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

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FOR MULTIPLE PIN SHEET
SEE BOOK 3860 PAGE 368

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

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

**NORTH CAROLINA
ORANGE COUNTY**

**DECLARATION OF RESTRICTIONS
AND PROVISIONS FOR PRIVATE
ROAD MAINTENANCE**

This Declaration is made August 1, 2005, by Toben Properties, LLC, a North Carolina limited liability company, and Timothy P. Toben, hereinafter collectively referred to as "the Declarants." The Declarants state and declare as follows:

A. The Declarants are the owners of those seven (7) 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 Lots will have access to State Road 1103 in part via the private road shown on the plat of survey of record at Plat Book 98 Page 17, Orange County Registry ("the Plat"), which private road is known as "Thomas Berry Way."

C. The Declarants, by this Declaration, wish to bind themselves, their successors and assigns to provide all owners of any Lot perpetual ingress, egress and regress to Pickards Meadow Road and State Road 1103 and to provide for maintenance of Thomas Berry Way until such time as the private road is accepted by the State of North Carolina or some other governmental authority for maintenance.

NOW, THEREFORE, Declarants agree for themselves and for any and all persons or entities hereafter acquiring any of the Lots, that the same shall be subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof, which restrictions, conditions and covenants shall run with the Property and inure to the benefit of and be binding upon their heirs, successors and assigns of Declarants and other acquiring parties and persons.

1. The Property which is, and shall be, held, transferred, sold and conveyed subject to the protective and restrictive covenants set forth in this Declaration is located in Bingham Township, Orange County, North Carolina, and is more particularly described in Exhibit A attached hereto and incorporated herein.

2. Declarants hereby grant and reserve between themselves and unto themselves and the future record owners of any portion of the Property a perpetual, appurtenant easement over Thomas Berry Way as shown on the Plat, for the purposes of ingress, egress and regress over and upon Thomas Berry Way from and to Pickards Meadow Road and for the installation and maintenance of utilities along and within Thomas Berry Way as it currently exists and as it may be extended to serve any portion of the Property, to have and to hold said easement unto the Declarants, their heirs, successors and assigns, forever.

2. Thomas Berry Way shall be maintained as passable in all weather conditions. The Declarants and the record owners of any Lot shall have the right to enforce maintenance standards by sending by registered or certified mail, return receipt requested, written notice of all proposed maintenance, the cost thereof, and the time and place of meeting (said meeting to take place no less than thirty (30) days following the mailing of such notice to all record owners at their last known addresses disclosed by the Orange County Tax Listings.

3. The record owners of all Lots shall bear on a pro-rata basis the cost of maintaining Thomas Berry Way, this being each owner's pro-rata share for grading costs, gravel, or rock hauled in to fill ruts, holes, and washed out sections and necessary replacement or additions of drainage culverts. A majority of votes cast, in person or by signed proxy at a record owner's meeting, is required for the approval of all maintenance and repairs to Thomas Berry Way. Further, at such meeting, the record owners by a majority of the votes cast in person or by signed proxy, shall select an agent to contract the maintenance work. At the record owner's meeting, each record owner shall have one vote for each "point" assigned to their Lot. Each Lot's pro-rata share of the maintenance costs of Thomas Berry Way shall be computed by a point system whereby one point is assigned per Lot owned, and three points for each occupied dwelling unit on a Lot. For example, a single Lot with a single dwelling unit built upon it would be assigned four (4) points. Each Lot's share shall be the percentage that the Lot's total points is of the total of all points assigned to all Lots. "Maintenance," as that term is used in this Declaration, shall not include improvements to the roads beyond their condition as constructed, and shall not mean or refer to widening, landscaping, or any other upgrading. Each record owner's pro rata share shall be due and owing to the elected agent with in ten (10) days, said cost may be reduced to a judgment and shall become a lien on the land of the defaulting owner. Notwithstanding any vote at the record owner's meeting, nothing in this agreement shall be construed as denying any record owner the right to ensure that Thomas Berry Way is maintained. Maintenance of Thomas Berry Way 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 Declarants in writing in advance.

4. Any record owner of a Lot may require that any dispute concerning the maintenance requirements set forth herein be submitted to binding arbitration under the Rules of the American

Arbitration Association.(as governed by the Revised Uniform Arbitration Act of North Carolina, North Carolina General Statutes Section 1-569.1 et seq., as it may be amended from time to time) notice mailed to all record owners at their last known addresses as is shown on the Orange County Tax Listings by registered or certified mailed, return receipt requested, by 5:00 p.m. on the second working day following the record owner's meeting. Unless such arbitration notice is sent, the vote of the majority of the record owners shall be conclusive as to the maintenance mandated by this agreement. The costs of such arbitration shall be borne by all record owners, pro rata, if maintenance is ordered, or if not, entirely by the party (or parties) seeking arbitration.

