

9K8092PG2427

Prepared By
and Return to
Andrew S. Martin

PRESENTED
FOR
NORTH CAROLINA REGISTRATION

00362

98 JUN 30 AM 10:17

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
FOXMOOR SUBDIVISION

WAKE COUNTY REGISTER OF DEEDS
LAURA M. RIDGICK

DECLARATION made this 26th day of June, 1998, by ASHLEY TURNER
ENTERPRISES, INC., a North Carolina corporation, hereinafter called "Declarant";

WITNESSETH:

THAT WHEREAS, Declarant is the owner and developer of the real property hereinafter described as Lots 1 - 79, Foxmoor Subdivision, Phases 1 and 2, as shown on maps recorded in Book of Maps 1998, Pages 737-740, Wake County Registry; and

WHEREAS, There are previously recorded Protective Covenants for Foxmoor Subdivision recorded in Book 8020, Page 386, Wake County Registry; and

WHEREAS, Declarant desires to withdraw and revoke said prior Protective Covenants recorded in Book 8020, Page 386, Wake County Registry, and to replace the same with the covenants set forth in this Declaration which shall be applicable to all of the above-described lots, included herein in the description of "Properties".

NOW, THEREFORE, in consideration of the premises and the mutual benefits and duties herein contained, Declarant, hereby withdraws the above-referenced lots from the operation and effect of the Protective Covenants for Foxmoor Subdivision, recorded in Book 8020, Page 386 Wake County Registry, and declares that the Properties hereinafter described shall be held, sold and conveyed subject to the following covenants, easements, conditions and restrictions, all of which are for the purpose of protecting the value and desirability of, and which shall run with, the real property described and be binding on all parties having any right, title or interest therein, along with their heirs, successors and assigns, and which shall inure to the benefit of each Owner thereof;

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Foxmoor Homeowners 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, as shown on map recorded in Book of Maps 1998, Pages 737-740, Wake County Registry, and such additions

2400

9K8092PG2428

thereto as may hereafter be brought within the jurisdiction of the Association pursuant to the provisions of Article VII hereunder.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners, including the Permanent Open Spaces shown on the aforesaid maps.

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 Ashley Turner Enterprises, Inc., and its successors and assigns.

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, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

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

(c) 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 recreational or other purposes as are allowed by and subject to all applicable governmental ordinances; provided that no such dedication or transfer shall be effective unless approved by local governmental authority having jurisdiction over same, and unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

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.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment and the Declarant, shall

BK8092PG2429

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 classes of voting membership:

Class A. Class A member (s) shall be all those Owners, with the exception of Declarant, and they shall be entitled to one vote for each Lot owned.

Class B. The Class B member (s) shall be Declarant, which shall be entitled to one (1) vote for each Lot owned and one (1) vote for each vote held by a Class A member and this right of an additional vote for each vote held by a Class A member shall terminate when the Declarant has sold ninety-eight (98%) percent of all Lots affected by these Covenants. Thereafter, the Declarant shall be entitled to one (1) vote per Lot owned. Declarant may voluntarily sooner relinquish any aforesaid voting rights.

The total vote of the Association shall consist of the sum of the votes of Class A members and the votes of Class B member(s). When more than one person holds an interest in any Lot, all such persons shall be members; and the vote for such Lot shall be exercised as they among themselves determine, but in no event may more than one vote be cast with respect to any Lot owned by Class A members. When one or more co-owners sign a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before a vote is counted. If co-owners disagree as to the vote, it shall be split equally among the co-owners.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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: (i) annual assessments or charges, and (ii) 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 such 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 improvement and maintenance of the Common Area.

BK8092PG2430

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot by Declarant, the maximum annual assessment shall be One Hundred and Twenty Dollars (\$120.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner by Declarant, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for 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 maximum annual assessment may be increased above 5% 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 cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, 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 each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of 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 at 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 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on an annual, quarterly or monthly basis as determined by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot at such time as such Lot is conveyed to a purchaser of a completed house on such Lot. Neither Declarant or builder purchasers from Declarant shall be liable for such assessments. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of

BK8092PG2431

Directors shall fix the amount of the annual assessment against each 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. 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. 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 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 9. 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.

