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FILED Joyce H. Pearson
Register of Deeds Orange COUNTY, NC
BY: *Rudal Clayton*
Deputy

Prepared by and return to:
Bagwell, Holt & Smith, P.A.
111 Cloister Court, Suite 200
Chapel Hill, NC 27517

Grantee's address:
8300 Pickards Meadow Road
Chapel Hill, NC 27516

FOR MULTIPLE PIN SHEET
SEE BOOK 3860 PAGE 375

NORTH CAROLINA
ORANGE COUNTY

**DECLARATION OF RESTRICTIVE
AND PROTECTIVE COVENANTS
FOR CONSERVATION RIDGE SUBDIVISION**

This Declaration is made August 1, 2005, by Timothy P. Toben hereinafter referred to as "the Declarant." The Declarant states and declares as follows:

A. The Declarant is the owner of those six (6) tracts of land located in Orange County, North Carolina, more particularly described in Exhibit A attached hereto and incorporated herein. The tracts are hereinafter collectively referred to as "the Property." Each of the tracts is hereinafter individually referred to as a "Lot."

B. The Declarant desires to impose certain restrictive and protective covenants upon the Property to protect and to promote the beneficial ownership, use and enjoyment of all of the Lots.

NOW, THEREFORE, the Declarant hereby declares that all of the Property and any part thereof shall be held, sold and conveyed subject to the restrictive and protective covenants set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with, each of the Lots. The provisions of this Declaration shall be binding on all parties having any right, title or interest in any of the Lots or any part thereof at any time, their personal representatives, heirs, successors and assigns. The restrictive and protective covenants and provisions are as follows:

1. Definitions. The terms listed in this Section 1 shall be defined as stated herein:

(a) "Owner" shall mean and refer to any person or entity who is the owner of a fee or undivided fee interest in any Lot.

(b) "Declarant" shall mean and refer to Timothy P. Toben, his heirs, successors and assigns.

2. Land Use. No Lot shall be used except for residential purposes and for purposes incidental or accessory thereto, and as provided in **Section 30** below. All Lots shall be used solely for detached, single-family residential dwellings. No more than one single-family residential dwelling shall be placed on any one Lot. A single-family residential dwelling is defined for the purposes of this Declaration as a residential dwelling occupied by related persons of the same family, or by related persons of the same family and not more than two (2) unrelated persons. The restrictions stated in this **section** shall not preclude: (a) the inclusion of an apartment within a residential structure for occupancy by a domestic, or (b) the construction on a Lot of a separate residential structure, ancillary to the primary residence located on the Lot, for the sole purpose of providing housing for guests or domestics.

3. Control of Design, Quality and Construction of Improvements. No dwelling, building or other structure shall be erected, placed or altered on any Lot until a complete set of building plans and specifications for such structure, the plot plans showing the proposed location of such structure and the proposed builder have been approved by the Declarant in writing. Such plans shall show elevations, clearing limits, drainage and grades, and shall show the proposed location of buildings, other structures, driveways, walkways, fences and walls on the Lot. Consistent with the conservation ethic of the Property, all dwelling structures built on the Lots are required to be "Energy Star" rated homes and liberal use of solar thermal and solar photo voltaic technologies in the dwelling structures is encouraged. In determining whether to approve a proposed structure, the Declarant shall consider whether its exterior design is in harmony with existing structures on the Property and whether the proposed location and design are suitable to the applicable Lot. Approval or disapproval of a proposed structure shall be within the sole discretion of Declarant. If approved, the construction shall be performed strictly in compliance with the plans, specifications and drawings presented to and approved by Declarant. Construction of all driveways shall be contracted to C&J Grading Company of Pittsboro, ref: Charles Perry at 919-933-7267 or 919-524-1220, or any other contractor approved of by Declarant in writing in advance. If the Declarant or their authorized representative shall fail to approve or disapprove a builder, plan, design or location within thirty days after the name of the builder, the complete plans, the complete specifications and the plot plans have been submitted to it in writing, then the requirement of the approval of the Declarant shall be waived. Approvals pursuant to this **Section** shall be required through the 31st day of December, 2020.

4. Completion of Construction. Once construction of any structure located within the Subdivision is begun, it must be prosecuted diligently and must be completed within twelve months of its commencement, unless otherwise approved in writing by Declarant.