5. Thomas Berry Way may be dedicated to the public by a majority vote of the record owners of Lots within the property served by the private road at a meeting called and a vote taken as set out above, except the notice must state that the meeting is called to vote on dedicating the road to the public. In that event, the record owners and their successors in title and interest to any portion of the Property served by Thomas Berry Way will remain responsible for road maintenance as herein provided until such time as said roads are maintained by a governmental body. Provided, however, nothing in this Section shall be construed as requiring record owners to bear the cost of anything other than maintenance, as that term is defined hereinabove.

6. These provisions regarding maintenance shall remain in full force and effect as to Thomas Berry Way or any portion thereof until such time the road or any portions thereof are maintained by a governmental body and any portion of said road not maintained by a governmental body shall remain subject to this agreement and be maintained by the record owners of those lots in the property served by that portion of said roads not maintained by a governmental body as the record owners of those lots in the property served by that portion of said roads not maintained by a governmental body shall decide as set out herein.

7. It is further stipulated and agreed that the Declarants and the record owners of the Lots within the Property and their heirs, successors or assigns may enforce this agreement by injunction and that this shall not be in exclusion of, but in addition to, all other remedies available in law or equity.

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

Toben Properties, LLC

By: Timothy P. Toben, Manager
Timothy P. Toben, Manager

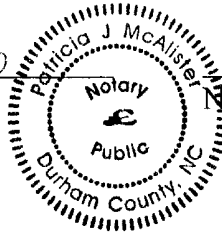
Timothy P. Toben
Timothy P. Toben

NORTH CAROLINA
ORANGE COUNTY

I, Patricia J. McAlister, a Notary Public for said County and State, do hereby certify that Timothy P. Toben personally came before me this day and acknowledged that he is Manager of Toben Properties, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the company, he executed the foregoing instrument in its name as its Manager.

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

My commission expires: 6/7/2010



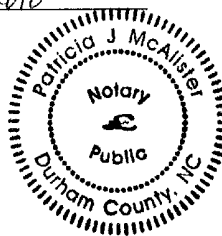
Patricia J. McAlister
Notary Public

NORTH CAROLINA
ORANGE COUNTY

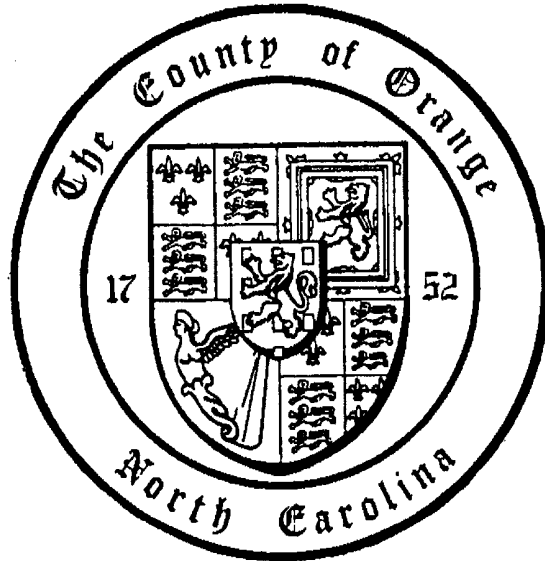
I, Patricia J. McAlister, a Notary Public for said County and State, do hereby certify that Timothy P. Toben personally appeared before me this day and acknowledged the execution of the foregoing instrument.

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

My commission expires: 6/7/2010



Patricia J. McAlister
Notary Public



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: *Amelia Clayton*
Deputy / Assistant Register of Deeds

EXHIBIT A

Property of Toben Properties, LLC:

TRACT ONE: Being all of that 10.28 acre tract shown as Lot 5 by plat of survey of record at Plat Book 96 Page 53, Orange County Registry.

PIN: 9850420850 TMN: 6.21..43B

Property of Timothy P. Toben:

TRACT ONE: Being all of that 10.47 acre tract shown as Lot 1 by plat of survey of record at Plat Book 98 Page 17, Orange County Registry.

PIN: 9850242885 TMN: 6.20..9A

TRACT TWO: Being all of that 10.25 acre tract shown as Lot 2 by plat of survey of record at Plat Book 98 Page 17, Orange County Registry.

PIN: 9850256208 TMN: 6.20..9B

TRACT THREE: Being all of that 10.03 acre tract shown as Lot 3 by plat of survey of record at Plat Book 98 Page 17, Orange County Registry.

PIN: 9850340970 TMN: 6.20..9C

TRACT FOUR: Being all of that 10.07 acre tract shown as Lot 4 by plat of survey of record at Plat Book 98 Page 17, Orange County Registry.

PIN: 9850347826 TMN: 6.20..9D

TRACT FIVE: Being all of that 10.35 acre tract shown as Lot 5 by plat of survey of record at Plat Book 98 Page 17, Orange County Registry.

PIN: 9850443429 TMN: 6.20..9E

TRACT SIX: Being 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.

PIN: 9850434709 TMN: 6.20..9F