

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

FOR

SHADY OAK WOODS

REGISTERED

Oct 14 1 32 PM '94

THIS DECLARATION is made this 12th day of October, 1994 by
 Russell T. Reitz, (hereinafter referred to as Declarant) for the express purpose as
 hereinafter set forth:

RECITALS

WHEREAS, it is the desire and intention of the Declarant to sell the above-referenced real property and place upon it certain mutually beneficial restrictions, conditions, easements, covenants and agreements and for all charges under a general plan or scheme of improvement for the benefit of said lands and future owners of the lands as described hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the benefits accruing to the present and future owners of the land included on said plat, Declarant hereby imposes the following restrictive covenants, all of which are to be declared to be in furtherance of a plan for the subdivision, improvement and sale of the real property and are established and agreed upon for the purpose of enhancing and protective the value, desirability, and attractiveness of said real property and every part thereof, all of which shall run with the land and shall be binding upon all the parties having or requiring any right, title or interest in the described lands or any part thereof and all of which shall be applicable to the entire tract shown on the aforesaid plat and shown as SHADY OAK WOODS II.

The provisions of this Declaration are intended to create equitable servitudes upon each of said lots and parcels in favor of each other and other lots and parcels; to create reciprocal rights between the respective owners of all such lots and parcels; to create privity of contact and estate between the Grantors of such lots, their heirs, successors and assigns.

I. DEFINITIONS

The following terms used in this Declaration are defined as follows:

A. "Association" means the Shady Oak Woods Property Owner's Association, Inc. a North Carolina non-profit corporation with its principal place of business in Jackson County, North Carolina, c/o the Declarant, Route 66, Box 283-A, Cullowhee, N.C. 28723 or at such other appropriated designee having as its initial registered agent, Russell T. Reitz .

B. "Development" means all that certain property known as Shady Oak Woods Lots 6-17 together with road rights-of-way as set forth more particularly according to a plat of Shady Oak Woods prepared by John Long, R.L.S., dated August 10, 1990, job # 005-5649, recorded in Plat Cabinet 7, Slide 55, Jackson County Public Registry to which reference is specifically made.

II. RESIDENTIAL RESTRICTIONS

The following shall be applicable to all lots, tracts and parcels within the Shady Oaks Woods II development and each owner, as to his lot, tract or parcel, covenants to observe and perform the same.

A. Land Use and Building Type: No lot or tract shall be used except for single-family residential purposes. Only one (1) detached single-family residence and one (1) bonafide guest house shall be erected, altered, placed or permitted on any lot.

B. Set-Backs: No part of any building shall be located on any lot nearer than twenty-five (25) feet to the front lot line and no part of any building shall be located nearer than ten (10) feet to any side or rear lot line. "Front lot line" as referred to herein is that part of the lot listed hereinabove which adjoins an access road located in Shady Oak Woods II Subdivision. It is expressly agreed and understood that in the event that any purchaser or lot owner wishes to have the above-requirements waived because of the shape of such tract or undue hardship, the owner may submit to the Declarant a lot plan showing an alternate location for the residential structure and improvements thereon. Said Waiver shall be accepted upon written consent of the Declarant hereto. No building or shed shall be placed on any right-of-way or easement regardless of set-back requirements with the exception of existing buildings as of the date of this agreement.

C. Subdivision of Lots: No lot shall be subdivided or its boundary lines changed except without the written consent of the Declarant, which consent shall be noted on the recorded plat.

D. Nuisances: No noxious or offensive activity shall be carried on upon any lots, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood.

E. Animals: No animals, livestock or poultry of any kind shall be permitted on any lot except domesticated pets and horses.

F. Completion of Construction: Construction and improvements, once commenced, shall be completed within eighteen (18) months. Improvements not so completed or upon cessation of construction for twelve (12) consecutive months or construction which has been partially or totally destroyed and not rebuilt or cleaned away so as to be partially or totally destroyed and not rebuilt or cleaned away so as to leave a neat and tidy appearance, within twelve (12) months shall be deemed a nuisance.

G. Maintenance of Lots and Improvements: All lots, whether occupied or unoccupied, and all improvements placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly, unsanitary, or a hazard to health. If not so maintained, the Association shall have the right to rectify such offensive situations, and the costs of such undertakings shall be a special assessment against the lot owner and the lot. Neither the Association nor any of its agents, employees or contractors shall be liable for any damage which may result from its actions to so rectify any offensive situation.

H. Storage of Garbage, Trash, Rubbish: No owner shall accumulate on his lot any junk vehicles, or any litter or garbage except in receptacles provided by owner for such purpose. All rubbish, garbage, trash receptacles and fuel storage tanks shall be buried for concealment or covered in a manner so as not be visible from any roadway or from adjacent property.

