

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

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Office of Register of Deeds, Spartanburg, S.C.

Stephen Ford, Register



DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR HERITAGE CREEK SUBDIVISION
AS SHOWN ON SURVEY ENTITLED
HERITAGE CREEK SUBDIVISION AND
RECORDED IN THE RMC OFFICE FOR
SPARTANBURG COUNTY, S.C., IN
PLAT BOOK 155, PAGE 92.

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,
made this 25th day of May, 2004 by Roger D.
Fisher and Tower Homes, Inc., A South Carolina Corporation,
hereinafter referred to as Declarants.

WITNESSETH:

WHEREAS, Declarants are the owners of that certain tract of
land in the County of Spartanburg, State of South Carolina, which
property is more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO:

WHEREAS, certain lots as shown on the above referenced plat
have previously been conveyed to Tower Homes, Inc., and

WHEREAS, Tower Homes, Inc. joins in the execution of this
Declaration to affirm that all lots in Heritage Creek Subdivision
conveyed to Tower Homes, Inc. prior to the date and time of the
recording of this Declaration are subject to the within Covenants
and Restrictions.

NOW, THEREFORE, Declarants hereby declare that all of the
properties described above shall be held, sold and conveyed subject
to the following easements, restrictive covenants and conditions,
which are hereby imposed against the property described above for
the purpose of protecting the value and desirability of said
property and to accomplish the systematic, uniform and harmonious
development of said property into a subdivision; that the
covenants, conditions and restrictions hereinafter set forth shall
run with the real property described above and be binding upon all
parties having any right, title to interest in the described
property or any part thereof, their heirs, successors and assigns,
and shall inure to the benefit of each owner thereof until January
1, 2014 at which time said covenants, conditions and restrictions
shall be automatically extended for successive periods of ten (10)
years each unless, by vote of two-thirds of the then owners of the
lots into which the property described above shall have been
developed, the within covenants, conditions and restrictions are
changed or amended, in whole or in part. In the event such vote
shall take place, the vote shall be cast by the legal title thereto
is held jointly or otherwise.

If the undersigned, its successors or assigns, or any owner of
any lot, their heirs or assigns, should violate or attempt to

violate any of the covenants, conditions and restrictions herein contained, it shall be lawful for any person or persons owning any of the real estate described above to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate same, to either prevent his or them for so doing, or to recover damages for such violations, or, in the event of the failure to secure the necessary approval as set forth in Article IV hereof, to require the removal of any non-approved building or improvement, as appropriate.

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

DEVELOPER'S DISCLAIMER. Roger D. Fisher, Developer, (including the Developer in its capacity as the Architectural Committee), and his heirs and assigns, his agents, consultants and employees, hereby disclaim any and all warranties, express or implied, of good workmanship, design, habitability, quality, fitness for any particular purpose of merchantability or any representation concerning same, and no warranties of any kind shall arise as a result of any plans, specification, standards or approvals made or approved by Developer, or its nominees, and Developer shall not be liable to any owner or any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against any owner or such other person arising out of or in any way related to the subject matter of any review, acceptance, inspection, permission, consent or required approval which must be obtained from the Developer, whether granted or denied. Furthermore, while Developer is not aware of any lots containing fill dirt, Developer expressly disclaims suitability of a lot form residential construction, and all future owners shall be responsible for determining the suitability of a lot for residential construction.

(1) All lots shall be used exclusively for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family residential structure not to exceed three stories in height, and a double garage attached or detached for private passenger automobile with door opening facing the front side or rear yard, unless otherwise approved for qualification or workmanship and materials, harmony of external design with main structure and as to location with respect to topography and finished grade elevation.

(2) No tent, shack, garage, barn, storage building or other out-building shall be erected upon any lot without approval from the architectural committee and, if approved, it shall not be used as a residence either temporary nature shall be used as a residence and no house trailer, modular home or mobile home shall be placed on any lot either temporarily or permanently. Any boat, camping trailer, recreational vehicle and/or similar equipment used for the personal enjoyment of a resident of a lot shall at all times be neatly stored and positioned so as to be inconspicuous.

(3) No obnoxious or offensive activity shall be permitted

anywhere on the property nor shall anything be done which may become an annoyance, nuisance or menace to the neighborhood. No lot of any part thereof shall be used for any business, commercial or public purpose and no commercial vehicle shall be parked in the subdivision, temporarily or permanently.

(4) No animals shall be kept, maintained or quartered on any lot or tract in the subdivision. No more than two (2) mature household pets may be kept at any single family residence building so long as said animals do not constitute a nuisance or menace to the neighborhood.