Section 10. Two Months Assessments to be Collected at Closing. At each Lot closing, a sum may be collected from the purchaser equal to the total assessment for such Lot for the succeeding two months and such sum shall be contributed to the reserve accounts of the Association to be used by the Association to meet unforeseen expenditures. This contribution shall not be considered an advance against assessments to become due or a refundable deposit.

ARTICLE V ARCHITECTURAL CONTROL & INSPECTION

Except for initial improvements by Declarant, no construction, erection, or installation of any improvements, including, but not limited to, residences, garages, attached or detached, outbuildings, fences, walls, exterior television antennas, satellite dishes, mailboxes and other structures, shall be undertaken upon the Properties unless the plans and specifications therefore, showing the nature, kind, shape, height, color, materials and location of the proposed improvements shall have been submitted to the Declarant or its agent and expressly approved in writing. No subsequent alteration or modification of any existing improvements nor construction, erection, or installation of additional improvements may be undertaken on any of the properties without prior review and express written approval of the Board of Directors of the Association, or by an Architectural Committee designated by the Board. Notwithstanding any other provision of the Declaration, until such time as the last Lot is sold to a purchaser of a completed home on such Lot, Declarant shall be and in control of the Architectural Committee.

9K8092PG2432

In general, no exterior alterations, including painting and additions to buildings, garages, or outbuildings shall be considered for approval unless such alterations or additions are in harmony with existing structures, as to style, shape, color and size. However, this section shall not be construed to mean that the Architectural Committee or Board shall be required to approve a proposed alteration or addition that meets the above criteria.

Generally, approval or disapproval should be issued within thirty (30) days. In the event that the Declarant or the Association, as the case may be, fails to approve or disapprove the site or design of any proposed improvements within sixty (60) day after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Declarant or the Association if they contain erroneous data or fail to present adequate information upon which the Declarant or the Association, as the case may be, can arrive at a decision.

The Declarant and/or the Association (as applicable) shall have the right, at its election, but shall not be required, to enter upon any of the Properties during site preparation or construction, erection, or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specification and in a good and workmanlike manner, utilizing approved methods and good quality materials.

ARTICLE VI BUILDING AND USE

Section 1. Use. No Lot shall be used except for residential purposes, provided that with local governmental approval, Declarant or its assigns may use a Lot for a community water system or recreational facility to benefit all Lot Owners in the subdivision. Furthermore, Declarant may maintain a Sales/Operations trailer or similar facility and may approve location of a construction trailer for a builder's use while any builder has a house under construction within the subdivision. No satellite dish which exceeds 18" in width, or other communications reception or transmitting tower shall be placed or erected on any Lot. No pools shall be allowed on any Lot except in-ground with concrete apron, nor shall any above-ground "bubble" be allowed on any such pool. Declarant shall provide and install on each Lot a mailbox, the specifications for which shall be uniform throughout the subdivision, and said specifications must be adhered to for any replacement mailbox that may be erected by an Owner. No noxious or offensive activities shall be carried on upon any Lot nor shall anything be done thereon which may be or may become a nuisance or an annoyance to the neighborhood. No motor vehicle licensed to carry more than two tons shall be allowed or parked on any Lot or street within said subdivision except those vehicles delivering building materials to develop or improve the Lots within the subdivision or to carry furniture for any homeowner within said subdivision. No motor vehicle which cannot move under its own power or which is not currently licensed, any storage trailer or van, or house trailer shall remain parked on any Lot or street in the subdivision for more than thirty days. No heavy equipment, earth-moving equipment, trade materials,

BK 8092PG2433

inventories or farm machinery shall be parked or stored on any Lot or street at any time except for equipment engaged by the Declarant or homebuilder for the development and improvement of the Lots in the subdivision. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats or other household pets which are not dangerous may be kept provided they are not kept, bred or maintained for commercial purposes. Each Owner shall keep his Lot free of tall grass, undergrowth, dead trees, trash and rubbish and properly maintained so as to present a pleasing appearance. In the event an Owner does not properly maintain his Lot as above provided, in the opinion of the Architectural Committee, then the Committee may have the required work done and the costs thus incurred shall be paid by the Owner. Such Committee cost shall be a lien on the Lot to which attributable. No portion of any Lot shall be used for street purposes without the written consent of the Declarant, their successors or assigns. No structure shall be erected or allowed to remain on any Lot except one (1) single family dwelling of not more than two and one-half (2 1/2) stories in height (excluding any basement, which may be occupied by a single family, together with an apartment to be occupied by a member of the same family or domestic servants). There may also be located upon said Lot a private garage which may include quarters for servants or occupants of the main dwelling and for storage. The construction of dwellings and approved improvements shall be completed within twelve (12) months after construction has begun.