I. Certain Structures Prohibited: No travel trailer, mobile home, modular home, relocatable dwelling, tent, lean-to or other temporary structure may be placed or erected on any lot except that temporary structures, trailers or the like may be permitted by the Board of Directors when used in the process of erection of improvements thereto,

J. Recreational Vehicles, Boats, and Trailers: Recreational vehicles, boats and boat trailers shall be permitted on lots, provided, however, that the Board of Directors of the Association shall have the right to require that such vehicles, boats and trailers be located on the lots in such a manner as to be screened from view from roads and from other lots.

K. Motorcycles, Dirt Bikes, etc: No motorcycle, motor bicycle, "dirt bike" or other such vehicle shall be operated on any lot or roadway in Declaration Property. (Since one of its purposes is to limit noise, this restriction shall be broadly construed to include all such vehicles, notwithstanding the number of wheels.)

III. ASSOCIATION

A. General: The Association is a North Carolina non-profit corporation which is intended to further and promote the common interest of the property owners of the development including the specific interest of road maintenance.

B. Membership: The members of the association shall consist of every person, firm or corporation or other legal entity having a vested possessory interest in any lot, parcel or tract.

C. Rights, Privileges and Obligations: The rights, duties, privileges and obligations of membership in the Association are set forth in this Declaration and in the By-Laws of the Association.

IV. EASEMENTS

A. Reservation: The following easements over each lot, tract or parcel including the right to ingress and egress to the extent reasonably necessary to exercise such are reserved to Declarant, its successors and/or assigns:

1. Utilities: A twenty (20) foot easement on all front lot lines for the installation of water lines, power lines and any other utility which may be placed on the property. Such reserved easements shall be for the express purpose of drainage and the further purpose for the installation, maintenance and operation of utilities, including television transmission cables, and the accessory right to locate guy wires, braces, or anchors, or to cut, trim or remove trees and plantings whenever necessary upon such lots or parcels in connection with such installation, maintenance and operation.

2. A right-of-way from State Road 1157 and thence continuing over the private 30 foot in width road right-of-ways of Gem Creek drive, Vista Point Drive, and other road ways shown on the plat of the development recorded in Plat Cabinet 7, Slide 55, Jackson County Public Registry for ingress and egress to the lands of the Declarant and including the lands originally described in Book 544, Page 57, Jackson County Public Registry.

3. Utilities. A twenty (20) foot wide strip running along the inside of all lot lines (except those lot lines coincident with street rights of way lines) for the installation, maintenance and operation of utilities including radio and television transmission cables and the accessory right to locate guy wires, braces and anchors or to cut, trim, or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation, including an easement given unto Nantahala Power and Light Company recorded in Book 870, Page 817, Jackson County Public Registry.

V. ASSESSMENTS AND MAINTENANCE OF ROADS

A. Road Construction and Maintenance: Declarant shall construct all the roads within Shady Oak Woods II at Declarant's expense. The Association shall be responsible for the operation and maintenance of the subdivision's roads. It is expressly agreed and understood that the Association as herein shall be responsible for maintenance of the private roadways within the development and for the pro-rata share of the gravel leading to the entrance of Shady Oak Woods II from State Road # 1157.

B. Road Assessments : Repairs, maintenance, operations and other matters pertaining to the roads shall be assessed annually by the Association to each lot owner. For the calendar years 1994 and 1995 the maximum annual assessments for owners shall be sixty dollars (\$60.00) a year for owners of an unimproved lot and an annual assessment of one hundred dollars (\$100.00) for an improved lot which sum is immediately due when an owner obtains a building permit from Jackson County for the improvement of said owners property. Annual road maintenance assessments are due and payable by the owner to the association on May 1 of each year and shall be pro-rated on a May 1 through April 30 fiscal year.

C. Construction Impact Fee: A one-time impact fee of two hundred and fifty dollars (\$250.00) shall be due and immediately payable to the Association at the time any owner secures a building permit from Jackson County.

D. Collection of Delinquent Assessments: The Association is charged with the duty and responsibility of bringing any actions at law against the owner obligated to pay any delinquent assessments and to enforce the lien so imposed upon the subject property as above set forth.

Any sale or transfer of any lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer; however, no sale or transfer shall release any lot from liability for any assessment becoming due or from the lien thereof. No sale or transfer shall relieve any previous lot owner from his personal obligation to pay the assessment according to these covenants.

