

Prepared by and return to:  
MERRIMAN, NICHOLLS & DOMBALIS, P.A.

PRESENTED  
FOR  
REGISTRATION

BOOK 2911 PAGE 507

MAR 25 11 44 AM '81

NORTH CAROLINA  
WAKE COUNTY

RE. WENZIE, JR. DECLARATION OF PROTECTIVE COVENANTS  
REGISTER OF DEEDS  
WAKE COUNTY, N.C. BERKSHIRE DOWNS SUBDIVISION  
SECTION II, PART B

THIS DECLARATION, made this 24 day of MARCH, 1981, by  
BERKSHIRE DOWNS ASSOCIATES, a North Carolina general partnership,  
having its principal office in Wake County, North Carolina,  
hereinafter called "Declarant;"

W I T N E S S E T H :

WHEREAS, the Declarant is the owner of real property described in Paragraph 2 of this Declaration and is desirous of subjecting said real property to the protective covenants hereinafter set forth, each and all of which is and are for the benefit of such property and for each owner thereof, and shall inure to the benefit of and pass and run with said property, and each and every lot or parcel thereof, and shall apply to and bind the successors in interest and any owner thereof;

NOW THEREFORE, the Declarant hereby declares that the property hereinafter described is and shall be held, transferred, sold and conveyed subject to the protective covenants set forth below:

1. GENERAL PURPOSE OF DECLARATION. The real property described in Paragraph 2 hereof is subject to the covenants, restrictions, conditions, reservations, provisions and easements hereby declared to insure the best use and the most appropriate development and improvement of each residential building lot thereof; to protect the owners of residential lots against such improper use of surrounding residential lots as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon with appropriate locations thereof on residential lots; to prevent haphazard and inharmonious improvement of residential lots to secure and maintain proper setbacks from streets, and adequate free spaces between structures, and in general, to provide adequately for a high type and quality of improvement in said property, and thereby to enhance the values of investments made by purchasers of residential lots thereof.

2. PROPERTY PROTECTED. The real property which is, and shall be held, transferred, sold and conveyed subject to the protective covenants in this declaration is located in Neuse Township, Wake County, North Carolina, and is more particularly described as follows:

BEING ALL OF Lots 10, 11, 13 through 37, 71 and 82, (hereinafter referred to individually as "lot" and collectively as "lots"), Section II, Part B, Berkshire Downs Subdivision, as shown on a plat recorded in Book of Maps 1981, Page 236, Wake County Registry.

3. LAND USE AND BUILDING TYPE. All lots shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on any of said lots other than one, detached, single-family dwelling not to exceed two and one-half stories in height and a private garage for not more than two automobiles.

4. DWELLING SIZE. No dwelling shall be permitted on any lot unless the same has the following minimum amounts of floor area, exclusive of decks, open porches and garages:

- (a) 900 square feet for a one story dwelling;
- (b) 1,100 square feet for a one and one-half story, split level or bi-level dwelling;
- (c) 1,250 square feet for a two story dwelling; and
- (d) 1,300 square feet for a two and one-half story dwelling.

5. BUILDING LOCATION. No building shall be located on any lot nearer than 40 feet to the front lot line, or nearer than 30 feet to any side street line. No building shall be located nearer than 10 feet to the interior lot line or 30 feet to the rear lot line. For purposes of this covenant, eaves and steps shall be considered as a part of any building, but this may not be construed to permit any portion of a building on a lot to encroach on another lot. Declarant reserves the right to waive minor violations of the setback and side line requirements set forth in this article and violations not in excess of 10% of the minimum requirements shall be deemed minor.

6. PLANS AND SPECIFICATIONS. All plans, specifications and builders must be approved, in writing, by the Declarant prior to the start of any construction on a lot.

7. EASEMENTS. Easements for installation and maintenance of utilities and drainage facilities are reserved along and over a 10 foot wide strip on all sides of each lot. Within these easements, no structures, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage channels in the easements, or which obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lots, except for the improvements for which a public authority or utility company is responsible.

8. LOT OWNERS RESPONSIBILITY. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such lots which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. Non-operating cars, unused objects or apparatus, or any portion thereof, shall not be permitted to remain on any lot. All lots shall be kept clean and free of garbage, junk, trash, debris, or any substance that might contribute to a health hazard or the breeding and habitation of snakes, rats, insects, etc. Each lot owner shall cause his lawn to be mowed as needed, cause the maintenance and protection of landscaping insuring proper drainage of the lot so as to prevent soil erosion, and cause the maintenance of the residence and any other structures and improvements located on his lot.

