

Modern Continental
333 Corporate Plaza
Suite 1508
Raleigh, NC 27601

NORTH CAROLINA)

WAKE COUNTY)
Wake County, NC 1099
Laura M Riddick, Register Of Deeds

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Book : 008839 Page : 00289 - 00298

DECLARATION OF RESTRICTIVE
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR PEMBERLEY
SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS that this Declaration of Restrictive Covenants, Conditions and Restrictions for Pemberley Subdivision (the "Declaration") is made and entered into as of the 9th day of January, 2001, by MODERN CONTINENTAL ENTERPRISES, INC., a Massachusetts corporation qualified to do business in North Carolina, with a mailing address of 600 Memorial Drive, Cambridge, Massachusetts 02139 (hereinafter referred to as "Declarant").

RECITALS

1. Declarant is the owner of the real property generally known or to be known as Pemberley Subdivision, which is more specifically described in Exhibit A attached hereto and incorporated herein by reference (the "Development").

DECLARATION

SECTION ONE - GENERAL TERMS

NOW THEREFORE, the Declarant does hereby declare that the real property consisting of the Development, and all future phases of the Development annexed hereto in accordance with Section Four hereof, shall be held, used, transferred, sold, conveyed, and occupied, subject to the terms, conditions, and provisions of the covenants, conditions, restrictions, easements, charges and liens as hereinafter set forth, whether or not specific mention of this Declaration is made on the instrument conveying title to the land burdened and benefited hereby.

It is expressly understood and agreed between the Declarant and all subsequent owners of Lots in the Development, by virtue of such owners' acquisition of title to real property in the Development, that all conveyances in the Development are and shall be made and deemed to be made subject to the covenants, conditions and restrictions herein, and that such covenants, conditions and restrictions are for the protection and general welfare of the Development and shall be covenants appurtenant to and running with the land, binding upon all parties acquiring title to real property in the Development and their heirs, successors and assigns, administrators or executors.

The restrictions, covenants and conditions herein are hereby declared and agreed to be in furtherance of a general plan and scheme of development and the division of the Development into individual tracts of land and shall be a burden and a benefit to the Declarant, its successors and assigns, and to any person acquiring or owning any interest in the real property herein

described, and any improvements thereto, and to the grantees, successors, heirs, assigns, executors, administrators and devisees.

The Declarant intends to develop the Development pursuant to a general plan or scheme of development, and the Declarant does not intend to abandon this general plan. However, the Declarant specifically reserves its right to unilaterally modify or change the restrictions, covenants and conditions herein for future phases of the Development or for unsold Lots in any phase of the Development and to grant variances from the provisions hereof as to any Lot by the written consent of the Declarant, which written consent shall be duly executed, acknowledged, and recorded in the Office of the Register of Deeds of Wake County, North Carolina, and which written consent may be given or withheld within the uncontrolled and sole discretion of the Declarant, as said Declarant may deem best for the general plan or scheme of development.

These restrictions, covenants and conditions shall apply to each and every Lot in the Development. A "Lot" shall be any numbered parcel of land within the Development that is intended for use as a site for dwelling unit, as shown upon any recorded plat of any part of the Development, if the recorded plat has been executed by the Declarant and any owners, if different, of the property that is the subject of the plat (such a plat hereinafter referred to as a "Recorded Plat"). Property encumbered by the Declaration and not designated as a "Lot" may be designated and used as any of the following so long as such use is consistent with the zoning of the property: public or private streets and common areas, including a swimming pool and bath house or other recreational area, whether open to the public or restricted to the owners of Lots and their guests. Property designated with a particular use (including without limitation a Lot or a street) on a Recorded Plat may later be designated for some other use on a future Recorded Plat, with the latest designation of property on a Recorded Plat governing that property's designation for purposes of this Declaration.

SECTION TWO - RESTRICTIONS

The following restrictions apply to every Lot:

(1) No building or other structure shall be used or built, altered or erected other than a single-family dwelling house and its customary accessory buildings, and no such dwelling house of a Lot shall be used except for residential purposes and other related uses, including home office use, as may be permitted by applicable zoning.

(2) No building or other structure or portion thereof shall be used as an apartment.

(3) The following shall not be permitted:

(a) The keeping of swine and goats; (b) the keeping of more than two domestic fowl of any kind; (c) the erection of clothes lines, the maintenance of exposed exterior garbage cans, the storage of boats, campers and trailers (with the exception of on-site trailers used during the construction period of any dwelling(s)); (d) the parking on the streets of boats

and campers for more than twenty-four (24) hours; (e) structures of a temporary character, trailers, tents, shacks, or other outbuilding used as a temporary residence.

