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END PAGE 0123  
INSTRUMENT # 07173

*Estates*

NORTH CAROLINA  
HOKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS  
RESTRICTIONS FOR WESTGATE SECTION 1  
*RET: JEFF DUNHAM*

THIS DECLARATION, made this the 16 day of <sup>MARCH</sup>~~JANUARY~~, 2004, by SOMERSET INVESTMENTS, LLC, a North Carolina Limited Liability Company with its principal place of business in Cumberland County, North Carolina, hereinafter referred to as "Declarant".

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of certain property in McLaughlin Township, Hoke County, North Carolina, which is to be known as WESTGATE SECTION 1, as shown on the plat of same duly recorded in Plat Cabinet 2, Slide 2-98, Map 3, Hoke County Registry;

**NOW, THEREFORE**, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

Section 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

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ONNIE BRATCHER DUDLEY  
REGISTER OF DEEDS

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described. In the event that additional property is annexed into the subdivision by the methods hereinafter described, such additional annexed property shall thereafter also be included within the definition of "Properties".

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties. In the event that additional property is annexed into the subdivision by the methods hereinafter described, such additional annexed property and the Lots comprising same shall thereafter also be included within the definition of "Lot".

Section 4. "Declarant" shall mean and refer to Somerset Investments, LLC, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## ARTICLE II USE RESTRICTIONS

Section 1. Land Use. All Lots in the tract known and described as residential Lots may be developed as traditional, single-family residences only except that only one residence or dwelling shall be permitted on any one Lot.

Section 2. Building Type. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two stories in height and a private garage for not more than three (3) cars and other outbuildings incidental to residential use of the Lot. Such outbuildings erected, altered, placed or permitted shall be of the same quality, workmanship and material as the principal dwelling structure, and will be erected and placed according to Section 3 below.

Section 3. Set Back Requirements. There shall be no structure on any of the designated single-family Lots within 100 feet of the right of way on Adcox Road, unless approved by Declarant. Set back from side Lot lines shall be a total of at least 25 feet, with each side being a minimum of 10 feet. The rear set back line on all Lots shall be thirty (30) feet. For purposes of this covenant, eaves, steps and overhangs shall not be considered as a part of the building, provided however, that this shall not be construed to permit any portion of an improvement on a

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plans which are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons connected with future development plans of the Declarant of said land or contiguous lands. In passing upon such building plans and specifications and Lot-grading and landscaping plans, the Declarant may take into consideration the suitability and desirability of the proposed constructions and of the materials of which the same are proposed to be built to the building plot upon which it proposes to erect the same, the quality of the proposed workmanship and materials, the harmony of external design with the surrounding neighborhood and existing structures therein, and the effect and appearance of such constructions as viewed from neighboring properties. In the event the Declarant fails to approve or disapprove such building plans and specifications within thirty (30) days after the same have been submitted to it as required above, the approval of the Declarant shall be presumed and the provisions of this Section five (5) shall be deemed to have been complied with. However, no residence or other building, structure or improvement which violates any of the covenants and restrictions herein contained or which is not in harmony with the surrounding neighborhood and the existing structures therein shall be erected or allowed to remain on any part of a Lot plot on said land.

Section 6. Driveways. All driveways shall be constructed of asphalt or concrete.

Section 7. Temporary Structures. No trailer, tent, shack, garage, barn or similar type outbuilding shall be placed, erected or allowed to remain on said property without the written consent of Declarant, its successors or assigns. No structure of a temporary character shall be used as a residence temporarily, permanently, or otherwise.

Section 8. Restricted Activities. No commercial, noxious or offensive trade or activity shall be carried on upon any Lot, nor shall anything be done which may be or become an annoyance or nuisance to the neighborhood.

Section 9. Animals. No animals or poultry of any kind, except common pets, shall be placed or kept on any part of a Lot. No breed of dogs that may be perceived by members of general public as being dangerous or having a propensity for being dangerous, including, but not limited to, pit bulls, rottweilers, Dobermans, chows and German shepherds, nor any dog whose lineage includes in part any of said breeds, nor any dog that has at any time bitten a person, nor any dog that has been trained as an attack dog, shall be permitted on a Lot unless such dog is at

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all times confined within fencing as follows: a privacy fence (so that one cannot see through or beyond the fencing) not less than five feet (5') in height shall extend out to the side Lot lines from the rear of the structure, or any distance less than the total distance to the side Lot line, and parallel to the side Lot line on each side of the structure for a distance of fifty feet (50') and parallel to the rear of the structure. A chain link fence not less than five feet (5') in height may be built around the remaining perimeter of the Lot. On corner Lots, no such fencing may be placed any closer to the street than the back, rear corner of the principal dwelling structure on improved Lots or nearer to any street than the setback line on any vacant Lot or nearer to any street than thirty (30) feet. Provided further that any fencing erected also comply with Section 10 herein.

