

Prepared by and return to Bagwell & Holt, P.A.

Declarant's address: P.O. Box 16007, Chapel Hill, NC 27514

**DECLARATION OF CREATION OF NORTH FIELD  
AT CREEK WOOD, A PLANNED COMMUNITY**

This Declaration is made October 17, 2000, by S & H Development, LLC, a North Carolina limited liability company, hereinafter referred to as "the Declarant." The Declarant states and declares as follows:

9881-36-0376 9881-25-9243  
9881-35-4789 JW

A. The Declarant is the owner of those three (3) tracts of real estate located in Orange County, North Carolina, and shown as Tracts 1, 2 and 3 by plat of survey entitled, "EXEMPT SUBDIVISION, PROPERTY OF S & H DEVELOPMENT," of record at Plat Book 86 Page 41, Orange County Registry.

B. The Declarant intends to subdivide that 32.404 acre tract shown as Tract 1 by said recorded plat ("the Subject Tract") into single-family residential lots ("the Lots") and public rights-of-way, and to create from the Subject Tract a planned community known as North Field at Creek Wood ("the Community");

C. Also, the Declarant desires to impose those restrictive and protective covenants stated in Section 6 below upon the Subject Tract to protect and to promote the beneficial ownership, use and enjoyment of all single-family residential lots to be located within the Community and within those two tracts shown as Tracts 2 and 3 by said recorded plat ("the Adjoining Tracts"), which shall not be part of the Community; and

D. Within one year of the date of this Declaration, the Declarant intends to impose restrictive and protective covenants substantially similar to those stated in Section 6 below upon the Adjoining Tracts to protect and promote the beneficial ownership, use and enjoyment of all single-family lots located within the Adjoining Tracts and within the Community.

THEREFORE, pursuant to Chapter 47F of the North Carolina General Statutes ("the Planned Community Act"), the Declarant hereby executes this Declaration to create North Field at Creek Wood, a North Carolina planned community, and declares that henceforth all portions of the Subject Tract (PIN: 9881-36-0376; TMN: 7. 16A. .2) shall be held and owned subject to the following terms, provisions, covenants, conditions and restrictions, which shall run with the Subject Tract and which shall be binding upon all owners of any portion of the Subject Tract and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns:

1. **Application of the North Carolina Planned Community Act.** The terms and provision of Chapter 47F of the North Carolina General Statutes, as the same shall be amended from time to time, shall apply to the Community.

2. **Definitions.** The definitions set forth in N.C.G.S. §47F-1-103 shall apply to this Declaration and are incorporated herein, except that the terms listed below shall have the specific meanings stated:

(a) "Association" shall mean North Field Homeowners Association, a North Carolina nonprofit corporation, its successors and assigns.

(b) "Declarant" shall mean S & H Development, LLC, its successors and assigns.

(c) "Declaration" shall mean this Declaration of Creation of North Field at Creek Wood, a North Carolina planned community.

3. **North Field Homeowners Association.** Every person or entity who is an owner of a fee or undivided fee interest in any of the Lots shall be a member of the Association. Ownership of such interest shall be the sole qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. The Association shall be organized and governed as follows:

(a) Purposes. The purposes of the Association shall be:

(1) To maintain and preserve all parcels of land, rights-of-way and/or easements owned by the Association at any time, and all roads, streets, decorative and protective structures (including but not limited to buffer walls), ponds, lakes, utilities, landscaped areas and other improvements located thereon, if any;

(2) To enforce the provisions of this Declaration, of any bylaws and rules and regulations promulgated by the Association and of any restrictive and protective covenants imposed upon the Adjoining Tracts by the Declarant;

(3) To perform all duties and functions allotted to owner's associations pursuant to Article 3 of the Planned Community Act; and

(4) To promote and to protect the enjoyment and beneficial use and ownership of the Lots.

(b) Powers and Responsibilities. The Association shall have all powers and responsibilities and shall perform all duties and functions allotted to owner's associations by Article 3 of the Planned Community Act, the terms and provisions of which are incorporated herein. The Association shall also have all rights and powers and shall perform all duties and functions that may be assigned to it by Declarant pursuant to this Declaration.

(c) Voting Rights and Meetings. On matters of Association business submitted to vote of the membership, there shall be one (1) vote per Lot, regardless of the number of owners of a Lot. Unless otherwise provided herein or in the Planned Community Act, all voting matters shall be decided by a simple majority vote. Requirements for a quorum shall be as provided by the bylaws of the Association. The members of the Association shall meet as provided by the bylaws of the Association.

