof) building or structure on a Lot.

(e) "Legal Requirements" shall mean and refer to any and all judicial decisions, orders, injunctions, writs, statutes, rulings, rules, codes, regulations, promulgations, directives, requirements, permits, certificates or ordinances of any Governmental Authority, insurance underwriter or Utility in any way applicable to any Owner, any Lot or any other portion of the Property, including, but not limited to, any of the aforesaid pertaining to maintenance, operation, use, insurance, zoning, environmental and utility matters.

(f) "Lot" shall mean and refer to any one of the fifty-one (51) numbered lots shown on the Map. (Note: On the Map, the Lots are numbered 1 through 45 and 47 through 52, there being no Lot No. 46.)

(g) "Owner" shall mean and refer to the person who is the County Register of Deeds, owns the fee simple title to any Lot, except that the term "Owner" shall not include a mortgagee or trustee or holder of a deed of trust, or their successors or assigns, unless pursuant to a foreclosure or proceeding or deed in lieu of foreclosure.

(h) "Person" shall mean and refer to any natural person, trust, corporation, association, partnership, joint venture or other legal entity, whether private or public.

(i) "Utility" shall mean and refer to any public or private provider of utility services, including, but not limited to, providers of the following services: electric, telephone, water, sewer, natural gas and cable television.

ARTICLE II

RESTRICTIONS ON USE AND OCCUPANCY

Section 1. Residential Use. No Lot shall be used except for single-family residential purposes and purposes incidental or related thereto (except as may be prohibited herein). Except as otherwise provided herein, no building or other improvement shall be constructed or permitted to remain on any Lot other than one (1) detached, permanent single-family residence dwelling not exceeding three (3) stories in height (exclusive of basement), and such

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garages, carports, swimming pools, outbuildings and structures as are generally used as accessories to a single-family residence dwelling; provided, any garage, carport or outbuilding shall be architecturally harmonious in design and exterior materials with the residence dwelling on the Lot; further provided, each single-family residential dwelling shall have a carport or garage (attached or detached from the dwelling) sufficient in size for at least one automobile. Notwithstanding the foregoing, with the approval of the Architectural Committee and upon such terms and conditions specified in the approval, a residence dwelling or temporary trailer may be used as a temporary model home/sales facility.

Section 2. Size Restrictions. No residence dwelling shall be constructed on any Lot unless the number of square feet thereof of finished, fully enclosed and heated floor space devoted to living area, as measured around the exterior walls thereof, and exclusive of garages, carports, outbuildings, terraces, patios, decks, eaves, porches, outside balconies, stoops and unenclosed breezeways, is equal to or greater than the following:

- (a) one story dwelling, 1650 square feet;
- (b) one and one-half story dwelling or greater, and split level dwellings, 1800 square feet.

Section 3. Setbacks. Except as otherwise approved by the Architectural Committee, no residence dwelling or accessory structure, such as a garage, carport, outbuilding or storage building, shall be constructed or allowed to remain on any Lot any nearer to the front lot line thereof than thirty (30) feet, any nearer to any side lot line thereof than ten (10) feet, nor any nearer to the rear lot line thereof than thirty (30) feet. On corner Lots, the lot lines adjoining the streets both shall be considered front lot lines for the purposes of this Section 3. Provided, approval by the Architectural Committee from the Authority to waive setback requirements, nor shall such waiver excuse any Owner from complying with applicable Governmental Authority requirements.

For the purposes of the setback distances established by this Declaration, steps, open porches, decks, stoops, eaves, balconies and overhangs, bay and similar windows and chimneys shall not be considered a part of the residence dwelling or accessory structure.

Section 4. Exterior Materials. All residence dwellings and other improvements constructed on any Lot shall consist of materials of good grade, quality and appearance. The exterior of all residence dwellings shall be either wood, stone, brick, masonite, aluminum siding or some other equally acceptable material approved by the Architectural Committee. Provided, no residence dwellings shall have exteriors consisting of concrete blocks, asbestos or asphalt siding. All other improvements on any Lot shall be constructed

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with the same quality and workmanship as, and shall consist of exterior materials compatible with, the residence dwelling on the Lot.

Section 5. Mobile Homes. Except as provided in Sections 1 and 6 of this Article II, no mobile home or trailer or other readily movable, non-permanent type of building or structure may be constructed or allowed to remain on any Lot. No trailer, camper, tent or building or structure of a temporary character may be used as a temporary or permanent residence dwelling on any Lot.

