

NYZ

4879
533
119

Prepared by and sent to: Kenneth D. Burns, P.O. Box 469, Fayetteville, N.C.
BK 4079 PG 0533

NORTH CAROLINA 67165
CUMBERLAND COUNTY

MODIFICATION AND AMENDMENT OF
COVENANTS, CONDITIONS AND RESTRICTIONS
REC'D
MAY 17 1993
GEC

THIS MODIFICATION AND AMENDMENT, made on the date hereinafter set forth, amends the Declaration of Covenants, Conditions and Restrictions for North View Villas II, a North Carolina General Partnership hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Fayetteville, Cumberland County, North Carolina, which is more particularly described as:
See attached Exhibit A

WHEREAS, a Declaration of Covenants, Restrictions and Conditions was executed and recorded on all of the properties as hereinabove set forth and that said Declaration was duly recorded in the Office of the Register of Deeds in Cumberland County, North Carolina in Book 3953 Page 225 on the 10th day of May, 1993 and that said declaration was signed by only one of the general partners instead of at least two as required by the partnership agreement recorded in Book 3604 Page 644 Cumberland County Registry, North Carolina.

WHEREAS, Declarant, North View Villas desires to correct said Declaration by the execution and recordation of this instrument.

WHEREAS, in addition to the correction of said Declaration Declarant desires to modify and amend said Declaration and does hereby declare, modify and amend said Declaration of covenants, Restrictions and Covenants as hereinafter set forth.

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, which are for the purpose of protecting the value and desirability of said property and which shall run with the real property and binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Section 1. "Association" shall mean and refer to North View Villas Homeowners Association II, 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 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 hereinbefore 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 (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners and shall be preserved to the perpetual benefit of the Homeowners Association. The Common Area is to be owned by the Homeowners Association. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

See attached Exhibit B.

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 Frank T. Edwards, his successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

2/1/93

3X4079FG0534

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 or 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 such purposes and subject to such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

(d) the right of the Association to limit the number of guests of members.

(e) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

(f) the right of the Association to mortgage all or any part of the common area. No such mortgage shall be effective unless an instrument agreeing to said mortgage is signed by two-thirds (2/3) of each class of members (excluding the developer) and 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 shall 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 members shall be all Owners, with the exception of the Declarants, and 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 they determine, but in no event shall more than one vote be cast with respect to any lot, and no fractional vote may be cast with respect to any lot.

CLASS B. The Class B members shall be the Declarants as defined in the Declaration, and shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal 75% of the outstanding total votes; or

(b) on January 1, 1995.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarants, for each Lot owned with the Properties, hereby covenant, and each Owner of any Lot by acceptance

JKL079PG0535

of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (1) annual assessment or charges, and
- (2) special assessments for public or private 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 the 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 and the private streets of North View Villas II, Revised as recorded in Book of Plats Book 84, Page 13, Cumberland County, North Carolina Registry. Included in the above Common Area costs, but not limited thereto, are the public works bills for any underground sprinkler system and street lights.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Six Hundred Dollars (\$600.00) per lot.

(a) 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 each year not more than five percent (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 five percent (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.

Section 4. Special Assessment 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 any construction, reconstruction, repair or replacement of a public or private capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent or two-thirds (2/3) of the votes of each class of members who are voting in person or by a meeting duly called for this purpose.

Section 5. Taxes. As an additional annual assessment, the Association shall levy against the Owners equally an amount sufficient to pay the annual cost of liability insurance premiums for such insurance on the Common Area and the amount of ad valorem property taxes and/or special assessments levied by any lawful governmental authority on the Common Area. It shall be the duty of the Association to pay all such premiums and taxes promptly when they shall become due. Upon default by the homeowners association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the common areas or assessments for public improvements to the common areas, which default shall continue for a period of six (6) months, each owner of a lot in the development shall become personally obligated to pay to the tax assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due by the total number of lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the lot of the then owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law against the owner personally obligated to pay the same or may elect to foreclose the lien against the property of the Owner.

Section 6. Private Streets. Every owner shall be granted a non-exclusive easement for ingress and egress in and across those private streets as shown on the plat of North View Villas II Revised, Book of Plats Book 84, Page 133, Cumberland County, North Carolina Registry. The Association shall have the right to assess each Lot for its pro rata share of the maintenance of said streets and remit said assessments by contract to the North View Villas Homeowners Association

3K4079FG0536

II, Inc.

Section 7. 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 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all 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 sixty (60) days following the preceding meeting.

Section 8. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 9. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of 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 date 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 10. 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 a rate of six percent (6%) per annum. The Association may bring an action of 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 11. 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.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and

ak 4 079 PG 0537

maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, any Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII

EXTERIOR MAINTENANCE

The Association shall be responsible for the maintenance of the individual owner's townhouse building, fence and appurtenant structures attached thereto. The Association shall be responsible for the painting, repairing, replacing and caring of roofs, gutters, downspouts, exterior building surfaces, and other exterior improvements including termite and other fumigation and the cost of such maintenance, repairs and replacements shall be added to and become part of the assessment to which the owners are subject.

