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Otto W. DeBruhl, Register of Deeds

NORTH CAROLINA
BUNCOMBE COUNTY

**DECLARATION OF RESTRICTIONS AND
PROTECTIVE COVENANTS**

Prepared by and return to Jay A. Kania (box)

THIS DECLARATION, made on the date hereinafter set forth by Walter Tamagni;

WITNESSETH:

WHEREAS, Walter Tamagni is the owner of certain real property in Buncombe County, as described hereinbelow;

WHEREAS, Walter Tamagni desires for the benefit of said property and for the benefit of future purchasers and owners of lots within the subdivision, that said property and subdivision shall be developed, used, and restricted as hereinafter set forth.

NOW THEREFORE, Walter Tamagni hereby declares that said property and subdivision 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 said property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

DEFINITIONS

1. "Property" or "Subdivision" shall refer to that certain real property as described on a plat entitled "Rosy Hills", said plat recorded in Plat Book 86, Page 111, Buncombe County Registry. These terms shall include numbered and unnumbered lots as shown on said plat.
2. "Developer" shall mean Walter Tamagni or his assigns.
3. "Lot" shall mean and refer to any plot or parcel of land which is a portion of Property, with distinct boundary lines identified and platted by Developer or any subsequent Owner.
4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any fee interest in any Lot, but excluding those entities having any such interest merely as security for the performance of an obligation.

ARTICLE II
OTHER RESERVATIONS, EASEMENTS & RESTRICTIONS

1. The Property shall be used only as residential property. Certain professional services may be conducted within an owner's primary residence when compatible with residential purposes subject to approval by the Homeowners' Association as hereinafter provided. Household pets and animals maintained for personal pleasure may be kept on property. The only farm animals permitted shall be horses and sheep. No commercial operations, such as kennels, boarding and grooming houses, or commercial farming operations, may be maintained within the property.
2. No lot shall be used or maintained as a dumping ground for trash, rubbish, or garbage, and all waste shall be kept in sanitary containers and shall be removed from each lot at least weekly. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
3. No fences with a height of more than five feet shall be permitted on any lot. No fences, walls, hedges, or shrubbery shall be planted on any corner lot which would prevent motorists from having a clear, unobstructed view of oncoming traffic.

4. No building, entry signs, mail boxes, fences, house numbers, or driveway shall be erected, placed, or altered on any lot until the plans and location of same have been approved in writing by the Developer. All such plans submitted for approval must show the location of all buildings or driveways to be placed, erected, or altered on said lot. Upon Developer's sale of five (5) lots, the Homeowners' Association shall assume the rights and obligations of Developer pursuant to this provision. In no event shall Developer be required to obtain approval by the Homeowners' Association of any plans and specifications for improvements on any lot owned by Developer. The area of the main structure, exclusive of one-story open porches and garages shall not be less than 2000 square feet of heated, finished living space, inclusive of all stories. The main floor level of any structure shall contain a minimum of 1500 square feet of heated, finished living space, exclusive of open porches and garages. Additional structures of any size are allowed as long as materials and architectural design are similar to the main house and are never sold separately from main house unless said structures and acreage meet minimum square footage/acreage requirements.

No clear cutting shall be allowed on any lot unless approved by Developer. To the extent possible, the native appearance of each lot shall be maintained in order to preserve the rustic beauty and nature of the subdivision.

No towers for the purpose of reception and transmission of signals shall be permitted on any lot, with the exception of satellite television dishes having a diameter of not more than thirty (30) inches.

5. Utility and drainage easements affecting all lots are reserved five feet in width along all interior lot lines and over the rear ten feet of each lot for the installation and maintenance of utilities and drainage facilities, except that such easements shall not be applicable along interior lot lines where adjoining lots are owned by the same owner. Utility and drainage easements are also reserved within the bounds of the roadways as shown on the aforementioned plat. All utilities on the lots within the subdivision shall be underground from the Street, and no utility poles shall be permitted upon the subject property with the exception of those installed by Developer along the Street right of ways.

6. No junk or abandoned automobiles, boats, travel trailers, or other items of personal property of comparable size shall be placed and/or maintained upon the above described property unless licensed and registered. For the purpose of this restriction, any item of personal property requiring licensing and/or registration by proper authorities for its intended use shall be deemed to be abandoned upon lapse of such license and/or registration by more than thirty (30) days.

7. No trailer, basement, tent, shack, garage, or other outbuildings erected on these tracts shall be used as a residence temporarily or permanently, nor shall any structure of temporary character be used as a residence, nor shall any residence be moved onto a building lot in the subdivision. This restrictive covenant shall not prohibit the construction of modular homes built by licensed general contractors and inspected for compliance with the North Carolina Building Code, subject also to Developer's approval as set forth herein.

