

FOR REGISTRATION REGISTER OF DEEDS  
KIMBERLY S. HARGROVE  
HARNETT COUNTY, NC  
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INSTRUMENT # 2005009744

Prepared by and return to: Thorp, Clarke, Neville & Radford, P.A.  
P.O. Box 670, Fayetteville, NC 28302-0670

NORTH CAROLINA

DECLARATION OF RESTRICTIONS  
OVERHILLS CREEK, SECTION FIVE,  
PARTS ONE AND TWO

HARNETT COUNTY

WHEREAS, North South Properties, L.L.C., hereinafter referred to as  
“Declarant” is the owner of certain property in Harnett County, North Carolina, which is  
more particularly described as follows:

SEE EXHIBIT “A” ATTACHED HERewith.

All of that area shown on that certain map of Overhills Creek, Section Five, Parts  
One and Two, which is recorded in Map Box 2005, Page 447, in the Office of the  
Register of Deeds of Harnett County, North Carolina.

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. “Association” shall mean and refer to Overhills Creek Homeowner’s  
Association, Inc., its successors and assigns.

Section 2. “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.

Section 3. “Properties” shall mean and refer to that certain real property  
hereinbefore described, and such additions thereto as may hereafter be brought within the  
jurisdiction of the Association.

Section 4. "Common Area" shall mean all property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All of that area shown as "Common Area" on that certain map of Overhills Creek, Phase Five, Parts One and Two, which is recorded in Map Book 2005, Page 447, in the Office of the Register of Deeds of Harnett County, North Carolina.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to North South Properties, L.L.C., 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 PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot and shall be preserved to the perpetual benefit of the owners Association, subject to the following provisions:

(a) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded;

(c) the right of individual Owners to the exclusive use of the common parking lot as shown on that certain map of Overhills Creek, Section Five, Parts One and Two, which is recorded in Map Book 2005, Page 447, in the Office of the Register of Deeds of Harnett County, North Carolina, as provided in this Article;

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. Parking Rights. Ownership of each Lot shall include two parking spaces together with easements over the Common Areas for access, ingress and egress from and to public streets and walkways and easements for enjoyment of the Common Areas.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners of attached units with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The Vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B members shall be the Declarant and shall be entitled to twenty (20) votes for each Lot owned. The Class B Membership shall cease and be converted to a Class A membership respectively upon the happening of either of the following events, whichever occurs earlier:

- (a) when the Declarant no longer owns a Lot; or
- (b) On January 1, 2040.

### ARTICLE IV COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessments or charges, and
- (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvements and maintenance of the Common Area, including, but not limited to maintenance of the fences, private drives, exterior lighting, brick walkways, irrigation systems, gutters, awnings, individual landscape maintenance and exterior painting and roofing.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual maximum assessment for Owners of each Lot shall be \$~~125.00~~ per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual maximum assessment may be increased each year not more than five (5%) percent above the assessments of the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual maximum assessment may be increased above five (5%) percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the costs of any construction, reconstruction, repair or replacement of public and private capital improvement upon the Common Area or as required in accordance with the purpose of the assessments as set forth in Section 2 above, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of both classes of members who are voting in person or by proxy at the meeting duly called for this purpose. For purposes of this Section and any other Section contained in this Declaration with respect to voting procedure or voting

rights, Class A and Class B members shall be considered as one class and shall vote in a common pool for purposes of computation of votes, number and/or quorum as may be required.

Section 5. Taxes. As an additional annual assessment, the Association shall levy against the Owners equally an amount sufficient to pay the annual cost of liability insurance premiums for such insurance on the Common Area and the amount of ad valorem property taxes and/or special assessments levied by any lawful governmental authority on the Common Area. It shall be the duty of the Association to pay all such premiums and taxes promptly when they shall become due. Upon default by the Owners Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Areas or assessments for public improvements to the Common Areas, which default shall continue for a period of six (6) months, each Owner of a building site in the development shall become personally obligated to pay to the tax assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due by the total number of building sites in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the building site of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law against the Owner personally obligated to pay the same or may elect to foreclose the lien against the property of the Owner.

Section 6. Notice and Quorum for any Action Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the cumulative votes of Class A and Class B membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum and the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and collected on an annual basis.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The written assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment

shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against such Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. At the time prescribed for payment of annual dues, members shall be required to submit proof of insurance coverage in amount and form acceptable to the Board of Directors.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six (6%) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 10. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V  
USE RESTRICTIONS

1. Residential Purposes Only: All lots in said subdivision shall be residential lots, and no structures shall be erected, altered, placed or permitted to remain on any of said lots except a structure for one family occupancy.
2. Minimum Value of Improvements: No dwelling shall be permitted on any lot at a cost less than ninety thousand dollars (\$90,000.00) based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenants to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better that which can be produced on the date these covenants are recorded at a minimum cost stated

herein for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, for one-story structures shall be not less than 1,300 square feet. The ground floor area of the main structure, exclusive of one-story open porches and garages, for a two-story dwelling shall not be less than 750 square feet for the first floor of said dwelling unit. No pre-manufactured homes shall be located on any lot.

