

WAKE COUNTY, NC 68
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
06/05/2008 AT 10:49:47

BOOK:013127 PAGE:00844 - 00850

STATE OF NORTH CAROLINA

SECOND AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
HERITAGE SPRING SUBDIVISION

Prepared by and hold for:
Kathryn S Drake
Attorney at Law Box 104

COUNTY OF WAKE

THIS SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE SPRING COMMUNITY (this "Amendment") is made this 21 day of MAY, 2008, by HERITAGE SPRING, LLC, a North Carolina limited liability company, hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, Declarant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Heritage Spring Subdivision dated July 1, 2006 (the "Declaration"), recorded in the Book 2187 Page 1392 of the Wake County Registry, pertaining to the real property described on Exhibit A attached hereto and made a part hereof (the "Property"), as amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions dated April 25, 2007, recorded in Book 12519 Page 1729.

WHEREAS, pursuant to Article II Section 3 of the Declaration, the entire Property was subjected to age restrictions in order to qualify for the "55 and older" exemption of the Fair Housing Acts (as defined in the Declaration).

WHEREAS, as shown on the plats recorded in Book of Maps 2006 at pages 1099 through 1103, as amended by plats recorded in Book of Maps 2006 at pages 1579 through 1583, the Property is subdivided into twenty-four (24) parcels designated Blocks 1 through 24, each of which is intended to be further subdivided into two Lots, for a total of forty-eight (48) Lots.

WHEREAS, by plat recorded in Book of Maps 2007 at page 966, Block 10 was subdivided into Lots 10A and 10B; by plat recorded in Book of Maps 2007 at page 1148, Block 11 was subdivided into Lots 11A and 11B and Block 20 was subdivided into Lots 20A and 20B; by plat recorded in Book of Maps 2007 at page 2505, Block 8 was subdivided into Lots 8A and 8B and Block 9 was subdivided into Lots 9A and 9B; and by plat recorded in Book of Maps 2007 at page 794, Block 19 was subdivided into Lots 19A and 19B. All of the foregoing plats are herein referred to together as the "Plats."

WHEREAS, the owners of all of the Lots have determined that it is in their mutual best interest to amend the Declaration (i) so that the age restrictions will expire after a period of time with respect to certain Lots within the Property, and (ii) so that the age restrictions are removed immediately with respect to the remainder of the Lots.

WHEREAS, as of the date hereof, Declarant is the owner of more than seventy-five percent (75%) of the Lots (as defined in the Declaration).

WHEREAS, pursuant to the power and authority of the Declarant under Article XII Section 2 of the Declaration, the Declarant has executed this Amendment for the purpose of amending the Declaration as set forth herein.

NOW THEREFORE, Declarant hereby declares as follows:

1. **Definitions.** Capitalized terms not otherwise defined in this Amendment shall have the meaning given such terms in the Declaration.
2. **Partial Exemption from Age Restrictions.** Article II Section 3 of the Declaration is hereby deleted in its entirety and is replaced with the following:

Section 3. Housing for Older Persons; Age Restriction.

- (a) Lots 8A, 8B, 9A, 9B, 10A, 10B, 11A, 11B, 20A and 20B, and Block 21, as shown on the Plats, are herein referred to as the "Restricted Lots." With respect to Lots 8B, 10A, 11B, 20A and 20B, the "Expiration Date" is June 1, 2014. With respect to Lots 8A, 9A, 9B, 10B and 11A, and Block 21, the "Expiration Date" is the earlier to occur of (i) June 1, 2014, or (ii) the date that Developer no longer owns any of the Restricted Lots. From the date hereof through the Expiration Date, the Restricted Lots (but not the remainder of the Property) are intended to be operated as "Housing for Older Persons" in order to qualify for the "55 and older" exemption of the Federal Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act Amendment Act of 1988, 42 U.S.C. §3607; and as further amended by the Housing for Older Persons Act of 1995, 46 U.S.C. §3601 (collectively, the "Fair Housing Acts"), and shall be continued to be titled and occupied as such. Until the Expiration Date, the occupancy of any Dwelling Unit constructed on the Restricted Lots shall be limited to person(s) who are fifty-five (55) years of age or older or the legal spouse, over the age of nineteen (19), of an occupant of such Dwelling Unit who is fifty five (55) years of age or older. In furtherance of the age restriction set forth herein, occupancy (as defined in the Fair Housing Acts) shall be restricted consistent with the intent of this provision, and, accordingly, persons under the age of fifty-five (55) will not be: (i) accepted as occupants of, or (ii) permitted to reside within such Dwelling Units, except that a person who is the legal spouse, over the age of nineteen (19), of an occupant fifty five (55) years of age or older shall be permitted to occupy the same Dwelling Unit as such occupant. A legal spouse under the age of fifty-five (55) whose occupancy of a Dwelling Unit is permitted pursuant to the foregoing provisions shall be allowed to continue such occupancy following the death of the occupant who is fifty-five (55) or older. Notwithstanding anything in this Section to the contrary, it is understood and agreed that