5. Subdivision of Lots. No dwelling shall be erected on less than one Lot and no Lot shall be subdivided; however, owners of adjoining Lots may adjust a common boundary line,

provided that the adjustment conforms in all respects with the Orange County Zoning Ordinance and all other provisions of this Declaration.

6. Minimum Dwelling Size. The minimum size of dwelling structures to be erected on the Lots shall be eighteen hundred (1800) square feet of heated and finished living area. A multiple story structure shall have no less than one thousand (1,000) square feet on its first floor.

7. Setbacks. Setbacks for all structures to be located on the Lots shall be as set forth by applicable provisions of the Orange County Zoning Ordinance as enacted September 2, 1981 and as subsequently amended or restated.

8. Signs. No commercial signs of any kind shall be displayed to public view on any Lot. This provision does not apply to signs used to advertise a Lot for sale.

9. Mailboxes and Newspaper Containers. The size, type, style, composition and location of mailboxes, newspaper containers and similar structures, if placed apart from the dwelling on any lot, must be approved by the Declarant.

10. Refuse Storage. All trash, garbage and refuse stored outside of a dwelling shall be stored in a solidly screened, enclosed, covered receptacle out of view from any road or any other Lot. In no event shall this provision be construed to prevent roll-out garbage containers from being used for curbside garbage collection as required by a garbage-collection service; provided that such roll-out containers shall not remain within view of any roadway for a period exceeding twenty-four (24) hours. Non-biodegradable garbage or waste materials such as plastics, metal and glass shall be removed from the Lots at least monthly. Biodegradable garbage and waste not removed shall be buried or composted. Composting of biodegradable garbage is strongly encouraged. No non-operative or unlicensed vehicles shall be kept for spare parts or other reasons unless kept in covered sheds, enclosed buildings or solid fences.

11. Storage of Building Materials. No lumber, brick, stone, cinder block, concrete block, cement or other materials used for building purposes shall be stored upon any Lot longer than a reasonable time for the completion of the construction in which they are to be used.

12. Temporary Structures. No temporary structures such as sheds shall be erected or placed on a Lot without the written approval of the Declarant. Such structures, if permitted, may be used only during periods of construction, and never as a residence.

13. Parking and Vehicle Storage. The Owner(s) of any occupied Lot shall provide at least two (2) parking spaces on the Lot, which need not be covered and which may be on a driveway, for off-street parking. Only licensed and operative vehicles, classified as passenger cars, station wagons, passenger pick-up trucks or passenger vans may be regularly parked in driveways. No vehicle will be permitted to park regularly on any roadway within or bordering the Property. Recreational vehicles and work vehicles must be screened from view as provided in **Section 21** below to be allowed upon a Lot. No vehicle located on a Lot may be used as a dwelling, even temporarily.

14. Pesticides and Herbicides. No chlorinated hydrocarbon pesticides or other pesticides that persist longer than one season or the life of the crop they are meant to protect (whichever is shorter) shall be used on the Property, either on crops, natural vegetation or in termite control unless serious economic damage is imminent and can be avoided in no other way. Provided however, that herbicides may be used selectively if necessary to eradicate poison oak, kudzu or poison ivy.

15. Keeping Animals. Pigs and sheep may not be kept on any Lot. Horses, cows, goats, ducks, geese, chickens (and similar fowl), dogs and cats may be kept on a Lot under reasonable conditions of control and sanitation, provided that they do not become a nuisance to the occupants of other Lots, and further provided that they are not kept, bred or maintained for any commercial purpose. Pets shall not be permitted to range the neighborhood, and shall be kept on leashes when not on the Lots of their owners. The number of grazing animals allowed on any Lot shall be limited to that number which is one-half of the total acreage of a Lot, rounded down to the nearest whole number. For example, no more than five (5) grazing animals would be allowed on a Lot which is eleven (11) acres in size. Residents shall control dogs, cats and other pets so that they do not chase or molest wildlife or become a nuisance to other Lot Owners. Outside housing for dogs and other pets shall be constructed in such a way that barking dogs or other animals shall not be heard at night.

16. Offensive Activities Prohibited. No noxious or offensive activity shall be conducted upon any Lot, recreation area or open area, nor shall anything be done thereon tending to cause nuisance to the neighborhood or to the occupants of any Lot. Notwithstanding any other provision herein, the rehabilitation, including the housing in cages, of birds of prey and songbirds shall not be a violation of this Declaration.