Any dog house or dog containment structure or system must be located to the rear of the main structure and must be located within thirty feet (30') of the rear of the main structure. No such permitted dog house or dog containment structure or system shall be placed, erected or maintained nearer to any street than the rear or side of the principal dwelling structure on improved Lots or nearer to any street than the setback line on any vacant Lot or nearer to any street than thirty (30) feet.

On corner Lots, no dog house or dog containment structure or system shall be placed any closer to the street than the back, rear corner of the principal dwelling structure on improved Lots or nearer to any street than the setback line on any vacant Lot or nearer to any street than thirty (30) feet.

Section 10. Motor Vehicles. No non-functioning or inoperable automobile, motor vehicle, mechanical device, machine, machinery, or junk car shall be placed or allowed to remain on a Lot. No commercial trucks, including but not limited to eighteen wheelers, shall be permitted to be parked on a Lot except in the course of delivery, pick up, or discharge of a specific commercial duty. No automobile or other motor vehicle shall be parked in the street or public right of way.

No camping trailer, motor home, or recreational vehicle (not including sports utility vehicles) shall be permitted on a Lot except in accordance with restrictions contained herein. No camping trailer, motor home, or recreational vehicle may be parked closer to the front street than

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either the front corner of the house on the Lot or the front corner of the adjacent house, whichever is further from the street, and must be parked on a permanent parking pad as large as the camping trailer, motor home, or recreational vehicle. The placement of the parking pad is subject to the control and approval of Declarant. Any permitted camping trailer, motor home, or recreational vehicle must be kept in well maintained condition and appearance, which condition and appearance are subject to the approval and control of the Declarant. On corner Lots, no camping trailer, motor home, or recreational vehicle shall be permitted any closer to any street than the principal dwelling structure. In no event shall any permitted camping trailer, motor home, or recreational vehicle be used as a residence temporarily, permanently, or otherwise.

Section 11. Fences. No fence or wall higher than six feet (6') shall be erected or maintained nearer to any street on the front elevation of said dwelling except erected on the back corners of principal dwelling structure. Any fence erected on the front elevation of the property must be a decorative fence, not over forty (40") inches in height, or ornamental fence. All side Lot line fences and rear Lot line fences can be privacy wood, vinyl or ornamental iron. Wood privacy fences shall not be painted without the approval of Declarant. Any variation or deviation may be considered only with the written consent of Declarant. On corner Lots, the fence on the side street side cannot be located any closer to the side street than twenty (20') feet from the street right-of-way.

Section 12. Exterior Alterations. No exterior alterations, additions, or changes, of any kind may be made to the structure or design of the residence and improvements on a Lot without the written consent of Declarant, its successors or assigns.

Section 13. Satellite Dishes and Radio Antennas or Towers. No satellite dish antennas, radio tower or antenna of any nature shall be placed or allowed to remain on a Lot except for a satellite dish measuring no more than 24 inches in diameter, attached to the rear of the dwelling, so long as said satellite dish is not visible from the road.

Section 14. Clothes Lines. Outside clothes lines may be located only on the back one-half (½) of a Lot.

Section 15. Signs. Except as otherwise permitted herein, no sign of any character shall be displayed or placed upon any Lot except "For Sale" signs, which signs may refer only to the particular Lot on which displayed, shall not exceed two (2) square feet in size, shall not extend more than four (4) feet above the surface of the ground, shall be fastened only to a stake in the ground and shall be limited to one (1) sign to a Lot. The Declarant may enter upon any building plot and summarily remove and destroy any signs which do not meet the provisions of this paragraph.

Section 16. Outdoor Furniture. No upholstered furniture, of any nature, shall be placed or allowed to remain outside as lawn furniture.