(4) Only one single-family dwelling shall be allowed to exist or shall be built, altered or erected on any one Lot except as hereinafter provided.

(5) No Lot shall be subdivided into more than one Lot except that any Lot may be subdivided and/or recombined with the adjoining Lots so long as the total number of Lots in the Development is not increased.

(6) No single-family dwelling house shall be allowed to exist or shall be built, altered or erected on a Lot unless the main body of the structure, exclusive of porches and terraces, contains 1,400 square feet or more of floor space, as measured to the outside wall lines.

(7) No company vehicle or service vehicle larger than one-half ton shall be parked overnight in the Development unless parked wholly within a garage on a Lot.

(8) No satellite dish with a diameter in excess of three feet across shall be installed on any Lot unless appropriately screened from view in accordance with the guidelines of the Declarant and the Federal Communications Commission.

(9) All builders (including individuals) building homes in the Development must receive prior written approval from Declarant to build new improvements or modify existing improvements.

(10) All driveways shall be completed with concrete or brick pavers.

(11) Front facades of some single family homes built within the subdivision shall incorporate brick or stone accents, unless waived by Declarant. Exterior siding shall be one of the following: brick, veneer, stone, vinyl from an approved manufacturer (0.040 inches thick), wood, hardboard, concrete siding or stucco.

(12) All builders must submit a landscape site plan to Declarant for written approval. They must contain a minimum of the following or equivalent per Lot:

<u>Qty</u>	<u>Size</u>	<u>Description</u>
1	2" diameter	flowering tree
2	5 gallon	large evergreen shrub
4	2 gallon	med. evergreen shrub
4	2 gallon	med. flowering shrub
4	1 gallon	small evergreen shrub
2	2 ½" diameter	Red Maples

All front yards must be sodded, except where front yard exceeds the average front dimension of a standard Lot, where the sides of these front yards may be seeded and strawed

consistent with the remainder of the yard. All landscaping must be complete prior to the issuance of a Certificate of Occupancy for the improvements on the Lot.

(13) No structure, whether residence, appurtenant building, tennis court, swimming pool, fence, shed or other improvements shall be constructed or maintained on any Lot and no alteration to the exterior of a structure or addition thereto shall be made, unless front elevation and site plans with contours have been submitted to and approved in writing by Declarant. At no time will approvals be unreasonably withheld. If the Declarant fails to give written approval or denial within thirty days of the date of submission, then approval shall be deemed to be given.

The Declarant shall issue on request a written certification, acknowledged for the purpose of recording, certifying, where true, that the building plans and specifications required by this restriction have been submitted and have been approved as herein required. Said certification may be included within a deed of a Lot from the Declarant or in a separate instrument.

If neither (a) a notice of violation of this Declaration is recorded in the Wake County Registry by the Declarant nor (b) a suit is instituted against a Lot owner, in either case within six (6) months after the completion of any building, structure, tennis court, swimming pool or other improvements, alteration, addition or landscaping by that Lot owner, then the Lot owner shall be conclusively deemed to have complied with this restriction.

(14) The Declarant is permitted hereunder to erect (i) signs indicating the name of the Development as well as the name of streets in the development, (ii) signs required by law, (iii) signs necessary for proper development of the Development, for sale signs and traffic control signs, and (iv) entry-way walls, fences, monuments and/or landscaping for the Development. The Declarant and its contractors and grantees shall also be entitled to locate such construction equipment and trailers as are necessary to construct roads, utilities, homes and other improvements in the Development.

The Declarant hereby reserves an easement for the construction, repair, replacement and maintenance of signs, entry-way walls, fences, monuments, utility lines and other improvements of a fixed and permanent nature that are to be erected by the Declarant within the Development. The Town of Wake Forest may exercise Declarant's right to access, install, maintain, repair and replace utility lines in such easement areas once such easements have been dedicated on a Recorded Plat. The location of such easements shall be noted on a Recorded Plat or other instrument executed by the owner of the land burdened by the easement. The Declarant hereby reserves an easement for landscaping certain portions of the Development. Such easements shall be deemed to exist (1) wherever such improvements or landscaping is located if so located prior to conveyance of such property to a builder or Lot owner by the Declarant, (2) wherever such improvements or landscaping is located if located wholly in a street or in a Lot within 10 feet of a boundary line of the Lot with a street, (3) where such improvements or landscaping is shown on a Recorded Plat, or (4) where consented to by a Lot owner (whose consent shall not be unreasonably withheld, conditioned or delayed and whose consent shall not be required where such owner is holding merely beneficial title to a Lot

pursuant to a deed of trust) if the easement's location is not already deemed pursuant to (1), (2), or (3).

