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BOOK PAGE
1351 1658

RECORDED AND VERIFIED
REBECCA P. TUCKER
REGISTER OF DEEDS
NEW HANOVER CO. NC

Nov 21 10 31 AM '86

NORTH CAROLINA
NEW HANOVER COUNTY

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
WINCHESTER TOWNHOMES
RECORDED IN
BOOK OF MAPS 26, PAGE 141
NEW HANOVER COUNTY REGISTRY

THIS DECLARATION, Made on the date hereinafter set forth by
AMMONS-BOYKIN CORPORATION, a North Carolina corporation, hereinafter
referred to as the "Declarant;"

W I T N E S S E T H:

THAT WHEREAS, the Declarant is the owner of certain
property in Cape Fear Township, New Hanover County, North Carolina,
consisting of approximately 9.376 acres, which is more particularly
described as Winchester Townhomes, Section 1, as the same is shown
on the map recorded in Book of Maps 26, Page 141, New Hanover
County Registry; and

WHEREAS, Declarant will convey the said properties, subject
to certain protective covenants, conditions, restrictions, reservations,
liens and charges as hereinafter set forth;

12 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,
all of which are for the purpose of enhancing and protecting the
value, desirability, and attractiveness of the real property. These
easements, covenants, restrictions and conditions shall run with
the real property and shall be binding on all parties having or
acquiring any right, title or interest in the described properties
or any part thereof, and shall inure to the benefit of each owner
thereof.

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RETURNED TO
Phil Adams
AMMONS-BOYKIN
2832 Northchase Parkway West
Wilmington, N.C. 28405

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ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Winchester Townhomes Association, Inc., its successors and assigns.

Section 2. "Northchase Association" shall mean and refer to Northchase Association, its successors and assigns. (See Declaration of Covenants, Conditions and Restrictions for Northchase Subdivision recorded in Book 1315, Page 1130, New Hanover County Registry.)

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

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of members or designated classes of members of the Association, including private streets, Limited Common Area, all water lines outside streets which serve Winchester Townhomes and all sewer lines outside of streets or easements which serve Winchester Townhomes, but

excluding water lines and sewer lines which serve only the lot on which they are located.

Section 5. "Limited Common Area" shall mean those portions of the Common Area that serve only a limited number of lots and which may include, but specifically is not limited to, driveways and walkways, parking lots or areas serving only specified lots, and such other similar areas as may be designated by the Association.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties on which such plot appears, with the exception of the Common Area and Limited Common Areas.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "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 9. "Declarant" shall mean and refer to Ammons Boykin Corporation and its successors and assigns to whom the rights of Declarant hereunder are expressly transferred, in whole or in part, and subject to such terms and conditions as the Declarant may impose.

Section 10. "Person" shall mean and refer to any individual, corporation, partnership, association, trustee, or other legal entity.

Section 11. "Building" shall mean and refer to a multi-unit structure containing townhomes, constructed or erected on the Property.

Section 12. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

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Section 13. "Common Expenses" shall mean and include:

(a) All sums lawfully assessed by the Association against its members;

(b) Expenses for maintenance of the townhomes, private streets and private water and sewer lines as provided in this Declaration;

(c) Expenses of administration, maintenance, repair, or replacement of the Limited Common Areas;

(d) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws;

(e) Hazard, liability, or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;

(f) Ad valorem taxes and public assessment charges lawfully levied against common areas;

(g) Expenses agreed by the members to be common expenses of the Association; and

(h) Unpaid assessments resulting from the purchase of a townhome at a foreclosure sale (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).

Section 14. "Townhome" shall mean and refer to a dwelling or place of residence constructed upon a Lot within the Property and constituting a part of a building.

Section 15. "Amenities" shall mean the facilities constructed, erected or installed on the Common Areas for the use, benefit and enjoyment of Members.

ARTICLE II

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Association. Annexation of additional Property shall require the assent of two-thirds (2/3) of the Class A membership and two-thirds (2/3) of the Class B membership, if any.

Section 2. Method of Annexation. Annexation of additional Properties shall be accomplished by recording in the New Hanover County Registry a Declaration of Annexation, duly executed by the Association describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation, and upon the approval by New Hanover County, if required by its ordinances.

