

VANCE COUNTY, N.C.
FILED FOR RECORD

BOOK 680 PAGE 575

AUG 9 2 00 PM '91

PREPARED BY: STAINBACK & SATTERWHITE - Michael A. Satterwhite
REGISTER OF DEEDS

STATE OF NORTH CAROLINA

COUNTY OF VANCE

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the day hereinafter set forth by **NELMS & STARK PROPERTIES, INC.**, a North Carolina business corporation, herein referred to as "Declarant;"

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in Henderson Township, Vance County, North Carolina, which is more particularly described as follows:

SEE SCHEDULE "A" ATTACHED HERETO.

NOW, THEREFORE, Declarant hereby declares that all the property 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, and which shall run with, the real property and be 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.

DEFINITIONS

Section 1. "Association" shall mean and refer to FERNWOOD TOWNHOME HOMEOWNERS' ASSOCIATION, INC., its successors and assigns.

Section 2. "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 3. "Common Area" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners.

Section 4. "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 5. "Declarant" shall mean and refer to Nelms & Stark Properties, Inc., a North Carolina business corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 6. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any lot situated upon the Properties, including contract sellers, but excluding those which have such interests merely as security for the performance of an obligation.

Section 7. "Member" shall mean and refer to all those Owners who are members of the Association as hereinafter provided.

ARTICLE II.

ADDITIONS TO THE PROPERTY SUBJECT TO THIS DECLARATION

Additional lands may become subject to this Declaration in the following manner.

Section 1: Additions by the Declarant: Additional lands within the area described as "Townhomes" 1.49 acre according to survey and plat entitled "Plat of Survey of Fernwood," prepared by John L. Hamme, Civil Engineer and Land Surveyor, dated January 10, 1991, recorded in Plat Book "U", Page 941, Vance County Registry, may be annexed by the Developer without the consent of the members within five (5) years from the date of the filing of this instrument.

Section 2: Other Additions: Upon approval in writing of the Association pursuant to vote of 2/3's of its members as provided in its Articles of Incorporation, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association may do so by the filing of record of a supplementary Declaration of Covenants, Conditions and Restrictions.

ARTICLE III.

PROPERTY RIGHTS

Section 1: Owners' 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:

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

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

(3) 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. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded; and

(4) the right of individual Owners to the exclusive use of parking spaces as provided in this Article.

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.

Section 3: Parking Rights: Ownership of each lot shall entitle the Owner or Owners thereof to the use of not more than three automobile parking spaces, which 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 area. The Association shall permanently assign three vehicle parking spaces for each dwelling.

Section 4: Owners' Easement for Encroachment: Every Owner shall have a right and easement of enjoyment in and to any portion of the Common

Area upon which any improvement erected on any Owner's lot inadvertently encroaches.

ARTICLE IV.

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 separate 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 Declarant, 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.

"Class B." The Class B member(s) shall be the Declarant 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 the total votes outstanding in Class B membership; or

(b) On January 1, 1995.

ARTICLE V.

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:

(1) annual assessments or charges; and

(2) 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 the assessment fell due.

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 of the homes situated upon the Properties.

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 Five Hundred Forty (\$540.00) Dollars per lot.

(1) From and after January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum assessment may be increased each year not more than five (5%) percent above the maximum assessment for the previous year without a vote of the membership; and

(2) 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 (5%) percent by a vote of two-thirds (2/3rd's) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose; and

(3) 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 or any lot, including fixtures and

personal property related thereto, *provided that* any such assessment shall have the assent of two-thirds (2/3rd's) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for the 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 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 of proxies entitled to cast sixty (60%) percent 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 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 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 a monthly basis.

Section 7: 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 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 eight (8%) 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 assessment 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 assessment 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 VI.

EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each lot which is subject to assessment hereunder as follows: paint, repair, replacement of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a lot or the improvements thereon is caused through the willful and negligent acts of its Owner or through the willful and negligent acts of the family, guests or invitees of the Owner of the lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such lot is subject.

ARTICLE VII.

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 VIII.

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 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 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 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, an 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: Right to Contribution Runs with Land: The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6: 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 such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX.