The owner of any Lot burdened by such easements shall maintain such easement areas in an aesthetically pleasing fashion, including performing any normal landscaping and lawn maintenance duties with respect to such areas. Drainage easement areas, and all catch basins, yard inlets and the like serving to collect storm water to run through the easement areas, shall be kept, by the Owners of Lots burdened by such easements, free of excessive vegetation, debris and other objects or materials that may impede the flow of storm water through the easement area. The Declarant may, but is under no obligation to, perform duties imposed on Lot owners herein for Lot owners that do not consistently perform such duties in a timely manner, and the Declarant may charge the owner of Lot(s) the cost of such work. Such cost, if notice thereof and of the Lot(s) affected is made by the Declarant in the Wake County Registry, shall constitute a charge against the Lot owner and a lien against the Lot(s), enforceable by the Declarant, including by an action like that for foreclosure of a deed of trust.

(15) Lot owners shall install and be reimbursed at the rate of \$12.95 per linear foot for the five(5) foot wide sidewalk improvement as specified by the construction plans, prior to receiving a Certificate of Occupancy.

SECTION THREE - DECLARANT CONTROL PERIOD; ASSIGNMENT

During the period of time, during the term of this Declaration as described in Section Five hereof, in which any portion of property in the Development remains undeveloped as Lots, streets and appurtenances thereto, or any Lots remain unimproved with a dwelling unit, the Declarant shall be empowered to exercise all rights as Declarant hereunder, including the right to enforce the terms, covenants, conditions and restrictions of this Declaration. Such period of time in which the Declarant's rights shall exist and be enforceable shall be referred to as the "Declarant Control Period."

The Declarant may, in its sole discretion, assign its rights as Declarant to any other party, by recording an assignment and assumption of such rights in the Wake County Registry. Such assignment may be made in connection with or apart from a conveyance of property in the development to such assignee. The assignee's rights as Declarant hereunder shall continue during the Declarant Control Period.

After the Declarant Control Period, the rights of the Declarant herein (including, without limitation, the architectural approval and the easement rights of the Declarant) shall revert to the owners of the Lots of the Development as a group. Such owners shall determine for themselves whether the Declarant's rights shall be terminated or continued, and if continued, how such rights shall be exercised. The Lot owners may, by way of example but not limitation, form an association that has the power to assess mandatory fees to enable the association to exercise its rights. Each Lot shall have one vote, exercisable indivisibly by the owner(s) of such Lot, in the process used to determine whether and how the Declarant's rights shall be exercised after the Declarant Control Period. Each Lot shall be bound by the decision of a majority of the votes taken (in person or by proxy) at a meeting for which notice thereof was provided to each Lot

owner (at the street address of such Lot) at least 10 and no more than 50 days prior to such meeting.

SECTION FOUR - ANNEXATION; AMENDMENT; RELEASE

The Declarant, and its successors and assigns, shall have the right but not the obligation, without further consent of the Lot owners, to bring within the scheme and operation of this Declaration all or any portion of the real property that is contiguous or nearby to the Development, if the consent to such annexation is made by the then owner(s) of such property to be annexed into the scheme of the Development. The annexations hereby authorized shall be evidenced by the filing in the Wake County Register of Deeds of one or more supplementary declarations with respect to such property made by the Declarant, or its successors or assigns, and consented to by the owner(s) of such property.

The Declarant, and its successors and assigns, shall have the right but not the obligation, without further consent of the Lot owners, to bring within the scheme and operation of this Declaration a swimming pool and bath house facility, which would be governed by a homeowners association responsible for the upkeep and maintenance of the facility. If such a facility, or other common area requiring more than nominal yearly maintenance, is designated in the Development, the homeowners association and the common areas shall be governed by the provisions of the North Carolina Planned Community Act (N.C.G.S. Chapter 47F) unless a majority of the Lot owners (with each Lot receiving one vote per Lot) decides to alter the effect of any of such provisions of the Act on the Development. Such governance by the terms of the Act shall include, without limitation, the right of the homeowners association to assess and enforce mandatory charges against all Lots in the Development to maintain, repair, replace, operate, insure, and the like, all common areas.

This Declaration may be amended, extended, limited, revised, changed, or otherwise altered by the filing of an amendment in the Wake County Register of Deeds referencing this Declaration and evidencing the consent to such amendment by the Declarant, or its successors or assigns, and by the owners of a majority of Lots (which owners, for purposes of determining the validity of the amendment, shall not include owners holding beneficial title pursuant to the making of a deed of trust encumbering a Lot). Such an amendment shall bind all Lot owners, not merely those agreeing to the amendment, and all owners and prospective owners of Lots in Pemberley Subdivision are hereby on notice of the binding effect of such amendments. An "amendment" may include any change to any portion of this Declaration, including specifically by way of example but not limitation, an extension, early termination, or other change to the term of this Declaration.