(5) Tall shrubbery or hedges shall be trimmed to reasonable limits where traffic hazards may be created.

(6) No vehicle which does not have a current license plate on it may remain on the premises for more than 30 days.

(7) No transfer tractor, transfer trailer or tractor trailer combinations shall be allowed in the subdivision at any time except for loading or unloading.

(8) It is the responsibility of each lot owner and all persons or entities employed by such person to assist in the construction of any building or improvement on said lot to control the discharge of surface water or sediment from such lot onto or upon any other part of the subdivision.

(9) Any damage(s) to any street, curb or gutter which occurs as a result of construction activity relating to any lot shall be promptly repaired to Spartanburg County specifications at the expense of the owner of said lot.

(10) All tools, lawn movers or equipment of any kind must be contained within a fenced or an enclosed area and hidden from public view when not in use.

(11) No house or portion of another house shall be moved into this subdivision.

(12) No signs shall be permitted on any lots except that a single sign offering the property for sale may be placed on such lot providing such a sign is approved by the Architectural Committee.

(13) All residences shall have a standard letter size mailbox which is to be provided by each lot owner. All boxes and posts shall be in good taste and maintained in a good state of repair at all times.

(14) The removal of any trees in excess of 12' in diameter (dbh) shall require prior approval of the Architectural Committee. No trees may be removed until final building plans have been approved by the Architectural Committee.

(15) The property within this subdivision is hereby declared to be a wildlife sanctuary and all hunting or shooting, is hereby prohibited.

(16) The owner of each lot shall cause written notice to be delivered to the Homeowners Association upon the conveyance of any lot by him advising the Homeowners Association.

(17) No satellite or television dish shall be constructed or

placed on any lot except where type, size, screening and location have been approved by Architectural Committee.

(18) No above ground pool shall be constructed or placed on any lot in the subdivision.

(19) Yard sales will be allowed by the approval of the Homeowners Association.

ARTICLE II: EASEMENTS

(1) In addition to other easements as are shown on the recorded subdivision plat, a five-foot easement and a ten-foot easement is reserved over and across all side and rear lot lines, respectively, for drainage, utility, cable television, gas, water, power, sewer and telephone installation and maintenance; provided that when more than one lot shall be used as a site for only on residence, the aforesaid five-foot easement and ten-foot easement shall apply only with respect to the exterior lines of such consolidated lot. Declarants specifically reserve the right to grant specific easements to any entity or organization, public or private, to provide any of the utility services listed herein at any time following the date hereof until any specific lot shall be conveyed by Declarants. The right is reserved to authorize the laying and placing of sewer, gas and water pipelines, telephone, cable television, telegraph and electrical light poles on any of the streets and easements shown on the recorded subdivision plat. An easement for the installation and maintenance of utilities and drainage facilities is reserved over said streets and easements.

ARTICLE III: SET BACK, LOCATION AND SIZE OF IMPROVEMENTS AND OF BUILDING PLOTS.

(1) Nothing herein contained shall be construed to prohibit the use of more than one lot or portions of one and more lots as a single residential building site, provided that said lot would otherwise meet the requirement as to size, setback line and directional facing of said building as determined by the Declarants.

(2) No building shall be erected on any lot nearer to the front lot line or nearer to the side street line than the building setback line shown on the recorded plat. Any such building shall face toward the front line of the lot except that buildings to be constructed on corner lots shall face in the directions designated by the architectural committee. No building shall be located nearer to any interior side lot line than the distance, as determined by applicable building codes.

(3) No detached building, other than the one intended to be used as a residence, shall be erected without approval as provided in Article IV and, if approved, shall be placed no nearer to any lot line than the distance as determined by applicable building codes.

- (4) No wall, fence or hedge shall be erected across or along the front of any lot and nearer to the front lot line than the building set-back line having a height of more than four feet; however, upon review and approval by the Architectural Committee, placement and height of any wall, fence or hedge may be altered. Chain link fences shall not be constructed on any portion of any lot, without prior approval from the Architectural Committee.
- (5) The total area of all driveways shall be paved by plant mix concrete.
- (6) No lot shall be recut so as to face in any direction other than is shown on the recorded plat nor shall it be recut so as to make any building site smaller than is provided for herein.
- (7) No one-story, split-level or story-and-a-half residence shall be constructed containing less than 1,600 square feet of heated floor space exclusive of porches, garages and breezeways. No two-story residence shall be erected containing less than 1,600 square feet of heated floor space total, exclusive of porches, garages and breezeways.
- (8) Roger D. Fisher may waive any minimum set back line or alter any property line as deemed necessary for the development of the subdivision.