Section 2. Dwelling Size. No one-storied dwelling shall be permitted to be erected or remain on any Lot with the ground floor area of the main structure exclusive of one (1) story open porches and garages less than 1600 square feet of heated space, nor less than 800 square floor heated space for a dwelling of two or more stories, nor less and 900 square feet of ground floor heated space for a dwelling on one and one half (1 1/2) stories. Total finished living area for any dwelling other than a ranch or one (1) level, shall not be less than 1700 square feet. Declarant may grant variances for fifteen (15%) percent or less deviations due to error or inadvertence. All residences must have a double car garage.

Section 3. Building Location: No building shall be located on any Lot nearer than thirty (30) feet to the front lot line or street abutting the front of any Lot or nearer than ten (10) feet to any interior lot line. However, on corner Lots the dwelling need be no more than thirty (30) feet from then property line qualifying as the front and ten (10) feet from the property line on the street paralleling the end of the house. For the purposes of this covenant, eaves, steps and open porches shall not be considered a part of any building, but this shall not be construed to permit any portion of a building unit to encroach upon another building unit. The location of all buildings and structures on any lot must have the prior written approval of the Declarant, or the Association, as the case may be, who shall have the authority to grant variances for inadvertent deviations of fifteen (15%) percent or less. No dwelling shall be erected or placed on any Lot having a width of less than sixty (60) feet at the minimum building setback line, nor shall any dwelling be erected or placed on any Lot having less than 30,000 square feet, provided a dwelling may be placed on any numbered Lot on the recorded subdivision map.

Section 4. Parking. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of the licensed automobiles of such Owner, and they shall not be permitted

9K 8092PG2434

to park their automobiles on the streets in the development, nor shall they be permitted to park boats, trailers, campers, mobile homes, motor homes and all other similar property on the streets in the subdivision, nor in the front yard of any Lot, nor in the side set-back of any Lot, but such property may be parked in a garage or screened area in the rear yard of the Owner.

Section 5. Easements and Utilities. Each Lot in the subdivision shall be subject to an easement of five (5) feet from its front, side and rear property lines to accommodate such underground services as electricity, telephone, cable television, natural gas, water and sewer lines or other facilities to service the needs of said Lot Owner as they may from time to time be available to said Lot including the installation of street lighting which may impose a continuing monthly or annual expense to the Owner of each Lot. Declarant reserves the right to subject the real property in this subdivision to a contract with Carolina Power & Light Company for the installation of street lighting, which requires a continuing monthly payment to Carolina Power & Light Company by each residential customer.

ARTICLE VII GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after with time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Staged Development. Additional land may be annexed by the Declarant without the consent of members within five (5) years of the date of this instrument.

Section 5. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members except as provided hereinabove in Section 4, Staged Development.

BK 8092P62435

Section 6. Management Company. The Declarant, or the Association, as the case may be, shall have the right to employ a management company to manage the affairs of the Association, which company shall have such powers as are delegated by the Declarant/Association.

IN TESTIMONY WHEREOF, Ashley Turner Enterprises, Inc., has caused this instrument to be signed by its President, the day and year first above written.

ASHLEY TURNER ENTERPRISES, INC.,
a North Carolina corporation

ATTEST:

Barbara Bailey
Secretary



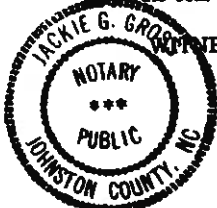
By: [Signature]

President

NORTH CAROLINA

WAKE COUNTY

I, Jackie G. Gross, a Notary Public in and for said County, do hereby certify that Barbara Bailey personally appeared before me this day and acknowledged that (s)he is _____ Secretary of Ashley Turner Enterprises, Inc., a North Carolina corporation, and that by the authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her as its _____ Secretary.



WITNESS my hand and notarial seal this 26th day of June, 1998.

Jackie G. Gross
Notary Public

My commission expires: 11-11-2001

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Jackie G. Gross

Notary/ies Public

is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

LAURA M. RIDDICK, Register of Deeds

By P. Anne Redd
Asst./Deputy Register of Deeds