The Declarant may release any portion of the Development from the benefits and burdens of this Declaration by recording an instrument evidencing such release, and executed by the Declarant and any other owners of such property, in the Wake County Registry. Once the Declarant no longer owns any portion of the Development, any contiguous portion of the Development may be released from the benefits and the burdens of this Declaration if 67% of the owners of the property to be released (with each Lot in such portion receiving only one vote per

Lot) execute an instrument evidencing such release and record such instrument in the Wake County Registry.

SECTION FIVE - TERM

The foregoing covenants, restrictions and conditions shall remain in full force and effect for a period of ninety-nine (99) years from the date hereof and shall run with the land. Changes to the term or other provisions of this Declaration, if made in accordance with Section One or Section Four hereof, shall bind the owners of the land encumbered hereby, as described in the amendments creating such changes.

SECTION SIX - CONFLICTS OF TERMS; PARTIAL INVALIDITY

In case of conflict between any of terms and conditions of this Declaration and any zoning ordinances (or exceptions thereto which may lawfully be made by the Zoning Board of Adjustment) or state or federal laws which may be in effect, or which may hereafter be enacted, such zoning ordinances or laws shall control.

Invalidation of any one of these covenants by judgment or Court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed under seal as of the date first above written.

MODERN CONTINENTAL ENTERPRISES, INC.

By: *Lelio Marino*
Lelio Marino, President

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF *Middlesex*

I, *Sandra A. McMurray*, a Notary Public of *Middlesex* County, Commonwealth of Massachusetts, do hereby certify that Lelio Marino personally came before me this day and acknowledged that he is the President of Modern Continental Enterprises, Inc., a Massachusetts corporation, and that he, as _____ President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the *9th* day of *January*, 200*0* *3 AM*.

Sandra A. McMurray
Notary Public

My Commission Expires: *December 30, 2002*

[OFFICIAL SEAL]



EXHIBIT A
Pemberley Subdivision

Lying and being in the Town of Wake Forest, Wake County, North Carolina, and being all of Tract A (recombined) and a portion of Tract B (recombined) as shown in Book of Maps 1999, Page 263, Wake County Registry and being more fully described as follows:

Beginning at an existing iron pipe located on the southern right-of-way margin of Forbes Road, said iron pipe being located South 51° 38' 38" West, 2,473.50 feet from N.C.G.S. Monument "Forestville" (North 805,133.40, East 2,142,561.73);

Thence from said BEGINNING POINT, the following calls:

South 52° 23' 24" West, 142.12 feet to an existing iron pipe; thence South 52° 35' 24" West, 22.42 feet to a point; thence South 87° 26' 47" West, 868.30 feet to an existing iron pipe; thence North 87° 00' 11" West, 178.69 feet to an existing iron pipe; thence South 01° 41' 17" East, 206.00 feet to an existing iron pipe; thence South 89° 41' 05" West, 329.46 feet to an existing iron pipe; thence South 89° 43' 40" West, 471.49 feet to a point; thence North 00° 36' 40" East, 650.92 feet to a point; thence North 13° 46' 41" East, 113.41 feet to a point; thence North 00° 36' 40" East, 159.57 feet to a point; thence North 07° 19' 56" East, 50.35 feet to a point; thence North 13° 52' 24" East, 161.24 feet to a point; thence South 89° 13' 01" East, 1,037.20 feet to an existing iron pipe; thence North 88° 21' 18" East, 152.19 feet to an existing iron pipe; thence South 29° 58' 42" East, 406.10 feet to an existing iron pipe; thence South 29° 49' 08" East, 99.97 feet to an existing iron pipe; thence North 59° 03' 46" East, 172.37 feet to an existing iron pipe on the southern right-of-way margin of Forbes Road (a 60 foot public road); thence continuing with the southern right-of-way margin of Forbes Road, South 28° 12' 52" East, 118.28 feet to a point; thence 397.01 feet along a 1,309.81 foot radius curve to the left, having a long chord of which measures South 36° 53' 52" East, 395.50 feet to a point; thence South 45° 34' 53" East, 10.26 feet to the BEGINNING POINT, containing approximately 1,626,717 sq. ft. (37.34 acres).

Laura M Riddick
Register of Deeds
Wake County, NC



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Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina - Wake County

The foregoing certificate ___ of Sandra A. McMurtry

____ Notary(ies) 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.

Laura M. Riddick, Register of Deeds

By: Wendy Parrish
Assistant/Deputy Register of Deeds

This Customer Group
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of Pages