**ARTICLE IV: APPROVAL OF PLANS AND
CONSTRUCTION ARCHITECTURAL COMMITTEE**

- (1) The Architectural Committee shall be composed of Roger D. Fisher. For the purpose of these restrictions the term Declarants and Architectural Committee may be used interchangeably. In all matters, a majority vote shall govern.
- (2) No improvements shall be erected, placed, altered or changed on any lot in this subdivision until and unless the building plans, specifications, and plot plan showing the proposed type of construction, exterior design, location of residence, walks, drives and fences have been approved in writing by the Architectural Committee as to conformity and harmony of external design and consistency of plan with existing residences on other lots in the subdivision and as to the location of the structure with respect to topography and finished ground elevation.
- (3) The Architectural Committee shall have the right to refuse to approve any plans, specifications and/or plot plans, taking into consideration the suitability of the proposed building or other improvement, the materials or which it is to be built, whether or not it is in harmony with the surroundings and the effect it will have on other residences already constructed.
- (4) Prior to the commencement of any construction, each owner shall submit to the Architectural Committee, in duplicate, plans and drawings, which shall contain at a minimum:
- (a) front, rear and side elevations;
 - (b) floor plan;
 - (c) the area of heated floor space;

- (d) exterior building material to include manufacturer, color and texture;
- (e) exterior trim color;
- (f) roofing material and color;
- (g) site plan (optional);
- (h) estimated completion dates of all construction and improvements;
- (i) special treatment required to alleviate problems anticipated due to changes in topography.

The documents and other information required to be submitted shall be delivered or mailed to Roger D. Fisher, P.O. Box 160125, Boiling Springs, S.C. 29316. One complete set shall be retained by the Architectural Committee and the second complete set shall be returned to the applicant, with the Architectural Committee's approval or disapproval clearly noted thereon.

(5) In the event that the Architectural Committee fails to approve or disapprove such plans within thirty (30) days after they have been submitted to it, such approval will be automatic. The terms "building" or "improvements" shall be deemed to include the erection, placement or alterations of any wall, fence, driveway or parking area, or any such activity undertaken subsequent to initial construction.

(6) The Architectural Committee is authorized to approve or ratify in the construction or alteration of any building violations of the Set Back, Location and Size of Improvements article of these restrictions if, in the opinion of the Architectural Committee, such shall be necessary to prevent undue hardship.

(7) All construction by any owner shall be performed by a licensed contractor or licensed builder.

(8) Once construction is commenced, each owner shall be responsible for insuring that such work proceeds at an orderly and timely pace, with no work stoppage in excess of 14 consecutive days, acts of God excepted.

(9) After the foundation for new construction has begun on any lot in the subdivision, the owner shall have the work carried on continuously by a licensed builder without unnecessary delay, and shall have 12 months from the time the foundation has begun to complete the residence, landscape the year, and plant shrubbery.

(10) The Declarants expressly reserve the right to assign any of the duties, powers, functions and approval authority set forth herein to any assignee at Declarant's sole discretion. Roger D. Fisher will assign all above mentioned duties to Tower Homes, Inc. when Tower Homes, Inc. has purchased all lots in the subdivision.

ARTICLE V: ASSOCIATION OF OWNERS

(1) On January 1, 2005, all owners including the Declarants shall organize Heritage Creek Homeowners Association, Inc. to be chartered as a non-profit corporation, in accordance with the laws of the State of South Carolina. Every person who is a record owner

of a fee or undivided fee interest in any lot which is subject to these covenants shall be a member of the Association. There shall be only one class of membership and such members 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 the owners determine, but in no event shall more than one vote be cast with respect to any lot, and, further, no fractional vote shall be cast with respect to any lot. Each property owner shall pay \$180.00 for year 2005 for dues to defray costs for expenses for lighting, maintenance, etc.

(2) The affairs of the Association shall be controlled by a Board of Directors, duly elected by the members.

(3) The Homeowners Association shall be entitled to collect dues, on an annual basis, with annual adjustments, if necessary, assessed against each lot in an amount to be determined by the Board of Directors. These dues shall be administered by the officers of the Association and used for the payment of necessary expenses for the operation of the Homeowners Association and for the maintenance of any vacant and untended lot or unkept improved lot and for the payment of any common utility expenses and for the maintenance of any property deeded to the Homeowners Association.