E. Grantee's Acceptance:

1. Each grantee or purchaser of any lot, parcel or tract shall, by acceptance of deed conveying title thereto, or the execution of an agreement for the purchase thereof, whether from Declarant or a subsequent owner of such lot or parcel, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges, and amenities of Declarant and of the Association. By such acceptance, each grantee or purchaser shall for itself, its heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with the Declarant and the grantee or purchaser of each lot to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

2. Any assessment not paid within thirty (30) days after due date, shall bear interest from due date at the rate of twelve percent (12%) per annum, or the highest rate permissible under North Carolina law, whichever is greater, and shall become a lien upon the subject property. No owner may waive or otherwise escape liability from the assessments provided for herein by non use of the road or abandonment of the tract or lot.

VI. ANNEXATION

A. PROPERTY TO BE ANNEXED: DECLARANT may, from time to time, and in its own discretion, annex other property owned or acquired by DECLARANT to the Development under this Declaration.

B. MANNER OF ANNEXATION: DECLARANT shall effect such annexation by recording a Plat of the real property to be annexed and by recording a Supplemental Declaration which shall:

1. Describe the real property being annexed and designate the permissible uses thereof;

2. Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including but not limited or restrictive uses of Common Areas; and,

3. Declare that such annexed property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the provisions of this Declaration. Upon the recording of such Supplemental Declaration the annexed area shall become a part of the Development, as fully as if such area were a part of the Development of the date of recording of this Declaration.

VII. MISCELLANEOUS

A. Term: These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time, said covenants shall automatically be extended for successive periods of ten (10) years, unless an instrument signed by the majority of the then owners of the Lots has been recorded agreeing to change said covenants in whole or in part pursuant to Article X hereinbelow.

B. Enforcement: Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages. The various restrictive measures and provisions of this instrument are declared to constitute mutual restrictive covenants and servitudes for the protection and benefit of each tract or lot; failure by the undersigned or any other person or persons entitled to do so, to enforce any measure or provision upon violation thereof, shall not stop or prevent enforcement thereafter or be deemed a waiver of the right to do so.

C. Severability: Invalidity of any of these covenants by judgment or court order shall in no way affect any of the provisions which shall remain in full force and effect.

VIII. REMEDIES

A. Suspension of Privileges: The Board may suspend all voting rights, if any, of any owner for any period during which any Association assessment against such owner remains unpaid or during the period of any continuing violation of the provisions of this Declaration by such owner after the existence thereof has been declared by the Board, in addition to any other rights of enforcement hereinbefore set forth.

B. Cumulative Rights: Remedies specified herein are cumulative and any enumerations herein of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of any aggrieved party to invoke an available remedy in respect to a violation of any provision of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuance of said violation, or the occurrence of said violation or the occurrence of a different violation.

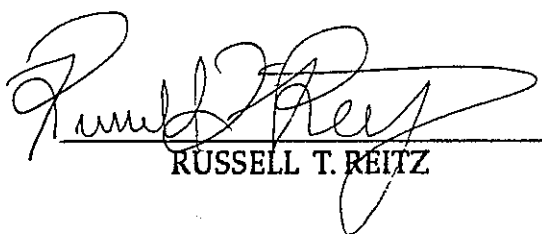
IX. SEVERABILITY

Every provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a Court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

X. REMEDIES

This declaration may be amended by the affirmative vote of a majority of the owners of all lots in the Development entitled to vote, or by an affirmative vote of a majority of all members of the Association entitled to vote, and by the subsequent recordation of an amendment to this Declaration duly executed by (a) the requisite number of the owners required to effect the amendment or (b) by the Association, in which the amendment shall have attached to it a copy of the resolution of the Board attesting to the affirmative action of the requisite number of the members to effect the amendment, certified by the secretary of the Association; but any amendment prior to the earlier of (a) when ninety percent (90%) of all lots in the Development have been sold by Declarant or (b) October 1, 2015, shall require the approval of Declarant.

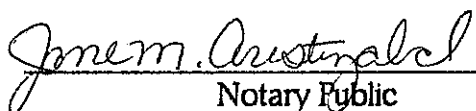
IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year first above written.

 (SEAL)
RUSSELL T. REITZ

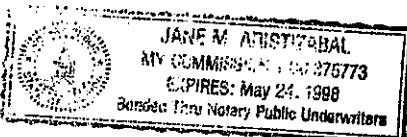
STATE OF FLORIDA
COUNTY OF COLLIER

I, Jane Aristizabal, Notary Public, do hereby certify that RUSSELL T. REITZ personally appeared before me this day and acknowledged the due execution of the foregoing instrument and that the statements contained therein are true.

Witness my hand and notarial seal this 12th day of October, 1994.



Notary Public

My Commission Expires:



STATE OF ~~NORTH CAROLINA~~
COUNTY OF JACKSON

The foregoing certificate of Jane M. Aristizabal, Notary Public, is certified to be correct. This instrument was presented for registration this 14th day of October, 1994, and duly recorded at 1:32 o'clock P.M., in Deed Book 872, Page .


Register of Deeds,
Jackson County, North Carolina