Section 3. Conveyance of Annexed Common Area. Subsequent to recordation of the Declaration of Annexation, the Declarant, if applicable, shall deliver to the Association one or more deeds conveying any Common Area within the lands annexed as such Common Area is developed, as set forth in Article V, Section 3 of this Declaration.

ARTICLE III

MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this Subdivision.

ARTICLE IV

VOTING RIGHTS

Section 1. Voting Classes. The Association shall have two classes of voting membership:

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Class A. Class A members shall be all those Owners as defined in Article III with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article III. When more than one person holds such 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. The Class B member shall be the Declarant. The Class B members shall be entitled to three (3) votes for each Lot in which he holds the interest required for membership by Article III, provided, that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in Subparagraph (b) below, additional lots are developed by the Declarant.

(b) On December 31, 1991.

Section 2. Suspension of Voting Rights. The right of any Member to vote may be suspended by the Board of Directors for just cause pursuant to its rules and regulations.

ARTICLE V

PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment.

Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the right to every assessed Lot, subject to the following provisions:

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(a) The right of the Association, in accordance with its Articles and Bylaws and with the assent of members entitled to cast two-thirds (2/3) of the votes of the entire Class A membership and two-thirds (2/3) of the entire Class B membership, if any, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property unless prohibited by law, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder;

(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; provided, however, that no conveyance of Limited Common Area shall deprive any Member of the full use thereof. No such dedication or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of the Class A membership and two-thirds (2/3) of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than 15 days nor more than 30 days in advance; and

(c) The right of the individual members to the exclusive use of parking spaces as provided in this Article.

Section 2. Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities and to the Limited Common Area and facilities to the Members of his family, his tenants, or contract purchasers who reside on the Property.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its assigns and successors, that it will convey fee simple title to the Common Area shown on the aforementioned map recorded in Book

of Maps _____, Page _____, New Hanover County Registry, to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first Lot, except utility and drainage easements and easements to governmental authorities. Similarly, the Declarant will convey to the Association Common Areas which are part of Winchester Townhomes as additional areas are developed in the future until all Common Areas, as shown on plans approved by New Hanover County, have been conveyed to the Association.

Section 4. Parking Rights. Ownership of each Lot with a townhouse constructed on it shall entitle the Owner or Owners thereof to the use of not less than two automobile parking spaces. Said spaces shall be as near and convenient to said Lot as reasonably possible, together with the right of ingress and egress in and upon said parking areas. The Declarant shall permanently assign one vehicular parking space for each dwelling, such space to be as near the dwelling to which it is assigned as is reasonably possible. The Association may regulate the parking of boats, trailers and other such items on the Common Area. No boats, trailers, campers, motor homes, trucks (except "pick-up" trucks) or tractors owned by a member, his guests, or family members shall be parked within the right of way of any public or private street in or adjacent to Winchester Townhomes; nor shall any of these be parked on the Properties. It shall be the responsibility of each lot owner to secure a space outside of the Properties for the parking or storage of such vehicles.

Section 5. Prohibition of Antennas and Discs. No television or radio antennas, or other antennas of any type or television or radio satellite discs or dishes of any type may be erected or placed on any individual lot or the Property.

ARTICLE VI

COVENANT FOR ASSESSMENTS

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

- (a) Annual assessments or charges which are common expenses;
- (b) Special assessments for capital improvements; and
- (c) Special assessments for purchase and reconstruction of townhomes as hereinafter provided.

Notwithstanding any provision herein to the contrary, the assessment for each lot owned by Declarant shall be twenty-five percent (25%) of the assessment which is applicable for a Lot titled in a name other than Declarant provided, however, if the Declarant rents a Townhome and Lot to a third party the Declarant shall pay to the Association the full assessment applicable to that Lot, as provided in Section three of this Article.

Such assessments shall be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot and improvements against which each such assessment is made. Each such assessment, together with such interest and costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the Lot at the time the assessment fell due. The personal obligation of an owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. All

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assessments shall be shared equally by the owners of each Lot, except as otherwise provided in this section.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety, and welfare of the residents and the Property; enforcing these covenants and the rules of the Association; paying common expenses; improving and maintaining the Property and the townhomes situated thereon and the Common Area; and providing the services and facilities for purposes of and related to the use and enjoyment of the Common Area and facilities.

Section 3. Amount of Assessment.

