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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2005 FEB 10 09:22:38 AM
BK:4669 PG:87-92 FEE:\$26.00

INSTRUMENT # 2005006608

NORTH CAROLINA

ROAD MAINTENANCE DECLARATION
FOR TANAGER COURT

NEW HANOVER COUNTY

THIS DECLARATION, made and entered into this the 9th day of February, 2005 by and between PEACHTREE VENTURES, LLC, a North Carolina Limited Liability Company, hereinafter called "Declarant"; and all persons and/or parties who hereinafter purchase lots in TANAGER COURT and who hereinafter shall be collectively called "Owners".

WITNESSETH:

WHEREAS, Declarant owns fee simple title to the real property described in Article I below;

WHEREAS, the said property will have access to Peachtree Avenue, a public street, via the private road shown on the plat hereinafter referred to, said private road being known as "TANAGER COURT";

WHEREAS, Declarant, by this Declaration, wishes to bind itself, its successors and assigns to provide Owners of lots in Tanager Court perpetual ingress, egress and regress to said public street; and

WHEREAS, Declarant, by this Declaration and these restrictions, wishes to bind itself, its successors and assigns to provide for maintenance of said private road until such time as acceptance of said private road is sought and obtained from a governmental body.

NOW, THEREFORE, Declarant agrees for itself and any and all persons, firms or corporations hereinafter acquiring lots in Tanager Court, that the same shall be subject to the following restrictions, conditions and easements relating to the use and occupancy thereof, which restrictions, conditions, easements and covenants shall run with said property and enure to the benefit of and be binding upon the heirs, successors and assigns of Declarant and Owners.

RETURNED TO *Tim Fuller*
251 5030

ARTICLE I

The real property (the "Property") which is, and shall be held, transferred, sold and conveyed subject to this Declaration is located in The City of Wilmington, New Hanover County, North Carolina and more particularly described as follows:

BEING all of Lots 1 through 6 as shown on plat entitled "TANAGER COURT "which appears of record in the office of the Register of Deeds of New Hanover County in Plat Book 47, Page 187.

ARTICLE II

Declarant hereby grants unto itself and the future owners of lots within the property a non-exclusive easement for perpetual ingress, egress and regress through, over and across the private road within the property.

ARTICLE III

The private road shall be maintained as passable in all weather conditions. Any record owner of lots 3, 4, 5 & 6 Tanager Court 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 New Hanover County Tax Listings. It is understood and agreed that Lots 1 and 2 have direct access to Peachtree Avenue and therefore will not be subject to this maintenance assessment and therefore shall have no right to vote on this matter.

Section 3.1 At the record owner's meeting, each record owner shall have one vote for each lot owned. But, in no event shall any lot or any subdivision thereof have more than one vote, regardless of the number of record owners. A majority of the votes cast, in person or by signed proxy at a record owner's meeting, is required for the approval of all maintenance. 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. The owners of Lots 3, 4, 5 & 6 shall bear, on a pro rata basis, the cost of maintaining the private road within the property, including but not limited to patching, paving, grading, adding gravel or rock to fill ruts, holes and washed out sections and doing any other needed maintenance. "Maintenance," as that term is used in this Declaration, shall not include improvements to the road beyond its condition as now 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 within ten (10) days, said cost may be reduced to a judgment and shall become a lien on the land of the defaulting owner that may be foreclosed on in the same manner as a deed or trust pursuant to Chapter 45 of the General Statutes. 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 the private road within the property is maintained. Any record owner of a lot within the property 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 Uniform Arbitration Act of North Carolina, North Carolina General Statutes Section I-567.1 et seq., as it may be from time to time be amended) by notice mailed to all record owners at their last known addresses as is shown on the New Hanover County Tax Listings by registered or certified mail, 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.

ARTICLE IV

The private road within the property does not currently meet City of Wilmington standards. However, if the owners of Lots 3, 4, 5 & 6 elect to improve said road to meet City of Wilmington standards, then those owners may petition the City to accept said road. The decision of the owners of Lots 3, 4, 5 & 6 shall be at a meeting called and a vote taken as set out in Article III above, except the notice must state that the meeting is called to vote on dedicating the road to the public. Until such time as the City elects to assume maintenance of the said private road, the record owners and their successors in title and interest to any portion of the property served by the private road within the property will remain responsible for road maintenance as herein provided until such time as said road is accepted and maintained by a governmental body. Provided, however, nothing in this Article shall be construed as requiring record owners to bear the cost of anything other than maintenance, as that term is defined in Article III hereinabove.