8. No sign of any kind shall be displayed to the public view on any lot, except subdivision and street signs and one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by Developer to advertise the property during the construction and sales period. Nothing in this paragraph shall be construed to prevent Developer from erecting display sign(s) designed to designate areas within a subdivision, including street signs.

9. Each property owner shall be responsible for maintaining their respective properties in conformity with the rules and regulations as promulgated by the Homeowners Association.

10. It is the intention of the Developer to convey certain lots having total acreage equal to or exceeding ten (10) acres. The 10 acre lots shall not be further subdivided into any lots smaller than three acres. Developer can divide the unnumbered lots as shown on the recorded plat into three separate lots.

11. The rights-of-ways appurtenant to the property for ingress, egress, and regress shall not be built to specifications which would allow their inclusion within the state-maintained road system. The repair and maintenance obligation of the road is the obligation of property owners. Each property owner shall be assessed a fee for road maintenance as approved by the Homeowners' Association and which shall constitute a lien against each lot. The assessment shall be apportioned based on the number of lots utilizing a given portion of the road system. Each Lot Owner shall be responsible for a pro rata share of the maintenance of only those road or roads that said Lot Owner necessarily uses to gain access to said Owner's Lot. No Lot Owner shall be responsible for contribution to the maintenance of any road which said Owner does not need to use in order to gain access to said Owner's Lot. For those roads which Lot Owner must use for access, Lot Owner shall be responsible for contribution to the maintenance only for that portion of the road between their driveway and the state-maintained road.

During the construction of improvements upon any property, the owner of such property shall be responsible for any damage caused to the subdivision roads and shall prior to commencement of construction of such improvements post with the Homeowners' Association a cash bond in the amount of two thousand and no/100 Dollars (\$2,000.00) to guarantee the repair of any damage done during such construction. The Homeowners' Association shall have the right to utilize the amount so deposited for the purpose of correcting any damages done by a property owner upon failure of said property owner to repair such damage after having been given written notice of not less than 14 days. If the amount of the cash deposit is not sufficient to pay for the repair of all such damages, the Homeowners' Association shall assess the property owner for the amount remaining due, and such assessment shall constitute a lien upon the Lot.

Upon the sale and/or transfer of five (5) lots, Developer shall have no further responsibility with respect to soil erosion control measures imposed by Buncombe County during road construction, and the same shall become the responsibility of the Homeowners' Association, the expense of which shall be paid from assessments received by the Homeowner's Association.

Any assessments not paid within thirty (30) days of the due date shall bear interest from the due date of twelve percent (12%) per annum. Any owner or future owner may bring an action against the owner personally obligated to pay an assessment or foreclose the lien of such assessment against the lot which the assessment has been levied. The lien of the assessment for road maintenance provided for herein shall be subordinate to the lien of any 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 transfer. No sale or transfer shall relieve such lot from liability for any assessment thereafter becoming due or from the lien thereon. The Homeowners' Association provided for hereinafter shall have the authority to set the amount of yearly assessment for road maintenance.

12 A Homeowners' Association is hereby established for the purpose as above specified and for the promulgation of rules and regulations pertaining to the improvements and/or use of the property. Such Association shall consist of all property owners. For purpose of voting, each lot shall be entitled to cast one (1) vote. A majority vote of the Homeowners' Association shall be required for the implementation of any rule and/or regulation, and/or any approval required pursuant to these restrictive covenants.

13. Enforcement of these restrictive covenants shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

14. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

15. 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 twenty (20) years from the date hereof, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of those persons then owning a majority of said lots, it is agreed to change said covenants on whole or part. These covenants may be amended at any time by vote of three fourths (3/4) of the then owners of lots.

16. No street lights are allowed on any lot.

17. Developer reserves the right to assign his rights under these restrictions.

IN WITNESS WHEREOF, Walter Tamagni has duly executed this instrument, this the 13th day of January, 2003.

Walter Tamagni
Walter Tamagni (SEAL)

State of North Carolina, County of Buncombe
Each of the foregoing certificates, of
Adrienne Madrigal
is hereby certified to be correct. Filed for registration on this the
15th day of January, 2003
Otto W. DeBruhl Deborah W. Hill
OTTO W. DEBRUHL, Register of Deeds By: Deputy

FLORIDA, DADE COUNTY

I, a Notary Public of said county and state, certify that Walter Tamagni personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 13th day of January, 2003.

Adrienne Madrigal
Notary Public
My commission expires: 2-26-2006