(d) Costs and Assessments. All costs of the Association in fulfilling the above stated purposes shall be shared equally among the owners of all of the Lots on a per Lot basis. The Association shall have the power to assess each Lot for its share of the aforesaid costs, which assessment, together with interest thereon and the costs of collection thereof, including reasonable attorney's fees, shall be the personal obligation of all the owners of each Lot. The Association shall have the power to take whatever action is necessary, at law or in equity, to enforce this Declaration and to collect the assessment, interest and costs. If the assessment remains unpaid for a period of thirty (30) days after the date of mailing of notice that it is due, interest shall accrue on any unpaid portion of the assessment from the date of mailing of the notice at the rate of twelve percent (12%) per annum, and the assessment, together with interest thereon and the costs of collection thereof (including reasonable attorney's fees) shall constitute a lien on the delinquent Lot when a claim of lien is filed by the Association against the Lot in the Office of the Clerk of Superior Court of Orange County. The lien may be foreclosed by the Association as provided in N.C.G.S. §47F-3-116.

(e) Bylaws, Rules and Regulations. The initial executive board of the Association shall enact and adopt all and any bylaws, rules and regulations that they deem necessary for the operation of the Association, which bylaws, rules and regulations shall be binding upon all members of the Association, their mortgagees, lessees, agents and invitees.

4. **Declarant Rights.** The Declarant reserves the following rights with regard to the Community:

(a) the right to use all access and utility easements throughout the Community for the purpose of making improvements within the Community;

(b) the right to appoint or remove any officer or member of the executive board of the Association for a period of two (2) years from the date of this Declaration;

(c) the right to amend this Declaration at any time within two (2) years of the date of recording of this Declaration by written instrument executed by the Declarant and recorded at the Orange County Registry, without approval or joinder of the Association or any other party; and

(d) the right to control design, quality and construction of improvements within the Community as stated in Section 5 below.

5. **Control of Design, Quality and Construction of Improvements.** No dwelling, building or other structure shall be erected, placed or altered on any Lot until the 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 floor elevations, clearing limits, drainage and grades, and shall show the proposed location of buildings, other structures, driveways, walkways, fences and walls on the Lot. In determining whether to approve a proposed structure, the Declarant shall consider whether its exterior design is in harmony with existing structures in the Community and whether the proposed location and design are suitable to the applicable Lot. If approved, the construction shall be performed strictly in compliance with the plans, specifications and drawings presented to and approved by Declarant. If the Declarant 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. Declarant may delegate its rights, powers, functions and responsibilities pursuant to this Section to an Architectural Review Board composed of three (3) individuals, all of whom shall be appointed by Declarant. Approvals pursuant to this section shall be required through December 31, 2005; provided that the Association may extend the time period during which such approval shall be required by recording, on or before December 31, 2005, a written declaration of extension with the Orange County Registry. Such declaration shall state that the Association or its authorized representatives have assumed all rights and responsibilities of the Declarant pursuant to this section, and shall state a definite extension period during which approval pursuant to this section shall be required.

6. **Restrictive and Protective Covenants.** All of the Subject Tract and any portion thereof shall be subject to the following restrictive and protective covenants, which are for the purpose of protecting the value and desirability of all single-family lots within the Community and within the Adjoining Tracts:

(a) Land Use. No portion of the Community shall be used except for residential purposes and for purposes incidental or accessory thereto. All Lots shall be used solely for detached, single-family residential dwellings in accordance with the plans for the Subdivision submitted to and approved by Orange County. 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. Notwithstanding any other provision herein, any lot may be used for a Home Occupation as defined by the Zoning Ordinance for Orange County, provided that such use complies with the Zoning Ordinance and provided that all necessary permits and approvals for such use have been obtained from Orange County and any other applicable authorities.

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

(c) 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 Zoning Ordinance of Orange County as enacted September 2, 1981 and as subsequently amended or replaced ("the Zoning Ordinance") and with all other provisions of this Declaration.

(d) Minimum Dwelling Size. The minimum size of dwelling structures to be erected on the Lots shall be three thousand (3,000) square feet of heated and finished living area. A multiple story structure shall have no less than two thousand (2,000) square feet on its first floor.

(e) Setbacks. Setbacks for all structures to be located on the Lots shall be as set forth by applicable provisions of the Zoning Ordinance.

(f) 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.

(g) 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.

(h) Driveways. All portions of any driveway for a Lot that are visible from any roadway or any other Lot shall be paved prior to occupancy of any dwelling constructed on that Lot.

(i) 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 street or any other Lot.

(j) 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.

(k) 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.

(l) Parking and Vehicle Storage. Garages shall be enclosed on all four sides. 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 the Community. Recreational vehicles must be screened from view as provided in subsection (r) below to be allowed upon a Lot. No vehicle located on a Lot may be used as a dwelling, even temporarily.