3. Fences: Fences shall be on the line from the rear corner of the home going to rear of the lot. The type of fencing shall require approval by the developer.
4. Permitted Use: No provision or provisions of these restrictions shall prevent or prohibit any lot or lots in said plat from being used for municipal or public park or playground purposes.
5. Nuisances: No noxious or offensive activity shall be carried out on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No two-way radio towers are to be installed, maintained, or used on any lot.
6. Temporary Structures: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any lot at any time as a residence either temporarily or permanently.
7. Building-location: No building shall be located on any Lot nearer than 25 feet to the front lot line, or nearer than 15 feet to any side street line. No building shall be located nearer than 10 feet to an interior lot line. No setback shall be required for a garage or other permitted accessory building located 50 feet or more to the rear of the minimum set back line. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. One lot and a portion or all of another lot may be used for the construction of one house and the side line setback will apply to the boundary lines of the entire tract so used.
8. Livestock and Poultry: No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats and other household pets may be kept, provided that they are not kept, bred, or maintained for any commercial purposes. Dogs must be kept on a leash or fenced in area of the owner's lot.
9. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary container.

10. Storage: No lot shall be used for storage or parking of disabled motor vehicles. All motor vehicles kept in the subdivision must be licensed annually.
11. Terms: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which they shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded agreeing to change said covenants in whole or in part.
12. Street Lights: The owner reserves the right to subject the property to a contract with South River EMC for the installation underground electric service and street lights either of which may require an initial and a continuing monthly obligation to South River EMC by the owner of any lot in the subdivision.
13. Enforcement: Enforcement shall be by proceeding at law or in equity, against any person violating or attempting to violate any covenant, either to restrain violation or to recover damages, or both.
14. Recreation Equipment and Fixtures: No recreation equipment or fixtures may be located closer to the street right-of-way than the front face of the residence.
15. Severability: Invalidation of any one of these covenants by judgment or Court Order shall remain in full force and effect.
16. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Notwithstanding any of the herein stated, the Declarant shall have the unfettered right to amend this Declaration so long as the Class B membership exists.

## ARTICLE VI EASEMENTS

Section 1. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. 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.



ARTICLE VII  
AMENDMENT

The provisions of this Declaration may be amended upon the vote of seventy-five (75%) percent of the Owners qualified and voting in accordance with the Bylaws and subject to Article III. Notwithstanding any of the herein stated, the Declarant shall have the unfettered right to amend this Declaration so long as the Class B membership exists.

IN WITNESS WHEREOF, the Declarant herein, has caused this Declaration to be executed this the 1st day of June, 2005.

NORTH SOUTH PROPERTIES, L.L.C.

By: William S. Wellons, Jr.  
Member/Manager

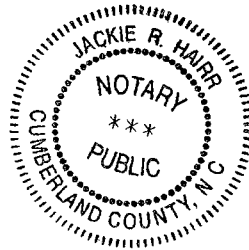
NORTH CAROLINA  
CUMBERLAND COUNTY

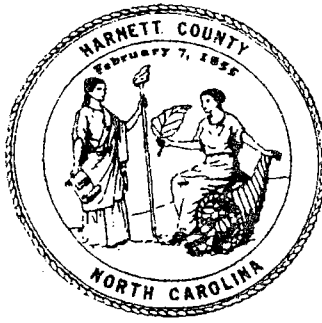
I, a Notary Public of the County and State aforesaid, certify that William S. Wellons, Jr., personally came before me this day and acknowledged that he is member/manager of North South Properties, L.L.C., a North Carolina Limited Liability Company, and that he being authorized to do so, executed the foregoing instrument on behalf of the L.L.C.

Witness my hand and official stamp or seal, this 1st day of June, 2005.

My Commission Expires: May 25, 2007

Jackie R. Hair  
Jackie R. Hair, Notary Public





KIMBERLY S. HARGROVE  
REGISTER OF DEEDS, HARNETT  
305 W CORNELIUS HARNETT BLVD  
SUITE 200  
LILLINGTON, NC 27546

**PLEASE RETAIN YELLOW TRAILER PAGE**

It is part of recorded document, and must be submitted with original for re-recording and/or cancellation.

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Filed For Registration: 06/03/2005 08:59:46 AM  
Book: RE 2088 Page: 213-222  
Document No.: 2005009744  
COVENANTS 10 PGS \$38.00

Recorder: SHARON K FURR

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State of North Carolina, County of Harnett

The foregoing certificate of JACKIE R. HAIRR Notary is certified to be correct. This 3 RD of June 2005

KIMBERLY S. HARGROVE , REGISTER OF DEEDS

By: Sharon K. Furr  
Deputy/Assistant Register of Deeds

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