

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2004 DEC 29 10:12 AM
BK: 18176 PG: 572-587 FEE: \$56.00

INSTRUMENT # 2004267216



2004267216

Return to:
C. Todd Burbank, Esq.
HELMS MULLISS & WICKER, PLLC
201 North Tryon Street
Charlotte, NC 28202

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

DECLARATION OF RESTRICTIONS/NO-
BUILD EASEMENT
(Building Envelope)

THIS DECLARATION OF RESTRICTIONS/NO-BUILD EASEMENT (the "Declaration"), is made and entered into this 28th day of December, 2004, by ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company ("Arbors") and CHARLES M. BLANKENSHIP, PAULINE BLANKENSHIP, WILLIAM S. McLEAN, and GAIL S. McLEAN, as tenants-in-common, each a North Carolina resident (collectively, the "Declarant");

RECITALS:

WHEREAS, Declarant is the owner of fee simple title to certain real property located on Mallard Creek Church Road in Charlotte, North Carolina, being all of Mecklenburg County Tax Parcel No. 029-011-29 said property being more particularly described in that certain deed recorded in Book 15537, Page 374, Mecklenburg County Registry (the "Property");

WHEREAS, the Declarant wishes to create certain restrictions and impose a negative easement over and across that portion of the Property more particularly described and/or depicted on Exhibit B attached hereto and incorporated herein by reference (the "Restricted Building Area") in order to serve as a buffer area between the anticipated improvements to be

located on certain adjacent property described on Exhibit A attached (the “**Adjacent Property**”) and any current or future improvements to be located on the Property in which no buildings will be constructed; and

WHEREAS, the restrictions and easements created hereby are intended to be for the use and benefit of the owner of the Adjacent Property (together with the Declarant and their respective successors and assigns, the “**Owners**”).

NOW, THEREFORE, the Declarant hereby declares that the Property is now and shall be held, occupied, sold, conveyed or otherwise transferred and used subject to the following covenants, easements and restrictions:

1. Declarant hereby grants to the owner of the Adjacent Property a negative easement over and across the Restricted Building Area and agrees that it will not construct any structure within the Restricted Building Area that encloses a space with a roof and walls, it being understood and agreed that nothing herein contained shall prohibit the Declarant from constructing and maintaining walks, drives, landscaping, parking or other non-building improvements, including utilities, within the Restricted Building Area so long as such improvements are in compliance with all applicable governmental or other regulatory agencies, codes, restrictions, guidelines, and/or regulations.

2. All of the restrictions and easements contained in this Declaration shall be appurtenant to and shall run with the Property and the Adjacent Property and shall be binding upon and inure to the benefit of all Owners of the Property or the Adjacent Property, as applicable, their heirs, successors and assigns, and shall continue in full force and effect, forever. The restrictions and easements created hereby, however, can be terminated or amended by the then current owners of the Property and the Adjacent Property by subsequent instrument.

3. Upon violation of the restrictions and easements contained in this Declaration, the Owner of the Adjacent Property may exercise any or all of the rights and remedies available to it under applicable law, including without limitation a suit for damages and/or a suit for specific performance and/or injunctive relief.

4. Arbors joins this Declaration for the purpose of subordinating its interest as Tenant under that certain Lease Agreement, dated June 18, 2003, a memorandum of which was recorded in Book 15537, Page 387, Mecklenburg County Registry.

5. Pauline Blankenship joins this Declaration for purposes of subordinating any marital rights she may have in the Property to the terms of this Declaration.

6. This Declaration shall be construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the undersigned has caused these presents to be duly executed under seal by authority duly given the day and year first above written.

DECLARANT:

Charles M. Blankenship
Charles M. Blankenship, Tenant-in-Common

Pauline Blankenship
Pauline Blankenship, Spouse of Charles M. Blankenship

William S. McLean, Tenant-in-Common, and Spouse of Gail S. McLean


Gail S. McLean, Tenant-in-Common, and Spouse of William S. McLean

IN WITNESS WHEREOF, the undersigned has caused these presents to be duly executed under seal by authority duly given the day and year first above written.