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: Invalidation of any one of these covenants or restriction by judgment or court order shall in no wise 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 which 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 (90%) percent of the Lot Owners, and thereafter, by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded.

Section 4: Annexation: Additional land within the area described as "Townhomes" 1.49 acre according to survey and plat entitled "Plat of Survey of Fernwood," prepared by John L. Hamme, Civil Engineer and Land Surveyor, dated January 10, 1991, recorded in Plat Book "U", Page 941, Vance County Registry, may be annexed by the Declarant without the consent

of the members within five (5) years of the date of this instrument, whether said lands be residential property and/or Common Areas.

ARTICLE X.

MISCELLANEOUS

Section 1: Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except for dogs, cats and other common household pets may be kept provided that they are not raised, bred or kept for any commercial purpose. Not more than two adult animals can be kept in any townhome located on any lot (and no animals shall be kept on the Common Area). Adult animals shall be defined for the purpose of this section as those animals which are over three months old. Owners shall be responsible for curbing unreasonable noise and/or dangerous or unreasonable conduct of their animals.

Section 2: Parking of Boats with Trailers and Use of Parking Lot: No boat or boat trailers or campers or trailers shall be permitted in the parking lot, other than in one of the Owner's three parking spaces. In addition, no storage or extensive repair work on automobiles shall be commenced or carried out on the parking lot, and no cars shall be stored on blocks or other platforms.

Section 3: Signs: No sign of any kind shall be displayed to the public view on any lot except for temporary signs erected by the Declarant in connection with the construction, lease or sale of lots.

Section 4: Window Air Conditioners: No individual window air conditioning units shall be permitted since all dwellings have central air conditioning service.

Section 5: Use of Sound Amplifiers or Musical Instruments: Lot Owners shall not use sound amplifiers or any musical instruments in such a manner that will disturb the peace and quiet of the neighboring Lot Owners.

Section 6: Noxious or Offensive Activities: No noxious or offensive activity shall be carried on upon any lot or in any dwelling nor shall anything be done therein which may be or become an annoyance or nuisance to the other Lot Owners, and all applicable zoning laws shall be strictly complied with.

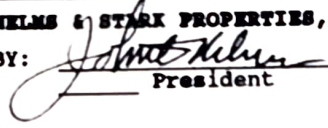
Section 7: Use: All lots shall be used for residential purposes only, and no business activity shall be conducted on any lot.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors.

This the 9th day of August, 1991.

HEILMS & STARK PROPERTIES, INC.

BY:


President

ATTEST:



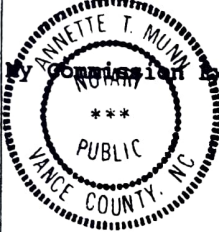
STATE OF NORTH CAROLINA

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COUNTY OF VANCE

I, a Notary Public of the county and state aforesaid, certify that William L. Stark personally came before me this day and acknowledged that he is Secretary of WELMS & STARK PROPERTIES, INC., a North Carolina business corporation, and that by 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 him as its Secretary.

WITNESS my hand and official stamp or seal this 9th day of August, 1991.



Annette T. Munn
NOTARY PUBLIC

My Commission Expires:

10-5-94

STATE OF NORTH CAROLINA, VANCE COUNTY

The foregoing certificate of Annette T. Munn, Notary Public of Vance County, N.C., is certified to be correct. This instrument was presented for registration and recorded in this office in Book 480, Page 575.

This 9 day of August 1991, at 2:00 o'clock P.M.

SARAH H. HALE, REGISTER OF DEEDS

BY: Rebecca W. Irvin
Deputy

SCHEDULE "A"

Attached to and made a part of that certain Declaration of Covenants, Conditions and Restrictions dated 9th day of August, 1991.

Being that certain lot or parcel of land containing 0.750 acre according to survey and plat entitled "Property Surveyed for Fernwood Townhomes - Phase I," prepared by John L. Hamme, Civil Engineer and Land Surveyor, dated July 12, 1991, recorded in Plat Book "U", Page 976, Vance County Registry.