Section 6. Temporary Structure. No structure of a temporary character, including but not limited to a mobile home or trailer, shall be constructed or allowed to remain on any Lot, with the exception of such temporary structures as are approved by the Architectural Committee for use in connection with (a) sales of single-family residence dwellings as provided in Section 1 of this Article II, and (b) the construction of Improvements on a Lot, and the use of such temporary structure for any one Improvement shall be limited to a total of twelve (12) months.

Section 7. Signs. Except as otherwise provided in this Section 7, no sign of any kind or other similar structure shall be constructed or allowed to remain on any Lot other than one sign not exceeding sixteen (16) square feet in size that advertises the Lot or residence dwelling thereon for sale or rent. Provided, however, any Person who constructs a residential dwelling on a Lot may, during the period of construction and sale thereof, place up to two (2) signs on the Lot, either or both of which may identify the Person and/or indicate that the dwelling and Lot are for sale, and neither of which shall exceed thirty-two (32) square feet in size. Further provided, Declarants reserve the right to reserve an easement for, and to construct and maintain on Lots No. 1, 5, 42 and/or 52, one or more signs identifying the Subdivision and/or indicating that Lots in the subdivision are for sale, with such signs not being subject to the restrictions of this Section 7.

Section 8. Parking. The Owner of each Lot shall provide adequate parking on the Lot for himself and his family members, guests, any kind, nor any boat, equipment, trailer, load, ~~motorized or non-motorized~~ if any other movable object, shall be parked or allowed to remain parked within the right of way on the paved portion of the streets in the Subdivision, except as the same may be necessary to deliver building supplies to a Lot, or to deliver consumer goods to a resident in the Subdivision, or as may be necessary in connection with construction, repair and maintenance of Improvements, streets and utility services in the Subdivision, or as may be incident to the residential use of a Lot in the Subdivision. Except in connection with the purposes listed in the preceding sentence, no tractor, truck or other vehicle of any kind, (motorized or non-motorized) in excess of a one-ton load capacity, nor any trailer or equipment attached to or designed to be pulled by such tractor, truck or other vehicle, shall be parked or kept overnight or longer on any Lot, unless the same is screened from view from the streets and all other Lots in the Subdivision.

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Section 9. Garbage and Refuse Disposal. No Lot shall be used or maintained in an unsightly manner or as a dumping ground for rubbish, trash or debris. Rubbish, trash, debris, garbage and other waste shall be kept only in sanitary containers screened from view from the streets in the Subdivision, except as otherwise may be required by the applicable Governmental Authority or private trash collector for pick up of such items from a Lot. All incinerators, containers or other equipment for the storage or disposal of such waste materials shall be kept in a clean and sanitary condition.

Section 10. Maintenance of Lots. All Lots, whether occupied or unoccupied, and all improvements constructed thereon, shall be well maintained and kept in a clean, neat appearing and sanitary condition, and no Owner shall allow unattractive growth or accumulation of rubbish or debris on the Owner's Lot. During construction of any improvement on any Lot, the Lot must be cleaned and kept clear of excess debris, and the Lot Owner shall be responsible for keeping the rights of way of all streets in the Subdivision clear of all construction debris.

Section 11. Destruction by Fire or Casualty. Any dwelling or improvement on any Lot which is destroyed in whole or in part by fire or other casualty must be rebuilt or all debris removed and the Lot restored to a sightly condition with reasonable promptness; provided, however, that in no event shall an Owner allow such debris to remain on such Lot longer than three (3) months.

Section 12. Other Prohibited Uses. In addition to other prohibitions contained herein, use of Lots for the following purposes are prohibited:

(a) No animals, livestock or poultry of any kind shall be raised, bred or kept in the Subdivision, except that dogs, cats or other domestic household pets in a reasonable number may be kept, provided they are not kept, bred, or maintained for any commercial purpose, and provided, further, that such pets do not constitute a danger or nuisance to other Lot Owners or occupants or to the Subdivision.

(b) No stripped, partially wrecked, or junked motor vehicle, or part thereof, shall be permitted to be parked or kept on streets and all Lots in the Subdivision.

(c) No noxious, offensive or illegal trade or activity shall be carried on in the Subdivision, nor shall any activity be conducted or allowed to be done therein that constitutes a nuisance to other Lot Owners or occupants in the Subdivision.