17. Erosion Control. At no time shall any Lot be stripped of its topsoil or trees, or allowed to be eroded by being excavated or neglected. During the period of grading and construction of a structure on a Lot and thereafter, the Owner(s) of the Lot shall exercise and maintain such erosion-control measures, including the erection of silt fences, as may be required by the Declarant in order to minimize erosion and runoff. Declarant reserves the right to impose requirements and standards of erosion control in excess of those required by law.

18. Underground Utilities. All utility lines serving structures located on Lots shall be placed underground.

19. Sound. There shall be no electric or electronic amplification of sound or music at a volume which may be heard from any adjoining Lot or parcel, provided that with the special permission of affected adjacent and nearby Lot or property owners, Lot Owners may make and amplify sound in excess of the above restrictions for special occasions.

20. Mobile Homes, Manufactured Housing and Modular Homes. No mobile home, trailer, manufactured housing or modular homes shall be located on any Lot, except that off-frame modular homes may be permitted on a Lot, subject to the provisions of **Section 3** above.

21. Screening. Boats, campers, satellite dishes, antennae, clotheslines, pet enclosures and the like shall not be located on a Lot so as to be visible from any roadway or any other Lot.

22. Garbage Collection. Garbage collection and removal shall be the responsibility of the Owner(s) of each individual Lot.

23. Fires Controlled.

a. All containers for fire or sites for fires, including chimneys and grills shall be fitted with spark screens or other suitable means of fire control, except as allowed in subsection (b) below. Notwithstanding any other provision herein, this Section 23(a) shall not apply to Lot 5 and Lot 6 of the Property.

b. There shall be no burning (including leaves and other vegetation) outside such proper containers unless a proper Forestry Service or other government agency permit is obtained first or the burning is done under the supervision of a professional crew or a fire department trained and knowledgeable in the method and manner of outdoor burning.

24. Maintenance of Lots. The Owner(s) of each Lot shall maintain and preserve his/her Lot in a clean, orderly and attractive condition. Maintenance and preservation of the Lot shall include but not be limited to the trimming of shrubs, the mowing of grass, landscaping, and the removal of garbage, trash, debris and fallen trees and limbs. Any landscaping of any area of a Lot not used for structures shall be done in a manner to preserve trees, to preserve the natural beauty of the Lot and the Property and to prevent unnecessary soil erosion. All lawn, grassland and field areas shall be mowed at least once every six (6) months. In the event that the Owner(s) of any Lot fails to mow as required by this section, then the Declarant may give such owner(s) written notice of such failure at such Owner(s) current address as shown on the records of the Orange County Tax Collector. If such Owner(s) fail to mow the neglected areas within twenty (20) days of the date of mailing of the notice, then the Declarant, acting through their authorized agents or contractors, shall have the power and authority to enter onto the delinquent Lot and mow the neglected areas, without any liability for wrongful entry or trespass for so doing. The Owner(s) of such Lot shall be liable to the Declarant for the cost of the mowing, together with interest thereon at the rate of twelve percent (12.00%) per annum from the date the cost is incurred, together with an administrative fee of one hundred dollars (\$100.00). A perpetual easement in gross over all of the Lots is reserved unto the Declarant for the purpose of performing remedial mowing as described in this section.

25. Tree Removal. No trees having a diameter of six (6) inches or greater at a distance of three (3) feet from the ground shall be cut or removed, unless such tree is dead, diseased, or is a danger to persons or structures by virtue of its ability or inability to remain upright. Notwithstanding the foregoing, the Owners of any Lot shall be permitted to cut any and all trees necessary to clear the Lot's house and yard area, provided that such house and yard area cleared does not comprise an area the size of which is in excess of thirty percent (30%) of the overall size of the Lot.

26. Stream and Creek Buffers. No structures or improvements of any kind shall be constructed within one hundred feet (100') from the boundary of any stream or creek on the Property, and no clearing or material disturbance of native vegetation within such buffer areas shall occur, except as necessary to remove dead trees or other dead vegetation.

27. Firearms and Hunting and Destruction of Wildlife.

a. No bored firearms shall be discharged on the Property for the purpose of practice, hunting, or the destruction of any animal.

b. Regardless of governmentally designated seasons, there shall be no hunting of birds, mammals, reptiles, or amphibians on the Property with any weapon.

c. In recognition that many invertebrate species are important to the functioning of the natural environment, as food supplies for larger species, and for human enjoyment of the land, no bug lights shall be used for the purpose of attracting flying insects, nor shall any pesticides or insect traps be used which are not capable of being targeted at particular populations or species dangerous to or annoying to residents.

d. Nothing herein shall prohibit the collection of fruits and other wild edibles and plants for propagation and decoration, provided such gathering does not endanger the natural population. Also, wildlife clearly threatening or endangering residents may be controlled in any practical manner.

