

Book 60 Pages 590-595
Register of Deeds
County of Watauga
State of North Carolina

DECLARATION OF COVENANTS AND RESTRICTIONS FOR FOREST PARK

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration") is made this the 22nd day of January, 1987, by DOUGLAS B. KOGER and wife, PALMA KOGER, hereafter referred to as "Declarants".

STATEMENT OF PURPOSE

Declarants are the fee simple owners of certain real property located in Blowing Rock Township, Watauga County, North Carolina, and desire to create thereon an exclusive private residential community to be named "FOREST PARK" which is to be developed as detached single family residential dwellings.

Declarants desire for their use and benefit, and that of their heirs, successors and assigns, and of future property owners, to provide for the preservation and protection of values, and to insure the attractiveness of all properties within FOREST PARK. To this end Declarants desire to subject the real property described herein, with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements and obligations hereafter set forth, all of which are for the benefit of said property and each owner thereof.

Declarants further desire to create an organization of property owners to which eventually will be delegated and assigned the powers of administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the assessments and charges hereinafter created in order to efficiently preserve, protect and enhance the values and amenities in FOREST PARK, to insure the residents' enjoyment of the specific rights, privileges and easements and to provide for the maintenance and upkeep of the property.

NOW, THEREFORE, Declarants, for themselves, their heirs, successors and assigns, and for their future grantees, their heirs, successors and assigns, hereby declare that the property described herein and such additions as may be made subject to the provisions hereof is and shall be held, used, transferred and sold and conveyed subject to this Declaration. This Declaration shall initially apply to those residential lots in FOREST PARK as are shown on that certain map recorded in the Office of the Register of Deeds for Watauga County, North Carolina, in Map Book 10, Page 281. Declarants reserve the right to subject additional property to the provisions of this Declaration in the manner hereinafter provided.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to FOREST PARK PROPERTY OWNERS' ASSOCIATION, which shall initially be an unincorporated association, but which may become a North Carolina non-profit corporation, its successors and assigns. Nothing herein contained shall require Declarants to pay the cost and expense of incorporating such non-profit corporation.

Section 2. "Development" shall mean and refer to FOREST PARK, a residential development proposed to be developed on the Property by the Declarants.

Section 3. "Lot" shall mean and refer to any plot of land, with delineated boundary lines, appearing on any Map of the Property.

Section 4. "Map" shall mean and refer to any map of the Property as recorded (either now or hereafter) in the Watauga County, North Carolina, Public Registry.

Section 5. "Member" shall mean and refer to each Lot Owner, and to every other person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to a Lot, including the Declarants if they own any Lot and including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Property" shall mean and refer to the property or properties which are now or may hereafter be made subject to this Declaration and brought within the jurisdiction of the Association. Declarants reserve the right, but not the obligation, to subject other property to this Declaration and/or to bring same within the jurisdiction of the Association.

ARTICLE II

USE RESTRICTIONS

Section 1. Residential Use. All Lots shall be used only for single family residential purposes and for such rights-of-way and easements as are necessary or appropriate for the proper enjoyment of the property and for no other purpose. Only one family may occupy a Lot as a principal residence at any one time.

Section 2. Nuisance. No noxious or offensive activity shall be conducted, permitted or allowed to remain or continue upon any Lot or in any building thereon, nor shall anything be done thereon or therein which is or may become an annoyance or nuisance to other Owners.

Section 3. Temporary Structures. No structure of a temporary character and no mobile home or trailer shall be placed upon any Lot; provided, however, that this prohibition shall not apply to shelters used by a contractor during the construction of the dwelling to be located on the Lot; provided further, however, that such permitted temporary shelters may not be used as residences or permitted to remain on the Lot after completion of construction.

Section 4. Subdivision. No Lot shall be subdivided, or its boundary lines changed, unless each part of the subdivided lot becomes a part of an adjacent whole Lot. Each resulting modified Lot shall thereafter constitute one Lot. The restrictions and covenants in this Declaration shall apply to the modified Lots resulting from said subdivision and addition. The intent and purpose of this provision is to insure that no Lot may be resubdivided for the purpose of building another dwelling on any Lot.

Section 5. Compliance. In the event that any Owner fails to comply with any of the restrictions set forth in this Article, Declarants, or, after the assignment of Declarants' rights, the Association, shall have the right, but not the obligation, to enter any Lot and undertake any necessary action in order to cure such Owner's default. All expense and cost incurred by the Declarants or the Association in curing such default shall be charged to the defaulting Owner and shall be payable by such Owner to the Declarants or the Association as the case may be immediately upon demand. Declarants or the Association and their authorized agents shall not be liable for any damage which may result from such entry unless such damage results from the willful misconduct of Declarants or the Association or their authorized agents.