(m) Keeping Animals. No animals, birds or reptiles may be kept on any Lot, recreation area or open space, except that a limited number of 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.

(n) Offensive Activities Prohibited. No noxious or offensive activity shall be conducted upon any Lot, recreation area or open area, nor shall anything be conducted thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood or to the occupants of any Lot.

(o) Erosion Control. At no time shall any Lot, recreation area or open area 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.

(p) Underground Utilities. All utility lines serving structures located on Lots shall be placed underground.

(q) Mobile Homes and Manufactured Housing. No mobile home, trailer or manufactured housing shall be located on any Lot.

(r) 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. Swing sets, tree houses and play areas shall be located at the rear of a Lot.

(s) Vegetable Gardens. No vegetable garden shall be located on a Lot so as to be visible from any roadway.

(t) Garbage Collection. Until such time as garbage collection services may be contracted by the Association, garbage collection and removal shall be the responsibility of the Owners of each Lot.

(u) Maintenance of Lots. Each Owner shall maintain and preserve his 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.

7. **General Provisions.**

(a) Parties Bound. All persons and entities acquiring any interest in any of the Lots, 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.

(b) Duration. The provisions of this Declaration shall run with and bind the Subject Tract perpetually, unless and until the Community is terminated pursuant to N.C.G.S. Section 47F-2-118.

(c) Amendment. Except as provided in Section 4 above, this Declaration may be amended only by a written instrument executed by the Association and authorized by the affirmative vote of at least sixty-seven percent (67%) of all Lots, cast in person or by proxy at a meeting held in accordance with the bylaws of the Association. Any amendment must be recorded at the Orange County Registry to be effective.

(d) Enforcement.

(1) The Declarant, the owner of any fee interest in any Lot and/or the Association 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, the owner of any fee interest in any Lot and/or the Association may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration, and/or to recover damages therefor. The Declarant, the owner of any fee interest in any Lot and/or the Association shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action from the breaching or violating Lot owner(s).

(2) In addition, the owner of any fee interest in any portion of either of the Adjoining Tracts shall have the right to enforce, by any proceeding at law or in equity, all of the restrictive and protective covenants stated in Section 6 above. The owner of any fee interest in any portion of either of the Adjoining Tracts may bring any action necessary to enjoin any violation or breach of the provisions of Section 6 above, and/or to recover damages therefor. The owner of any fee interest in any portion of either of the Adjoining Tracts shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action from the breaching or violating Lot owner(s).

(e) 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.

(f) Assignment by Declarant. Any or all of the rights, powers, easements, functions and obligations reserved or given to the Declarant in this Declaration may be assigned to the Association, and the Association shall accept and assume responsibility for any or all such rights, powers, easements, functions and obligations when requested by the Declarant. Any such assignments or transfer shall be made by an appropriately recorded written instrument, executed by both the Declarant and the Association, and the Association shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Declarant. The Declarant, but not the Association, shall thereupon be released from such obligations and duties.

(g) 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.

(h) 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.

(i) Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.

(j) References to Statutes. All references herein to any statutory provision shall be construed to include and apply to any subsequent amendments to or replacements of such provision.

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

S & H Development, LLC

By:   
Thomas H. Heffner, Manager

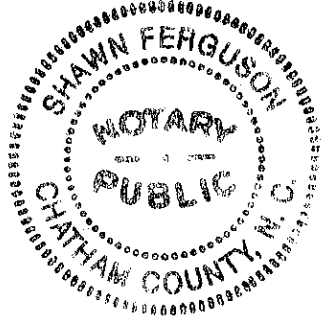
NORTH CAROLINA, CHATHAM COUNTY.

I, Shawn Ferguson, a Notary Public, do hereby certify that Thomas H. Heffner, Manager of S & H Development, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal this the 17<sup>th</sup> day of October, 2000.

My commission expires: 4/26/2003

Shawn Ferguson  
Notary Public



STATE OF NORTH CAROLINA, Orange COUNTY.

The foregoing certificate of Shawn Ferguson, A Notary Public of the designated Governmental units is certified to be correct. This instrument was presented for registration this 18<sup>th</sup> day of October, 2000, at 2:45:31 o'clock P.M., and duly recorded in the office of the Register of Deeds of Orange County, North Carolina, in Book 2149 Page 317. This the 18<sup>th</sup> day of October, 2000.

Joyce H. Pearson, Register of Deeds

By: [Signature]  
Assistant/Deputy Register of Deeds

FILED  
18 OCT 2000, at 02:45:31pm  
Book 2149, Page 317 - 325  
Joyce H. Pearson  
Register of Deeds, [Signature]  
Orange County, N. C.