28. Outdoor Lights. No mercury or sodium vapor lights shall be used outside enclosed buildings. In order to minimize light pollution and allow all Lot Owners to have an uninterrupted view of the night sky, no pole light, dusk to dawn lights, overhead outdoor lighting or any other type of outside area lighting independent of house current or house controls will be allowed. Acceptable outdoor lighting will be limited to motion sensor lighting or manually controlled lighting not to exceed one hundred fifty (150) watts per bulb and six feet in height. Further, all outdoor lights which are used shall be shaded so that no direct rays are shown on any area within fifty (50) feet of any property line. Notwithstanding anything above, all outdoor lighting must be approved pursuant to **Section 3** above prior to construction.

29. Motorcycles and All-Terrain Vehicles. There shall be no recreational use of motorcycles, motorbikes, all-terrain vehicles or any other motorized vehicles on any Lot or any roadway serving the Property.

30. Professional Offices. Subject to the provisions of the Orange County Zoning Ordinance, residents of a Lot may practice law, medicine, accounting, psychological counseling and similar professions on the Lot, and residents of a Lot may teach the fine arts on the Lot, on the following conditions: (a) any such activity must be conducted within the single-family residential dwelling located on the Lot, (b) no more than two (2) nonresidents may be employed by a resident to assist in such activity, and (c) clients or students must be seen on an appointment-only basis.

31. Parties Bound. All persons and entities acquiring any interest in any of the Lots and any other areas within the Property, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the Lots, shall likewise be bound.

32. Duration. The provisions of this Declaration shall run with and bind all tracts located within the Subdivision from the date this Declaration is recorded until it is rescinded pursuant to **Section 33** below.

33. Amendment or Rescission. This Declaration may be amended or rescinded only by a written instrument executed by the Owners of not less than five (5) of the Lots, and by the Declarant. Any such amendment or rescission must be recorded at the Orange County Registry to be effective.

34. Enforcement. The Declarant and/or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and obligations imposed by this Declaration. The Declarant and/or any Owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration, and/or to recover damages therefor. The prevailing party in any such action shall be entitled to recover all of the costs thereof, including but not limited to reasonable attorney's fees.

35. Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

36. Right of First Refusal.

a. If any Owner shall desire to offer to sell any Lot, or shall receive from a third party a bona fide offer to purchase a Lot which the Owner desires to accept, the Owner, before making or accepting the offer, as the case may be, shall send the Declarant two copies of a proposed contract for the sale of the Lot embodying the terms of the offer, both copies of which have been duly executed by the Owner, together with a written notification from the Owner of the Owner's intention to make or accept the offer embodied in the contract, as the case may be, if the offer is not accepted by the Declarant. The Declarant shall have the right, within seven (7) days of the receipt of the offer and the written notice, to contract to purchase the Lot on the terms and conditions set forth in the proposed contract. In the event the Declarant accepts the offer embodied in the contract, the Declarant must do so by executing one copy of the proposed contract and returning it to the Owner within the seven (7) day period.

b. If Declarant accepts the offer embodied in the proposed contract within the seven (7) day period provided in **subsection a** above, then the offer shall be deemed withdrawn, and the Owner shall be free for a period of twelve (12) months from the expiration of the seven (7) day period to sell or offer to sell the Lot to third parties on terms not less favorable to the Owner than those set forth in the proposed contract, free and clear of this Right of First Refusal. In the event the Lot is not sold to a third party within the twelve (12) month period, then any further offer to sell or purchase the Lot must first be submitted to the Declarant in accordance with the provisions of **subsection a**.