DECLARANT:

Charles M. Blankenship, Tenant-in-Common

Pauline Blankenship, Spouse of Charles M. Blankenship



William S. McLean, Tenant-in-Common, and Spouse of Gail S. McLean

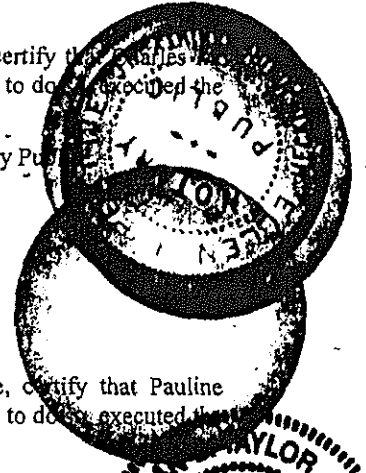


Gail S. McLean, Tenant-in-Common, and Spouse of William S. McLean

NORTH CAROLINA, Mecklenburg County

I, Ellen H. Peelle, a Notary Public of aforesaid County and State, certify that Charles Blankenship personally came before me this day and acknowledged that he, being authorized to do so, executed the foregoing instrument.

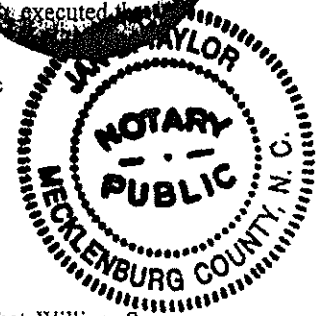
My commission expires: 5/12/2009 E. H. Peelle Notary Public



NORTH CAROLINA, Mecklenburg County

I, Jan B Taylor, a Notary Public of aforesaid County and State, certify that Pauline Blankenship personally came before me this day and acknowledged that she, being authorized to do so, executed the foregoing instrument.

My commission expires: 5-11-05 Jan B Taylor Notary Public



NORTH CAROLINA, _____ County

I, _____, a Notary Public of aforesaid County and State, certify that William S. McLean personally came before me this day and acknowledged that he, being authorized to do so, executed the foregoing instrument.

My commission expires: _____ Notary Public

NORTH CAROLINA, _____ County

I, _____, a Notary Public of aforesaid County and State, certify that Gail S. McLean personally came before me this day and acknowledged that she, being authorized to do so, executed the foregoing instrument.

My commission expires: _____ Notary Public

NORTH CAROLINA, _____ County

I, _____, a Notary Public of aforesaid County and State, certify that Charles M. Blankenship personally came before me this day and acknowledged that he, being authorized to do so, executed the foregoing instrument.

My commission expires: _____ Notary Public

NORTH CAROLINA, _____ County

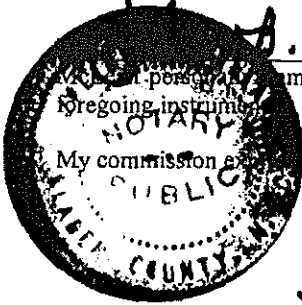
I, _____, a Notary Public of aforesaid County and State, certify that Pauline Blankenship personally came before me this day and acknowledged that she, being authorized to do so, executed the foregoing instrument.

My commission expires: _____ Notary Public

NORTH CAROLINA, Robeson County

I, Joline B. Kealor, a Notary Public of Bladen County and State, certify that William S. _____ personally came before me this day and acknowledged that he, being authorized to do so, executed the foregoing instrument.

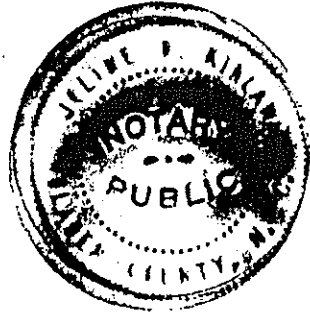
My commission expires: Oct. 14, 2009 Joline B. Kealor Notary Public



NORTH CAROLINA, Robeson County

I, Joline B. Kealor, a Notary Public of Bladen County and State, certify that Gail S. McLean personally came before me this day and acknowledged that she, being authorized to do so, executed the foregoing instrument.