9. ADDITIONAL RESTRICTIONS. Unless Declarant shall give its prior written approval: no residence shall have more than one standard television antenna attached to the structure; no residence shall have any other objects attached to the exterior of the structure and specifically prohibited are lightening rods, weather vanes, and high powered antennas; no outside clothes lines shall be installed except those located behind the residence and not easily visible from any roadway; no

window air conditioning units shall be permitted if they may be seen from any roadway in the direction in which they face; no fence shall be erected nearer the front property line than the front of the dwelling and no chain link or other variety of wire fence may be erected except along the sides and rear property lines of a lot; provided herein in addition to the above, as to all corner lots, no fencing of any type shall be located any closer to the right-of-way of the roadway adjacent to said fencing than is the nearest corner of the residence to said street right-of-way; no outbuilding, except a standard residential storage shed normally used for yard and garden tools shall be located on any lot and only in the rear yard.

10. RESTRICTED ACTIVITIES. No offensive or noxious activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants or animals, device or thing of any sort whose normal activity or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment or value of other property in the neighborhood by the owners thereof.

11. TEMPORARY STRUCTURE. No structure of a temporary character, mobile home, trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

12. SIGNS. No sign of any kind shall be displayed to the public's view on any lot except one professional sign of not more than 5 square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period.

13. ANIMALS. No poultry, pigs, cows, horses, sheep or goats shall be raised, bred or kept on any lot nor shall any animal, domestic or otherwise, be raised, bred or kept for commercial purposes.

14. UTILITY CONTRACT. The Declarant reserves the right to subject the real property in this subdivision to a contract with any utility company for the installation of utility lines, light, and other utility poles, etc., which may require an initial payment and/or a continuing monthly payment to said company by the owner of each lot.

15. TERM. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by all parties to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years except they may be altered, amended or revoked in whole or in part by written agreement of record owners of two-thirds (2/3) of the lots comprising Phases I and II.

16. NOTICE. Any notice required to be sent to any lot owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the person who appears as lot owner. Notice to one of two or more co-owners of a lot shall constitute notice to all co-owners.

17. SEVERABILITY. Should any covenant or restriction herein contained, or any sentence, clause, phrase, or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. In addition, if there is any contradiction between these restrictions and any governmental ordinances, laws or regulations of a federal, state or local agency, the latter shall prevail.

18. GARBAGE/FUEL TANKS. Each lot owner shall provide receptacles for garbage in an area not generally visible from the common roadway and for the removal of garbage at least once each week. Moreover, no fuel tanks or similar storage receptacles may be exposed to view, and may be installed only within the residence, within any other structure located on the lot or buried underground.

19. MODIFICATION OF PROTECTIVE COVENANTS. The Declarant reserves the right, at all times, to make such exceptions, modifications and alterations of these Protective Covenants herein created so long as such exceptions, modifications and alterations promote the orderly and harmonious development of the property subjected thereto.

20. ENFORCEMENT. These covenants may be enforced by any person owning any lot by proceedings, at law or in equity, against any person violating or attempting to violate the same, by restraining said violation, or the recovery of damages, including costs and reasonable legal fees, or both.

IN TESTIMONY WHEREOF, BERKSHIRE DOWNS ASSOCIATES, a North Carolina general partnership, has caused this instrument to be signed in its name by its managing general partner on the day and year first above written.

BERKSHIRE DOWNS ASSOCIATES

BY: Stephen B. Eastman (SEAL)  
Stephen B. Eastman  
Managing General Partner

NORTH CAROLINA

WAKE COUNTY

I, a Notary Public in and for said County and State, certify that Stephen B. Eastman, Managing General Partner of Berkshire Downs Associates, personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 24 day of March, 1981.

David J. Bennett  
Notary Public

My Commission Expires:  
30 Oct 1983

NORTH CAROLINA - WAKE COUNTY

The foregoing certificate

of David J. Bennett

Notar(y) Public 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.

R. B. McKEITHEN, JR., Register of Deeds

By Thaddeus C. Smith  
Deputy Register of Deeds