the foregoing restriction shall, in all cases, be enforced in accordance with all Federal, State and local laws, rules, regulations, statutes and/or ordinances.

- (b) Nothing contained in this Section 3 shall be deemed to prohibit the visitation by persons not otherwise permitted to occupy a Dwelling Unit who are the family members or the guests of the owner or occupant of a Dwelling Unit, provided that such visitation shall not be for more than thirty (30) cumulative days within any six (6) month period.
- (c) Until the Expiration Date, each Owner or occupant of a Dwelling Unit on the Restricted Lots, if requested to do so by the Association, shall furnish the Association with the names and ages of all occupants of the Dwelling Unit and such affidavits and other documents as the Association may request to verify the age of such occupants.
- (d) The Association may adopt, publish and enforce such policies and procedures and rules and regulations as are deemed necessary by the Association in order to demonstrate an intent to maintain the status of the Restricted Lots as Housing for Older Persons under the Fair Housing Acts until the Expiration Date. Such policies and procedures may provide for verification of the age of the occupants by reliable surveys and affidavits.
- (e) The requirements contained in this Section 3 are intended to comply with the exemption requirements under the Fair Housing Acts and any regulations issued thereunder. Notwithstanding anything contained herein to the contrary, all Owners acknowledge and agree that although it is the intent of the Declarant that the Property (including the Restricted Lots) is to be operated in compliance with the Fair Housing Acts, which exempt "Housing for Older Persons" from the prohibitions against discrimination because of familial status, no representation or warranty is made that the Property complies or will comply with the Fair Housing Acts, and if for any reason the Property is deemed not in compliance with the Fair Housing Acts and, therefore, not exempt from the prohibitions against discrimination because of familial status, neither the Declarant nor the Association nor their respective directors, officers, agents or employees shall have any liability in connection therewith. Notwithstanding any other provision of this Declaration to the contrary, the Declarant, so long as the Declarant owns any Lot, and thereafter the Association, may amend the provisions of this Section 3 and/or promulgate rules and regulations to the extent that it deems it necessary or appropriate, without the approval of the Owners, in order to comply with the exemption requirements under the Fair Housing Acts and any regulations promulgated thereunder.
- (f) All terms, conditions, and requirements of this Section 3 shall be enforceable until June 1, 2014, unless by a majority of the votes of the Members entitled to vote thereon at that time, it is decided to terminate such terms, conditions and requirements at an earlier date.

3. **Use of Lots and Common Area – Protective Covenants.** Article VIII of the Declaration is hereby amended by adding the following new Section 25:

Section 25. **Accessory Structures/Use of Common Areas and Private Streets.** No Owner shall install or permit to be installed on the Common Area or an such Owner's Lot, any permanent or temporary structures other than a Dwelling Unit, including but not limited to birdbaths, statuary or other decorative lawn ornaments, pet houses, ham radio antennas, clotheslines or other outdoor clothes drying apparatus, camping tents, above-ground pools, basketball hoops or other recreational or play structures. The Common Area is reserved for pedestrian use. Bicycles, scooters, roller blades, roller skates, or similar items may be used only on paved streets, and any use of these items on sidewalks, walking paths, unpaved areas or anywhere else on the Common Area is prohibited. The use of skateboards shall be prohibited in all Common Area. No motorized vehicles other than motor vehicles which may be lawfully operated on the public roadways of the State of North Carolina may be operated on the private streets on the Property. The private streets on the Property are for purposes of vehicular and pedestrian ingress and egress only, and shall not be used as public gathering or meeting space, for recreational activities (other than use by bicycles, unmotorized scooters, roller blades or roller skates, as set forth above), or for any other activities.