My commission expires: Oct. 14, 2009 Joline B. Kealor Notary Public



ARBORS AT MALLARD CREEK, LLC,
a North Carolina limited liability company

By: Arbors Land Partners, LLC, Manager

By: First Colony Corporation, Manager

By: *Cynthia B. Macroy*
Name: *Cynthia B. Macroy*
Title: *President/CEO*

By: Mallard Land Partners, LLC

By: _____
Name: _____
Title: _____

ARBORS AT MALLARD CREEK, LLC,
a North Carolina limited liability company

By: Arbors Land Partners, LLC, Manager

By: First Colony Corporation, Manager

By: _____
Name: _____
Title: _____

By: Mallard Land Partners, LLC

By: Jack Levinson
Name: Jack Levinson
Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

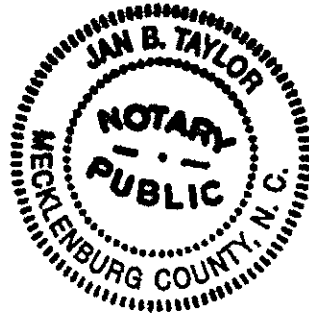
I, Jan B Taylor, a Notary Public of aforesaid County and State, certify that Cynthia B McCrory personally came before me this day and acknowledged that (s)he is Land President of First Colony Corporation, Manager of ARBORS LAND PARTNERS, LLC ("Arbors"), Manager of Arbors at Mallard Creek, LLC, a North Carolina limited liability company, and that (s)he, as Land President, being authorized to do so, executed the foregoing on behalf of the corporation, as Manager of Arbors, as Manager of the limited liability company.

Witness my hand and official seal, this the 22 day of December, 2004.

Jan B Taylor
NOTARY PUBLIC

My Commission Expires:

5-11-05
[NOTARIAL SEAL]



STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____, a Notary Public of aforesaid County and State, certify that _____ personally came before me this day and acknowledged that (s)he is Manager of MALLARD LAND PARTNERS, LLC ("MLP"), Manager of Arbors at Mallard Creek, LLC, a North Carolina limited liability company, and that (s)he, as Manager, being authorized to do so, executed the foregoing on behalf of MLP, as Manager of the limited liability company.

Witness my hand and official seal, this the ____ day of December, 2004.

NOTARY PUBLIC

My Commission Expires:

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, _____, a Notary Public of aforesaid County and State, certify that _____ personally came before me this day and acknowledged that (s)he is _____ of First Colony Corporation, Manager of ARBORS LAND PARTNERS, LLC ("Arbors"), Manager of Arbors at Mallard Creek, LLC, a North Carolina limited liability company, and that (s)he, as _____, being authorized to do so, executed the foregoing on behalf of the corporation, as Manager of Arbors, as Manager of the limited liability company.

Witness my hand and official seal, this the ____ day of December, 2004.

NOTARY PUBLIC

My Commission Expires:

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

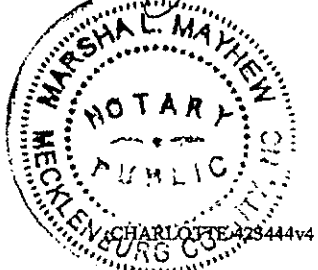
I, MARSHA L. MAYHEW, a Notary Public of aforesaid County and State, certify that JACK LEVINSON personally came before me this day and acknowledged that (s)he is Manager of MALLARD LAND PARTNERS, LLC ("MLP"), Manager of Arbors at Mallard Creek, LLC, a North Carolina limited liability company, and that (s)he, as Manager, being authorized to do so, executed the foregoing on behalf of MLP, as Manager of the limited liability company.

Witness my hand and official seal, this the 22nd day of December, 2004.

Marsha L. Mayhew
NOTARY PUBLIC

My Commission Expires:

28 January 2008
[NOTARIAL SEAL]

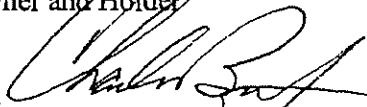


CONSENT AND SUBORDINATION


REGIONS BANK, an Alabama corporation ("Lender"), owner and holder of a note secured by (i) that certain Deed of Trust from Arbors at Mallard Creek, LLC, a North Carolina limited liability company ("Arbors"), to Bryan F. Kennedy, III, Trustee ("Trustee") for the benefit of Lender dated June 10, 2004 and recorded in Book 17398 at Page 550 in the Mecklenburg County Public Registry, and (ii) that certain Deed of Trust from Arbors to Trustee for the benefit of Lender dated November 30, 2004, and recorded in Book 18072, Page 404 (collectively, the "Deeds of Trust"), and Trustee hereby consent to the execution, delivery and recording of the foregoing Declaration of Restrictions (the "Declaration") and agree that any subsequent foreclosure of the Deeds of Trust shall not extinguish the Declaration and that the Deed of Trust, the liens created and/or perfected thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deeds of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof

IN WITNESS WHEREOF, the undersigned have duly executed these presents under seal as of this the 28th day of December, 2004.