ARTICLE VIII

USE RESTRICTIONS

Section 1. Land Use and Building Type. No lot shall be used except for single family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one single family dwelling not to exceed three and one-half stories in height. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article V of this Declaration of Covenants, Conditions, and Restrictions relating to architectural control.

Section 2. Nuisances. No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

Section 4. Recreational Vehicles. No boat, motor boat, camper, trailer, motor or mobile home, or similar type vehicle, shall be permitted to remain on any lot at any time, unless by consent of the Association in which event such vehicles shall be placed in the area or areas designed by the Association.

Section 5. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any lot or dwelling, except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. All pets must be leashed when not on the owners premises and pets may not be walked on common property.

Section 6. Outside Antennas. No outside radio or television antennas shall be erected on any lot or dwelling unit within the properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 7. Exterior Lights or Draperies. In order to preserve a harmonious presentation of the exterior of the units, only clear white non-frost or smoked exterior lights may be utilized and all draperies covering windows visible from the exterior of the units shall be lined with white or some other neutral color.

BK 4079 PG 0538

Section 8. No single story residence shall be constructed on a lot which shall have heated-area living space consisting ground coverage on one or more levels of less than 900 square feet. In the computation of floor space, furnace room areas, garages, and porches shall not be counted.

Section 9. Vehicles. No commercial vehicles shall be allowed in courtyards or drives; only two cars are allowed per unit, both vehicles must be currently registered and licensed, and the parking facilities for each unit shall not be used for storage of automobiles; no automobile repairs are allowed in the courtyard or drive except for emergency purposes.

Section 10. Plants. Only flowers, plants, or shrubs planted and maintained by the Association will be permitted on common property.

ARTICLE IX

EASEMENTS

Section 1. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage, or which may obstruct or retard the flow of water.

Section 2. The Association acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for in Article VII of this declaration.

Section 3. Easements are also reserved over those portions of the Common Area that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the Common Area or the air and light space above such Common Area.

Section 4. Easements over the common areas for access, ingress and egress from and to public streets and walkways and easements for enjoyment of the common areas and for parking areas shall be granted to each owner of a lot.

ARTICLE X

ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members, and two-thirds (2/3) of the Class B members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken at said meeting.

Section 2. The development of additional land described in this section shall be in accordance with the general plan submitted to the Federal Housing Administration, and the Veterans Administration with the processing papers for the first section. Detailed plans for the development of additional lands must be submitted to the Federal Housing Administration and the Veterans Administration prior to such development. If either the Federal Housing Administration or the Veterans Administration determines such detailed plans are not in accordance with the general plan on file and either agency so advises the Association and the Declarants, the development of the additional lands shall have the consent of two-thirds (2/3) of the voting membership.

BK4079PG0539

ARTICLE XI
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, reservation, liens and charges now or hereafter imposed by the provisions of these Declarations. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way 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) year from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) year. 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, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded.

Section 4. FHA / VA Approval. As long as there is Class B membership, the following actions will require the prior approval of the Federal Housing Administration and the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 5. Statutory Provisions. This instrument is prepared in accordance with Chapter 47 A of the General Statutes of North Carolina and Section 27-10(j) 7 of the Fayetteville City Code, the provisions of which are incorporated by reference as if fully set out herein. Any inconsistencies between these two statutory provisions shall be governed by Chapter 47 A of the General Statutes.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have hereunto set their hands and seals this the 15th day of December, 1993.

Edward R. Moore (SEAL)
EDWARD R. MOORE

Mary M. Schwab (SEAL)
MARY M. SCHWAB
.....
NORTH CAROLINA
CUMBERLAND COUNTY

I, SHARON L. HARDIN, a Notary Public of said County and State, do hereby certify that EDWARD R. MOORE and MARY M. SCHWAB, partners of North View Villas II, a North Carolina General Partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and Notarial Seal, this the 15th day of December, 1993.



Sharon L. Hardin
SHARON L. HARDIN, Notary Public

The foregoing Certificate(s) of Sharon L. Hardin
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.
By George E. Tatlow REGISTER OF DEEDS FOR CUMBERLAND COUNTY,
Cheryl J. Foster Deputy/Assistant Register of Deeds

ax4079pg0540

EXHIBIT A

Being all that area known as North View Villas II Revised, as recorded in Book of Plats 84, Page 13, Cumberland County, North Carolina Registry.



BK4079PG0541

EXHIBIT B

Being all that area designated as "Common Area," as shown on the plat of North View Villas II Revised, recorded in Book of Plats 84, Page 13, Cumberland County, North Carolina Registry.