(a) Initial Assessment. To and including December 31, 1987, the initial annual assessment shall not be in excess of FOUR HUNDRED THIRTY TWO AND N/100 Dollars (\$432.00) per Lot, the exact amount of which shall be determined from time to time as provided in Subsection (d) of this Section 3.

(b) Increase by Association. From and after December 31, 1987, the annual assessment effective for any year may be increased from and after January 1 of the succeeding year by the Board of Directors, without a vote of the membership, to an amount which may not exceed the original assessment (or revised assessment determined pursuant to subparagraph (c) below) plus seven percent (7%) of said assessment per year since December 31, 1987, or the date the revised assessment was established, whichever is later.

(c) Increase by Members. From and after December 31, 1987, the annual assessment may be increased by a percentage greater than permitted by this Article by an affirmative 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 such purpose, written notice of which, setting forth the purpose of the meeting, shall be sent to

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all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. The limitations herein set forth shall not apply to any increase in assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(d) Criteria for Establishing Annual Assessment.

The Association is required to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the common areas and such other areas and structures which the Association may be obligated to maintain. The fund shall be maintained out of annual assessments for common expenses as provided for in this article. In establishing the annual assessment for any assessment year, the board of directors shall set the annual assessment high enough to cover all current costs and expenses of the Association, any accrued debts, and reserves for future needs, but it may not fix the annual assessment in an amount in excess of the amount derived by the Index formula provided in subsection (b) without the consent of members required by subsection (c) of this Section 3.

(e) The Board of Directors may decrease the annual assessment from time to time if in its opinion such decrease is prudent.

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 construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the common area, including the necessary 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, written notice of which, setting forth the purpose of the meeting, shall be sent to all members not less than fifteen (15) days nor more than thirty (30) days in advance of the meeting. The amount of the proposed assessment need not be stated.

Section 5. Special Assessments for the Purchase and Reconstruction of Townhomes. In the event that any townhome located on the Property is substantially destroyed by fire or other hazard and the owner decides to sell said unit, the Association is empowered to contract for the purchase of such unit provided the contract is contingent upon the Board and Members of the Association deciding they want to purchase said unit as set out in sub-paragraph (a) of this section. The Owner shall have the right to sell said unit to any party, in addition to the Association. For the purposes of this section "substantially destroyed" shall mean that the costs of replacement or repair equals at least thirty-three percent (33%) of the appraised value of the improvements on the lot before they were damaged.

(a) Determination of Whether to Purchase. The Board of Directors shall appoint a committee, or shall designate an existing committee of the Association, to determine whether failure to reconstruct the damaged townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining Property. The committee may employ such persons, including, but not limited to, real estate appraisers, realtors, architects, and engineers, as are reasonably necessary to make its determination, and shall report its conclusions, with supporting data, in writing to the Board within fifteen (15) days. The report shall set forth such matters as the Board and committee deem pertinent, but shall contain estimates of the pecuniary injury and diminution in value along with an estimate of the cost of purchase and reconstruction of the townhome.

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If the Board of Directors determines that it would be advantageous to the Association and/or to the remaining Property to purchase and reconstruct the townhome, it shall call a special meeting by giving written notice thereof, setting forth the following submission of the committee report. The special meeting of members shall be held not less than seven (7) days nor more than fifteen (15) days following notice to members. Upon an affirmative vote of at least sixty-six and two-thirds percent (66-2/3%) of each class of membership present and voting, the Board will be authorized to purchase and reconstruct the townhome and to assess all lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of the townhome. The Board may require that the assessment be paid in a lump sum, in installments during an assessment year, or over a period of two (2) or more assessment years, as the Board, in its discretion, shall determine to be appropriate.

Such an assessment shall be in addition to, and not in lieu of, the annual assessments provided for in Section 3 and the special assessments provided for in Section 4 of this Article.

(b) Application of Insurance Proceeds. The owner of the townhome, prior to conveyance to the Association, shall apply or cause to be applied so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the townhome as shall be necessary to pay all liens, mortgages, deeds of trust, taxes and encumbrances upon the lot so that the fee simple marketable title thereto may be conveyed free and clear of all liens and encumbrances. If the insurance proceeds are not sufficient to pay all liens, encumbrances, and obligations upon the lot, the purchase price shall be reduced by an amount adequate to pay any such deficiency.

(c) New Unit to Conform with Existing Development. Whether the Owner retains the Lot or conveys