ARTICLE V

Section 5.1 Easements for Encroachments. The Dwelling Units, all utility lines, meters, and all other improvements as originally constructed by or on behalf of Declarant or its assigns shall have an easement to encroach upon any Lot as a result of the existing location of the building, utility lines and other improvements across boundary lines between and along Lots and/or the easement areas, and/or the private road.

Section 5.2. Lots' Utility Easements. Easements are granted in favor of each Lot Owner to and throughout the private road and easement areas as shown on the above map of Tanager Court, as may be necessary for the installation, maintenance, repair and use of underground water, gas, sewer, power and other utilities and services including power and communication, now or hereafter existing within said easement, including maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipment, or other components.

Section 5.3. Utility Easements. Easements are reserved and/or granted hereby in favor of the Declarant, its successors or assigns, through each Lot (provided that such easements shall not materially and unreasonably interfere with the use of any dwelling located upon Lots 1 through 6 of Tanager Court) for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, equipment, fixtures, utility, power or communication lines or equipments, or other components throughout Tanager Court. Each Owner and/or his respective

mortgagee by acceptance of a deed conveying such ownership interest and each mortgagee encumbering such ownership interest, as the case may be, hereby irrevocably appoint Declarant, its successors or assigns, as the case may be, as his attorney in fact, coupled with an interest, and authorize, direct and empower such attorney, at the option of the attorney, to execute, acknowledge and record for an in the name of such Lot Owner and his mortgagee, such easements or other instruments as may be necessary to effect the purpose of this Section 5.3. The easements may be assigned and/or granted by the Declarant, its successors and assigns.

Section 5.4. Access Easement. Appurtenant to each Lot is an easement over the private road (Tanager Court) for necessary pedestrian and vehicular ingress and egress to and from any such Lot, to and from Peachtree Avenue. The easement shall be over such walkways, driveways, or other ways as are designated by the Declarant and/or shown on the above referenced map.

ARTICLE VI

This agreement shall run with and be appurtenant to the land and shall be binding upon the heirs, successors and assigns of each record owner of a lot within the property.

ARTICLE VII

This agreement shall remain in full force and effect as to the aforementioned road or any portion thereof until such time as said road or any portion thereof is 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 road not maintained by a governmental body.

ARTICLE VIII

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

ARTICLE IX

Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.

ARTICLE X

For the purpose of these restrictions, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa, as the meaning may require.

ARTICLE XI

This Declaration, together with the Deed of Easement and Roadway Reservation by and among the parties hereto of even date herewith, contain the entire understanding of the parties hereto, and neither shall be amended without the written agreement of all of the parties hereto.

IN WITNESS WHEREOF, Declarants have caused this instrument to be signed on the day and year above written.

PEACHTREE VENTURES, LLC (Declarant)

By: *Mark L. Maynard* (SEAL)
Mark L. Maynard, Manager

NORTH CAROLINA
NEW HANOVER COUNTY

I, *Gillian D'Arcy*, a Notary Public of the aforesaid County and State, do hereby certify that Mark L. Maynard personally came before me this day and acknowledged that he is Manager of PEACHTREE VENTURES, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of partnership, the foregoing instrument was signed in its name by him.

Witness my hand and official seal, this the 9th day of February, 2005.

(OFFICIAL SEAL)

Gillian D'Arcy
NOTARY PUBLIC

My Commission expires: *April 6, 2009*





REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 02/10/2005 09:22:38 AM
Book: RE 4669 Page: 87-92
Document No.: 2005006608
DECL 6 PGS \$26.00

Recorder: JACQUELINE NELSON

State of North Carolina, County of New Hanover

The foregoing certificate of GILLIAN D'ARCY Notary is certified to be correct. This 10TH of February 2005

REBECCA P. SMITH, REGISTER OF DEEDS

By: 
Deputy Assistant Register of Deeds

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

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