c. In the event the Owner shall, during the aforesaid twelve (12) month period (or during a subsequent twelve (12) month period as provided in this **subsection**), decide to revise the terms of its offer so that the Lot shall be offered for sale upon terms less favorable to the Owner than those contained in any proposed contract previously submitted to the Declarant, or shall receive from a

third party a bona fide offer to purchase the Lot on less favorable terms, which offer the Owner is willing to accept (such offer on less favorable terms being hereinafter referred to as "New Offer"), then the Owner shall, with respect to each such New Offer, before offering the Lot for sale to others on the terms embodied in the New Offer, or accepting the New Offer, as the case may be, offer to sell the Lot to the Declarant on the terms contained in the New Offer. The terms of the New Offer shall be embodied in a new contract for the sale of the Lot, which shall be submitted to the Declarant in accordance with the requirements of **subsection a** above. If Declarant shall not accept the New Offer within seven (7) days after the receipt of the new proposed contract and the written notice referred to in **subsection a** above, then the Owner shall be free for a period of twelve (12) months from the expiration of the seven (7) day period to sell or offer to sell the Lot to third parties on terms not less favorable to the Owner than those contained in the New Offer, free and clear of this Right of First Refusal. Provided, however, that in the event the Lot is not sold to a third party within the twelve (12) month period, then any further offers with respect to the Lot must be submitted to the Declarant in accordance with the provisions of **subsection a**.

d. This Right of First Refusal shall be subordinate and junior to the operation and effect of any future deed of trust which hereafter becomes a lien on any Lot, and shall have no force or effect with regard to any foreclosure sale conducted pursuant to such Deed of Trust.

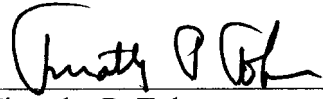
e. All notices pursuant to this **Section** shall be deemed given when personally delivered to the party to whom it is directed or in lieu of personal delivery on the fifth (5th) business day after the same is deposited in the United States mail, postage prepaid, sent certified mail, return receipt requested, addressed as follows: (1) if to the Declarant, to the address 8300 Pickards Meadow Road, Chapel Hill, NC 27516, or (3) if to an Owner, to the Owner's address as shown on the records of the Orange County Tax Collector.

f. This Right of First Refusal shall automatically expire on December 31, 2020.

37. **Severability**. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

38. **Captions**. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed on the date first stated above.

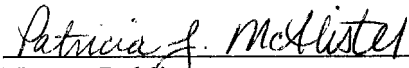


Timothy P. Toben

NORTH CAROLINA
ORANGE COUNTY

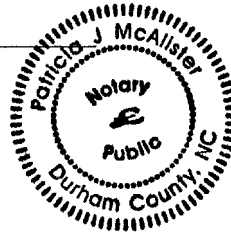
I, Patricia J. McAllister, a Notary Public for said County and State, do hereby certify that Timothy P. Toben personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

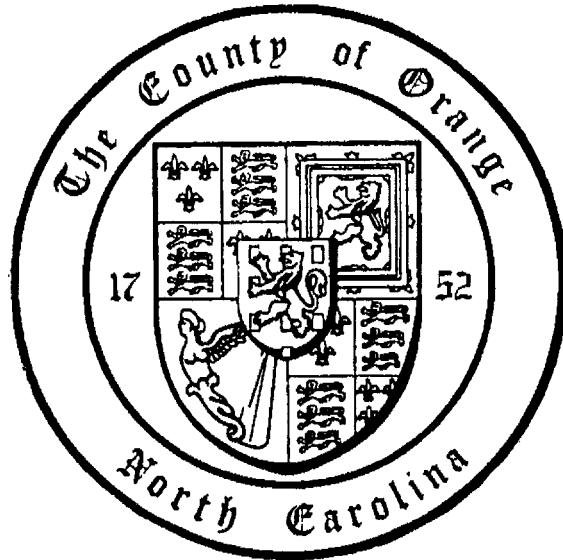
Witness my hand and official stamp or seal this the 26th day of August, 2005.



Notary Public

My commission expires: 6/7/2010





Joyce H. Pearson
Register of Deeds
Orange County
North Carolina

State of North Carolina, County of Orange

The foregoing certificate(s) of PATRICIA J. MCALISTER, NOTARY PUBLIC for the Designated Governmental units is/are certified to be correct. See filing certificate herein.

This day September 8, 2005.

Joyce H. Pearson, Register of Deeds

BY: *Audra Clayton*
Deputy / Assistant Register of Deeds

EXHIBIT A

BEING all of that 10.47 acre tract shown as Lot 1, all of that 10.25 acre tract shown as Lot 2, all of that 10.03 acre tract shown as Lot 3, all of that 10.07 acre tract shown as Lot 4, all of that 10.35 acre tract shown as Lot 5 and all of that 10.44 acre tract shown as Lot 6 by plat of survey of record at Plat Book 98 Page 17, Orange County Registry.