REGIONS BANK, an Alabama corporation
Owner and Holder

By: 

SENIOR VICE President



Bryan F. Kennedy, III, Trustee

STATE OF North Carolina

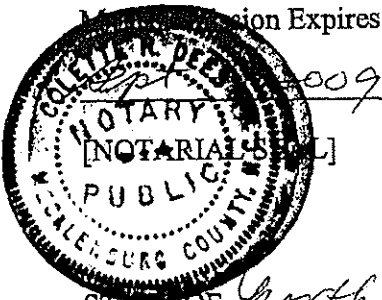
COUNTY OF Mecklenburg

I, Colette R. Dees, a Notary Public of aforesaid County and State, certify that Charles W. Bartz personally came before me this day and acknowledged that (s)he is Sr. Vice President of REGIONS BANK, an Alabama corporation, and that (s)he, as Sr. Vice President, being authorized to do so, executed the foregoing on behalf of REGIONS BANK, an Alabama corporation.

Witness my hand and official seal, this the 25th day of December, 2004.

Colette R. Dees
NOTARY PUBLIC

My Commission Expires:



9-21-09

STATE OF North Carolina

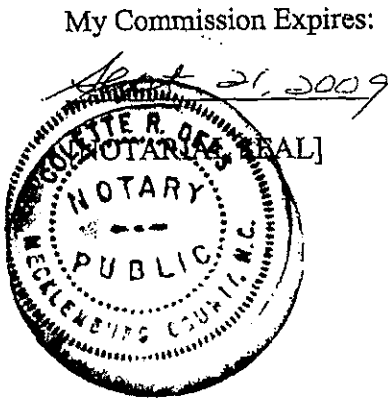
COUNTY OF Mecklenburg

I, Colette R. Dees, a notary public hereby certify that Bryan F. Kennedy, III, Trustee, personally came before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and notarial stamp or seal, this 25th day of Dec., 2004.

Colette R. Dees
NOTARY PUBLIC

My Commission Expires:



9-21-09

EXHIBIT A

Being all that tract or parcel of land located in Mecklenburg County, North Carolina and more particularly described as follows:

BEING all of Lot 7, containing 1.158 acres, as shown on "Final Plat of Lot 7 – Arbors at Mallard Creek, Phase 1" recorded in Map Book 42 at Page 697 in the Mecklenburg County Public Registry.

EXHIBIT B

The "Restricted Building Area" shall mean the area within (i) seventy two and ½ (75.5) feet from the western boundary line of the Adjacent Property and (ii) ninety four and ½ (94.5) feet from the northerly boundary line of West Mallard Creek Church Road, such area being depicted and cross-hatched on the attached Exhibit B-1 and labeled thereon as "Restricted Building Area".

"THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS"

"N-POND"

EXHIBIT B-1

50' R/W
ARBOR VISTA DRIVE

"RESTRICTED BUILDING AREA"

BREAKLINE

618

BUILDING ENVELOPE

MALLARD CREEK CHURCH ROAD
S.R. #2472

03033/PH1-CD/03033 PH1CDBASE.DWG



DPR ASSOCIATES, INC.
Landscape Architects
Planners & Engineers
420 Hawthorne Lane
Charlotte, NC 28204
704/332-1204

SITE PLAN EXHIBIT
FIRST CHARTER SITE
FOR
THE ARBORS
CHARLOTTE, NORTH CAROLINA

Scale: 1"=100'
Date: 12/17/04
Job #:03033.49

Dwg. No:

LA-2



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

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

Filed For Registration: 12/29/2004 10:12 AM
Book: RE 18176 Page: 572-587
Document No.: 2004267216
RESTR 16 PGS \$56.00

Recorder: LINDA CASTLEBERRY

State of North Carolina, County of Mecklenburg

The foregoing certificate of ELLEN H PEATTIE , JAN B TAYLOR , JOLINE B KINLAW , MARSHA L MAYHEW , COLETTE R DEES Notaries are certified to be correct. This 29TH of December 2004

JUDITH A. GIBSON, REGISTER OF DEEDS By: Linda J. Castleberry
Deputy/Assistant Register of Deeds



2004267216