4. **No Further Amendment.** Except as expressly set forth herein, the Declaration remains unmodified and in full force and effect.

[signature on following page]

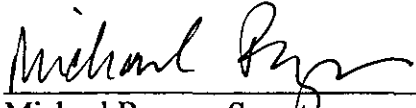
IN WITNESS WHEREOF, the Declarant has caused this Amendment to be signed in its name by its duly authorized member and its seal affixed hereto, the day and year first above written.

Heritage Spring, LLC,
A North Carolina limited liability company

By: CPFS Corp., a Virginia corporation, its
sole member

Attest:

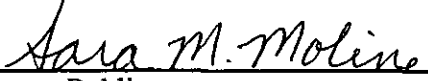
By: 
Michael T. Milhaupt,
Executive Vice President


Michael Bynum, Secretary

COMMONWEALTH OF MARYLAND
COUNTY OF MONTGOMERY

I, Sara M. Moline a Notary Public of the County and State aforesaid, certify that Michael T. Milhaupt personally appeared before me this day and acknowledged that he is the Executive Vice President of CPFS Corp., the sole member of Heritage Spring, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation and limited liability company, the foregoing instrument was signed for the purposes therein contained.

Witness my hand and official stamp or seal this 21 day of May, 2008.


Notary Public

My Commission Expires:
August 17, 2010

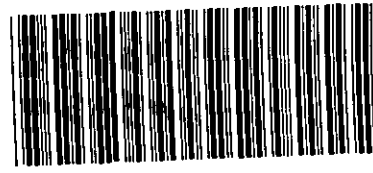
SARA M. MOLINE
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires August 17, 2010



**Exhibit A
Legal Description**

Being all of that portion of land shown as Proposed Tract 5 on an ALTA/ACSM Land Title survey entitled "Proposed Wildflower Subdivision, Proposed Tract 5, Wake Forest, North Carolina", prepared by the John R. Mcadams Co., Inc. dated 2/5/05 with the most recent revision date being 1/6/06 containing 7.69 acres more or less and being more particularly described as follows:

Beginning at an existing iron pipe being the southwestern corner of the now or formerly Hazel B. Eddins tract as shown in deed book 3740, page 183 of the Wake County Registry, said point being the POINT OF BEGINNING; thence along the aforementioned southern line South 68°28'12" East, a distance of 510.68 feet to an existing iron pipe being the southwestern corner of the proposed Tract 4; thence along the southern line of the aforementioned proposed tract 4 South 41°16'46" East, a distance of 215.73 feet to a calculated point; thence South 60°03'41" East, a distance of 33.39 feet to a calculated point being the northwestern corner of the proposed Heritage View Trail 60' right of way; thence South 30°31'50" West, a distance of 60.00 feet to a calculated point being the northwestern corner of the proposed tract 6; thence along the aforementioned western line South 30°31'50" West, a distance of 371.16 feet to a calculated point being on the northern line of the now or formerly Rogers Road Developers tract as shown in deed book 10924, page 643 of the Wake County Registry; thence along the aforementioned northern line along a curve to the left having a radius of 325.00 feet and a chord bearing North 86°31'26" West a distance of 68.90 feet to a calculated point; thence South 88°16'54" West, a distance of 22.55 feet to a calculated point; then South 88°16'54" West, a distance of 323.74 feet to a calculated point being on the eastern line of the now or formerly Lee Arnold Darch tract as shown in deed book 10371, page 2086 of the Wake County Registry; thence along the aforementioned eastern line North 01°43'08" West, a distance of 744.73 feet to an existing iron pipe being the POINT OF BEGINNING containing 7.69 acres, more or less and being all of that portion of land shown as Proposed Tract 5 on an ALTA/ACSM Land Title survey entitled "Proposed Wildflower Subdivision, Proposed Tract, 5, Wake Forest, North Carolina", prepared by the John R. Mcadams Co., Inc. dated 2/5/05 with the most recent revision date being 1/6/06.



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**Wake County Register of Deeds
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Register of Deeds**

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