ARTICLE III

EASEMENTS

Section 1. Easements Reserved by Declarants. Declarants reserve unto themselves, their heirs, successors and assigns, a perpetual easement over, upon, across and under an area ten (10) feet in width running along each boundary line of each Lot for the installation and maintenance of electrical and telephone wires, cables, conduits, and other utility facilities in order that utility services may be provided to all Owners. Declarants also reserve unto themselves, their heirs, successors and assigns easements to cut and maintain drainways for surface water wherever and whenever such action may appear to the Declarants to be necessary in order to insure proper drainage of surface water while maintaining the overall appearance of the Property. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or to take any other similar action reasonably necessary to provide utility installation and to insure proper drainage. All rights reserved by Declarants, including the Association upon the assignment of Declarants' rights to it, in order to provide or maintain any utility services or drainage.

Section 2. Easements for Ingress, Egress and Regress. Easements are hereby reserved and granted across all roads shown on any Map of the Property for ingress, egress and regress of the Declarants, their heirs, successors and assigns, their licensees, public safety personnel and any authorized agents, employees or assigns of any of the foregoing for the purpose of constructing, maintaining, inspecting and repairing the roads in the Development and the utilities and drainage areas described in Section 1 of this Article. In addition, the Declarants, and such other persons, shall have a continuing easement to enter the Lots in order to maintain, inspect and repair all utilities facilities and drainage areas located on the Lots.

Section 3. Owner' s Easements for Ingress, Egress and Regress. Every Lot shall be conveyed with a perpetual, nonexclusive right to use any roadway for the purpose of providing access to and from each Lot.

Section 4. Declarants' Rights-of-Way and Easements for Future Development. Declarants reserve for themselves, their heirs, successors and assigns, a perpetual and nonexclusive road right-of-way and easement over and upon any roadway for the purpose of providing access to and from, and utility services to, any other property now or hereafter owned by them but not presently within the Development (the Property). Declarants covenant to subject the purchasers of any such other properties, or any part thereof, to the payment of a reasonable, in Declarants' sole discretion, share for maintenance and repair of the roads through FOREST PARK.

Section 5. Obstruction. Within any easements described in this Article, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation or maintenance of sewage disposal facilities and utilities, or which may change the direction of flow, or which may obstruct or retard the flow of water through the drainage channels.

ARTICLE IV

COVENANTS FOR MAINTENANCE AND SECURITY ASSESSMENTS

Section 1. Responsibility for Maintenance and Security Services. Prior to the assignment of the rights of Declarants to the Association as hereinafter provided, Declarants shall be responsible for providing the services set forth in Section 2 below and for collecting the assessments set forth in this Article. Upon the assignment of the rights of Declarants to the Association, the Association shall thereafter provide the services set forth in Section 2 and collect the assessments set forth in this Article.

Section 2. Purpose of Assessments. The assessments levied by the Declarants, or, after the assignment of Declarant' s rights, the Board of Directors of the Association, shall be used to maintain and repair all roads constructed within the Development to the standard as such roads were in at the time of their completion, to

maintain all landscaping adjacent to such roads in a manner consistent with the overall appearance of the Development, to maintain and repair all street lights installed along such roads and to provide lawn mowing along, and snow removal from, roads in the Development.

Section 3. Creation of the Lien and Personal Obligation for Assessments. Declarants hereby covenants for each Lot, 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 the regular assessments in such amounts necessary so as to pay for the services set forth in Section 2 of this Article and charges and special assessments for capital improvements, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorney' s fees, shall be a charge and a continuing lien upon the Lot against which each such assessment charge is made. Each such assessment or charge, together with interest, costs and reasonable attorney' s fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fee is due. The personal obligation for delinquent assessments or charges shall not pass to an Owner' s successors in title unless expressly assumed by them.

Section 4. Special Assessments for Capital Improvements and Emergencies. In addition to the regular assessments authorized above, Declarants, or, after the assignment of Declarant' s rights, the Board of Directors of the Association, may levy, in any year, a special assessment applicable to that year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the common roadways serving the Development. Such special assessments may be levied only after obtaining the written consent of the Owners of at least 51% of the aggregate number of Lots.