(4) In the event the Homeowners Association's Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved and unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. If any such special assessment or annual dues payment, is not paid within thirty (30) days of its due date, the amount due shall bear interest from the date of delinquency at the rate of fourteen (14%) percent interest.

(5) The Declarants may delegate and transfer to the Homeowners Association any rights, duties, and powers which Declarants have expressly reserved unto itself in these Covenants and Restrictions.

(6) If any dues or assessments are not paid when due, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Ten (10%) percent per annum from the date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of any such dues or assessments, together with reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments.

If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the property, and there shall

be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as hereinabove provided together with reasonable attorney fees as may be fixed by the court together with the costs of the action.

(7) The lien of the assessments or dues provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessments or dues; provided, however, that such subordination shall apply only to the assessments or dues which have become due and payable prior to the sale or transfer of such proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments or dues thereafter becoming due, nor from the lien or any such subsequent assessments or dues.

(8) 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 cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes of each owner who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

(9) Quorum for any action. The quorum required for any action respecting assessments shall be the lot owners present at a meeting duly called and convened.

(10) Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of any special assessment and at least thirty (30) days in advance of the due date of any assessment prepare a roster of the properties and assessments applicable thereto which shall be kept in the Office of the Association and shall be open to inspection by any lot owner. Written notice of the assessment shall thereupon be sent to every lot owner subject thereto. The Association shall upon demand at any time furnish to any lot owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

(11) Term and election of Board of Directors: The Board of Directors shall be elected for a period of one (1) year. Election of each officer will require 2/3 votes of each lot owner who are voting in person or by proxy.

(12) Enforcement by Homeowners Association. Except for approvals and rights expressly reserved herein unto the Developer or its nominee, the Heritage Creek Homeowners Association, Inc.,

shall have standing to enforce the within restrictions, covenants and obligations in the same manner and to the same extent as does the Developer or any other owner. The powers and authorities herein granted to the said Association shall be in addition to such other and further rights, duties and obligations which may be set forth in the By-Laws of the Association adopted in accordance with the terms hereof.

(13) Board Authorization. All actions of the Association shall be authorized actions if approved by the Board of Directors of the Association in accordance with its By-Laws, unless the terms of this instrument provide otherwise. Any change in the authorities given to the Board of Directors will require approval of 2/3 votes of each lot owners who are voting in person or by proxy at an association meeting that has given thirty (30) days notice to said meeting describing in detail to the lot owner any proposed change concerning any future authority granted to the Board of Directors.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 25th day of May, 2004.

Jessie M. Messer
Jessie M. Messer
Jessie M. Messer

Roger D. Fisher
ROGER D. FISHER

TOWER HOMES, INC.
[Signature]
BY: PRES.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

ACKNOWLEDGEMENT

I Jessie M. Price a Notary Public, do hereby certify that Roger D. Fisher personally appeared before me this 25th day of May, 2004.

Jessie M. Price
Notary Public for S.C.
My Commission Expires: 7/29/08

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
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ACKNOWLEDGEMENT

I Tammie M Price a Notary Public, do hereby
certify that Tower Homes, Inc. by Dee Sappala
personally appeared before me this 25th day of May, 2004.

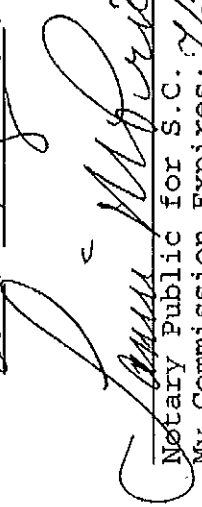

Notary Public for S.C.
My Commission Expires: 12/24/05

EXHIBIT "A"

All those certain pieces, parcels or lots of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot Nos. 1 - 63, as shown on survey of Heritage Creek, prepared by Souther Land Surveying, Inc., dated November 6, 2003 and recorded in Plat Book 155, Page 92, RMC Office for Spartanburg County, S.C. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

This being the same property conveyed to Roger D. Fisher by deed of Joe W. McCarter dated February 4, 1994 and recorded in Deed Book 61-A, Page 340, RMC Office for Spartanburg County, S.C. Reference is also made to deed of Lollie C. Hutchins, et al to Roger D. Fisher dated July 14, 1994 and recorded in Deed Book 61-Q, Page 446, RMC Office for Spartanburg County, S.C.

SPARTANBURG COUNTY, S.C.
RECORDED
FEB 14 1994
RMC OFFICE