(d) No trade materials or inventories (other than materials for construction of approved improvements) may be placed, stored or allowed to remain in the Subdivision, and no business activity or trade of any kind whatsoever (other than for construction or sale of approved improvements) shall be conducted in the Subdivision. Excluded from this prohibition are activities conducted by or for

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Declarants in developing the Property into a single-family residential subdivision, and activities of Governmental Authorities and Utilities in providing their services to the Subdivision.

ARTICLE III

ARCHITECTURAL APPROVALS

Section 1. Architectural Committee. To assist in carrying out the purposes of this Declaration, there shall be an Architectural Committee consisting of three (3) persons appointed by Declarants, none of whom shall be required to be Owners, and one of whom shall be designated to receive requests for approval of Improvements as hereinafter provided. In the event of a vacancy, the remaining members shall have the power to act as the Architectural Committee. Provided, however, that at any time there are less than two (2) members of the Architectural Committee, said Committee shall have no power to act hereunder, and approval by the Architectural Committee shall not be required for Improvements whose construction is begun during the time that the Architectural Committee is without the power to act.

The initial Architectural Committee shall consist of: (1) Timothy R. Smith, (2) Richard D. Barnhill and (3) Mike Matheny, and the person designated to receive requests for approval is Timothy R. Smith, 401 Harrison Oaks Boulevard, Suite 100, Cary, North Carolina 27513. Submission of a request for approval shall be delivered to the designated person in one of the following ways: (a) by personal delivery to the designated person, or by (b) mailing the request to the designated person by registered or certified mail, postage prepaid, return receipt requested. Delivery shall be deemed completed upon actual receipt, in the case of personal delivery, or, in the case of delivery by certified or registered mail, on the date indicated on the return receipt. No change of the name or address of the person designated to receive requests for approval shall be effective until such time as either (i) an addendum to this Declaration is signed by the members of the Architectural Committee and recorded in the Wake County Registry, or (ii) all Lot Owners have been notified of the change in the manner provided herein for giving of notices to Owners.

Section 2. Requests for Approval. No Improvement shall be constructed or used on any Lot until the proposed plans and specifications for the Improvement have been submitted to and approved by the Architectural Committee. Requests for approval (which shall include the required plans and specifications along with a specific request for approval thereof) shall be delivered to the designated person in the manner specified hereinabove. Within thirty (30) days following delivery of the request for approval to the designated person, the Architectural Committee shall review and approve or disapprove all or any part of the request for approval, subject to such conditions as the Architectural Committee shall determine to be appropriate. The Architectural Committee shall notify the requesting Owner of its decision. If the Architectural Committee fails to act upon any

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part or all of the request for approval within thirty (30) days following delivery of the request for approval to the designated person, the part of the request not acted upon shall be deemed approved and this Article III shall be deemed to have been fully complied with by the Owner seeking the request for approval. Approval of any part or all of a request for approval by written consent of all members or by a majority vote of the members of the Architectural Committee shall constitute approval by the Architectural Committee.

"Plans and specifications" shall consist of identification of the Lot on which the proposed Improvement is to be constructed, a written description of the proposed Improvement, including architectural style and proposed use thereof, a plot plan showing the location of the Improvement on the Lot and showing the size, dimensions and elevations of the proposed Improvement, plans for clearing and grading of the Lot, location of utility services (including septic tanks and wells), storm water drainage plans, a description (and if requested by the Architectural Committee, a sample) of the exterior materials, colors and finish of the proposed Improvement, the landscaping plan, the areas proposed to be screened or fenced, and any other documentation that the Architectural Committee may reasonably request. Except as otherwise provided herein, plans and specifications that contain erroneous or incomplete data shall be deemed not to have been delivered to the person designated to receive requests for approval. Provided, however, the Architectural Committee, in its sole discretion, may consider and act upon requests for approval where the plans and specifications contain incomplete data. If any items included in the foregoing definition of "plans and specifications" are inapplicable to the Improvement being requested, such items may be eliminated from the request for approval.

Without in any way limiting the permissible scope of the Committee's review process, or the objective or subjective considerations the Committee may utilize in approving or disapproving any request for approval submitted hereunder, the Committee shall be fully authorized and empowered to disapprove the the construction or use of an Improvement on a Lot based upon any one or more of the following:

- (a) Noncompliance with any of the provisions of this Declaration;
- (b) Failure to include information in the request for approval required by this Article III or failure to provide such other information and documentation as may have been reasonably requested by the Architectural Committee;
- (c) Objection to the exterior design or materials of the proposed Improvement upon any Lot;