Section 17. Basketball Goals. No basketball goals of any nature, whether stationary or portable, of regulation size or otherwise, shall be allowed in the street or public right of way. Basketball goals shall be allowed in Owners' yards or driveways, provided the goal is properly maintained in good repair and condition.

Section 18. Yard Maintenance. Each Owner shall landscape and maintain his yard in a well manicured style, so as to enhance his own as well as his neighbors' homes and Lots. Grass should be kept at a reasonably short length, and trees, shrubs and bushes shall be properly pruned and all yards shall be kept free of weeds.

Section 19. Trash and Yard Debris. No trash of any kind, whether household or yard debris shall be placed or allowed to remain on said property, except in proper containers provided by the County of Hoke, placed where trash is normally picked up, and may only be placed there on the evening before the day trash is normally picked up. Each Owner shall promptly remove the trash container from the point of pickup, in no case later than the evening of the day the trash was removed.

Section 20. Mailboxes. No mailbox of any type or nature shall be permitted on the premises, other than the black mailbox with white post approved by Declarant and such as those initially provided by the Builders. In the event the mailbox is destroyed, damaged or falls into disrepair, the Owner shall replace the mailbox with one of identical make, type and color as approved from time to time by Declarant.

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Section 21. Above Ground and In-Ground Pools. Above ground swimming pools must be surrounded with a five foot (5') privacy fence. Privacy fence in this Section 20 shall refer to a fence erected with solid materials so that the pool area cannot be viewed through the fence. In-ground pools must be surrounded by a four foot (4') privacy, ornamental or chain link fence.

**ARTICLE III  
UTILITIES AND UTILITY AND DRAINAGE EASEMENTS**

Section 1. Utilities. Declarant reserves the right to subject the real property in this subdivision to a contract with Lumbee River EMC for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Lumbee River EMC by the Owner of each building.

This property is subject to an ongoing monthly fee for the installation and/or maintenance of underground utilities and street Lighting by Lumbee River EMC.

Section 2. Utility and Drainage Easements. Easements for installation and maintenance for utilities and drainage facilities are reserved as shown on the recorded plat, and in addition thereto, an additional ten (10) foot easement for all such purposes is reserved along all interior Lot lines, such ten (10) foot easement being five (5) feet on each side of each interior Lot line of each of the aforesaid Lots, and in addition thereto, an additional five (5) foot easement for all such purposes is reserved along the rear property line on all Lots along the perimeter of the subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage, or which may obstruct or retard the flow of water. A five (5) foot easement is reserved along the rear property line on all Lots along the perimeter of the subdivision in which the Declarant or the Association may erect and maintain a perimeter fence. All areas indicated as streets and easements on the recorded plat are hereby dedicated to public use for such uses forever except side yard easements which are for the use and benefit of those persons and Lots as described herein.

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Section 3. Sign and Landscape Easement. Sign and landscape easements are reserved as shown on the recorded plat.

**ARTICLE IV  
GENERAL PROVISIONS**

Section 1. Amendment. It is understood and agreed, and the present Owners and all subsequent Grantees of present Owners expressly agree by the acceptance of land within the above described subdivision area that the covenants and restrictions of the Declaration shall run with and bind the land for a term of twenty (20) years from the date the Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Notwithstanding anything contained herein, these restrictive covenants may be amended at any time by Declarant, its successors or assigns, so long as Declarant, its successors or assigns, owns any one Lot contained in WESTGATE SECTION 1, recorded in Plat Cabinet \_\_, Slide \_\_, Map \_\_, Hoke County Registry, or subsequent Sections of WESTGATE SECTION 1.

Section 2. Enforcement. If the parties hereto, or any of them or their heirs or assigns shall violate or attempt to violate any of the covenants herein it shall be lawful for the Declarant to enforce these restrictions as agents of the homeowners, or persons owning real property situated in said development for subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate said covenants and either to prevent him or them from so doing or to recover damages or other dues or for such violation.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

**ARTICLE V  
CONFLICTING PROVISIONS**

To the extent the provisions of this Declaration conflict with any applicable provisions of the Hoke County Code or North Carolina General Statute, the conflicting provisions of the North Carolina General Statute or the Hoke County Code shall control in that order.