Section 5. Assessment Rate.

(a) Both regular and special assessments must be fixed at a uniform rate for all Lots; provided, however, Declarants shall maintain at their expense unsold properties and shall not be liable to pay assessments the same as other Lot Owners although the primary obligation to maintain and repair the roads in the Development shall remain in Declarants subject to the contributions, through assessments, of other Lot Owners. Declarants shall have the right to assign or otherwise transfer their rights as Declarants to any person, firm or corporation while conveying any Lots or group of Lots, and such conveyance shall not subject the Grantee thereof to the assessment obligation for sold Lots unless such conveyance shall so state.

(b) The amount of the aggregate regular assessments for each year shall be the amount necessary to fund the expenses described in Section 2 of this Article.

(c) Assessments shall be based on actual costs, whether bid or billed, whether accurately projected or actually incurred.

Section 6. Date of Commencement of Assessments; Dues Dates. Liability for assessments provided for herein shall commence for each Lot upon the closing of the sale of a Lot except as referred to in Section 5(a) above. Written notice of the assessment shall be sent to every Owner after determination of the amount of the assessment under Section 5 of this Article. The due date shall be established in such written notice.

Section 7. 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 sixteen percent (16%) per annum. In addition to such interest charge, the delinquent Lot Owner shall also pay such late charge as may have been theretofore established by Declarants, or the Board of Directors of the Association, to defray the costs arising because of late payment. Declarants, or the Association, may bring an action at law against the delinquent Lot Owner or foreclose the lien against the Lot. All interest, late payment charges, costs and reasonable attorney' s fees of such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandoning his Lot.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot or any mortgage or to the

Declarant. 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; provided, however, that Declarants, or the Board of Directors of the Association, may in their discretion, determine such unpaid assessments to be a regular or a special assessment, as applicable, collectable pro rata from all Lot Owners including the foreclosure sale purchaser. Such pro rata portions are payable by all Lot Owners notwithstanding the fact that such pro rata portions may cause the assessment to be in excess of the maximum permitted under Section 5 of this Article. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

ARTICLE V

ASSOCIATION

Section 1. Membership. Every Lot Owner shall be a Member of the Association. Membership of a Lot Owner shall be appurtenant to and may not be separated from the ownership of his Lot.

Section 2. Voting. All Lot Owners (including Declarants) shall be entitled to one (1) vote for each Lot owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot all such persons shall be Members and the voting rights appurtenant to said Lot may be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Section 3. Board of Directors. The Association shall be governed by a Board of Directors in accordance with such Bylaws as it shall adopt.

Section 4. Assignment of Rights to the Association. At the election of Declarants, Declarants shall assign its rights to the Association; provided, however, that such assignment must occur within ten (10) years from the date of the filing of this Declaration. Upon such assignment, the Association shall have all of the rights, duties, obligations, powers, easements and privileges as set forth herein in favor of Declarants except the right-of-way and easement reserved for future development.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. Declarants, the Association or any non-breaching Owner, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of such terms by any Owner or his agent. In addition to the foregoing, Declarants, or the Association after assignment to it of Declarants' rights, shall have the right, whenever there shall have been built on any Lot any structure which is in violation of these restrictions, to enter upon such Lot and correct or remove such violating structure at the expense of the Owner. Any such entry and abatement or removal shall not be deemed as trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration shall not be deemed a waiver of the right to do so hereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect such enforcement.

Section 2. Severability. The invalidation by any Court of any restrictions contained in this Declaration shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

Section 3. Duration and Amendment. All of the covenants, restrictions and servitudes set forth herein shall run with the land. All Owners affected hereby, by accepting the deed to such premises, accepts the same subject to said covenants, restrictions and servitudes and agrees for himself, his heirs, legal representatives, administrators, and assigns, to be bound by each of said covenants, restrictions, and servitudes jointly, separately, and severally. These covenants shall be in effect until January 1, 2000, and shall be automatically extended for successive periods of ten (10) years each unless the Owners of not less than two-thirds (2/3) of the Lots agree to terminate or modify the same in writing signed and recorded in Watauga County, North Carolina, Public Registry at any time prior to the expiration of said term or any succeeding ten-year period.

Section 4. Benefit. This Declaration shall be binding on and shall inure to the benefit of the Declarants, the Association, and their respective heirs, grantees, successors and assigns.

Recorded February 6, 1987
Register of Deeds
County of Watauga
State of North Carolina