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**ARTICLE VI  
COMPLIANCE WITH WETLANDS REGULATIONS**

Section 1. A portion of this subdivision has been determined to meet the requirements for designation as a regulatory wetland. A 401 Water Quality Certification was issued for this subdivision with the condition that the regulatory wetland not be filled. No subdivision filling or alteration of the wetland portion of this subdivision shall be accomplished unless said filling or alteration conforms to the requirements of state wetland rules adopted by the State of North Carolina in force at the time of the proposed alteration. All Lots abutting or including within its Lot dimensions a portion of any now existing ditch or any ditch as relocated shall be responsible for the maintenance of said open ditch and charged with the obligation to retain and protect the free-flowing character of the water contained therein subject to the provisions of Article III, Sec. 2, et seq.

Section 2. The areas shown on the recorded plat as wetland areas shall be maintained in perpetuity in their natural condition. No person or entity shall fill, grade, excavate, or perform any other land disturbing activities; nor cut, remove, or harm any vegetation, nor construct any structures, on such wetland areas.

Section 3. The property owner shall report the name of the subdivision, WESTGATE SECTION 1, in any application pertaining to said wetland rules.

Section 4. This covenant is intended to ensure continued compliance with the mitigation condition of authorizations issued by the State of North Carolina, Division of Water Quality, and the United States of America, U.S. Army Corps of Engineers, Wilmington District, and therefore may be enforced by the State of North Carolina and by the United States of America.

Section 5. This covenant is to run with the land and shall be binding on the Owner and all parties claiming under it.

Section 6. Article VI, Compliance with Wetlands Regulations cannot be amended without the express written consent of the U.S. Corps of Engineers, Wilmington District.

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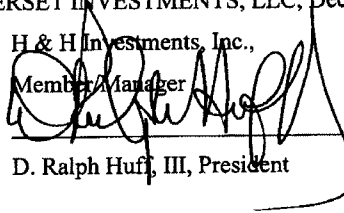
**ARTICLE VII  
HOMEOWNERS ASSOCIATION**

Each Lot owner is a member of Westgate of Hoke Homeowners Association and subject to the restrictions and covenants set out in the Declaration of Covenants, Conditions and Restrictions recorded in Book \_\_\_, Page \_\_\_ of the Hoke County Registry.

TO THE TRUE AND FAITHFUL PERFORMANCE OF THESE COVENANTS AND AGREEMENTS, SOMERSET INVESTMENTS, LLC, has caused this instrument to be signed in its name by its Member/Manager, this the 16 day of <sup>MARCH</sup>~~January~~, 2004.

SOMERSET INVESTMENTS, LLC, Declarant

By: H & H Investments, Inc.,  
Member/Manager

By:   
D. Ralph Huff, III, President

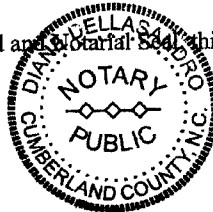
NORTH CAROLINA  
CUMBERLAND COUNTY

I, DIANE DELLASANDRO, a Notary Public of Cumberland County, North Carolina certify that D. Ralph Huff, III, personally came before me this day and acknowledged that he is President of H & H Investments, Inc., a North Carolina corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation, as Member/Manager of Somerset Investment, LLC a North Carolina limited liability company.

WITNESS my hand and Notarial Seal this the 16 day of MARCH, 2004

My Commission Expires:

July 19, 2008



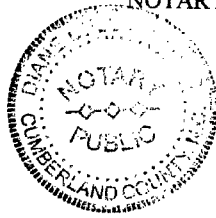
  
NOTARY PUBLIC

NORTH CAROLINA  
CUMBERLAND COUNTY

I, Diane Dellasandro, a Notary Public of Cumberland County, North Carolina certify that Watson G. Caviness, personally came before me this day and acknowledged that he is President of Caviness and Cates Development, Inc., a North Carolina corporation, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation

WITNESS my hand and Notarial Seal, this the 16<sup>th</sup> day of March, 2004.

My Commission Expires:  
July 19, 2008



Diane Dellasandro  
NOTARY PUBLIC

NORTH CAROLINA - HOKE COUNTY  
The foregoing certificate(s) of  
DIANE DELLASANDRO

Notary Public is (are) certified to be correct.  
Duly registered this date and hour shown  
on the first page hereof.

ONNIE DUDLEY  
Register of Deeds

By Samuel Hunt  
Assistant Deputy