HOLD: Senter & Stephenson

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

for

CHARLESTON COMMONS

FILED
REGISTRATION
95 APR 20 PM 3:10
KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

000494

THIS DECLARATION, made on the date hereinafter set forth by **CHARLES C. McLAURIN** and wife, **SARAH S. McLAURIN,** ***hereinafter referred to as "Declarant"*** and **RUBY S. GIBSON** ***owner of Lot #5*** and **EUGENE CHOSY** and wife, **RUTH G. CHOSY** ***owners of Lot #5***, hereinafter singularly referred to as "Lot Owners"

WITNESSETH:

WHEREAS, Declarants and Lot Owners are the owners of certain property in Fuquay-Varina, County of Wake, State of North Carolina, which is more particularly described as follows:

Charleston Commons lots as shown in Book of Maps 1995, page 1584 and any other lots developed within this subdivision when these covenants are incorporated by reference

AND WHEREAS, the parties wish to revoke those covenants recorded in **Book 6750, page 422** and substitute therefore the following protective covenants,

NOW, THEREFORE, Declarant and Lot Owners hereby declare that those covenants in **Book 6750, page 422** are hereby revoked and all of the properties described above shall and all future lots developed as Charleston Commons which incorporate these covenants by reference, 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. All Lot owners will be subject to monthly dues established by the Association for the maintenance and upkeep required by these declarations. Every lot owner shall be a member of the Association and subject to the rules and regulations adopted by the Association. Failure of any lot owner to pay dues or assessments will result in the filing of a lien upon the property of such owner as hereafter provided.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Charleston Commons Homeowners Association, 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 a 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 owned by the Association for the common use and enjoyment of the owners, together with all water and sewer lines located on and serving the properties which are located outside dedicated public easements and city rights-of-way, except water and sewer lines located on a lot which serve only that lot. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

The following two described "Natural Areas" and any future developed natural areas shown on any recorded map wherein these covenants are incorporated by reference, the two now being described as follows:

Being Natural Area containing 0.814 of an acre and Natural Area containing 0.611 of an acre as shown on Book of Maps 1995, page 1584.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties upon which a Single Family Dwelling is to be situated.

Section 6. "Architectural Control Committee" shall be the declarant or anyone appointed by the declarant and is hereafter referred to as ACC.

Section 7. "Declarant" shall mean and refer to Charles C. McLaurin or Sarah S. McLaurin or their or assigns.

Section 8. The term "Improvement" shall mean and include all buildings, storage sheds or areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, plantings, trees, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, clothesline installation, swimming pools, tennis courts,

signs, exterior illumination, changes in any exterior color or shape and any new exterior construction or exterior improvement exceeding $1,000.00 in cost which may not be included in any of the foregoing.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association, however, voting shall be limited to one vote per lot.

Section 10. "Master Covenants" shall mean and refer to these Declaration of Master Covenants, Conditions and Restrictions for Charleston Commons as the same may be amended from time to time as provided therein.

Section 11. "Town" shall be the Town of Fuquay-Varina, North Carolina.

ARTICLE I

EXTERIOR MAINTENANCE

Section 1. **Single Family Dwellings.** The Association shall have no obligation or responsibility for any maintenance of Single Family Dwellings which includes driveways, walks, patios, decks,(except it may clean out gutters) such being the sole responsibility of the Owner.

Section 2. **Maintenance by Owner.** In cases where maintenance or repair is required in this Declaration to be done or made by an Owner, and such maintenance or repair has not commenced within sixty (60) days, or if commenced, is not completed within a reasonable time thereafter, the Association may, and is hereby granted such right and easement, upon thirty (30) days written notice to such owner, make or complete such maintenance or repairs, and the cost thereof shall be an additional assessment applicable only to such lot and Owner, and shall be payable as determined by the Board of Directors of the Association.

Section 3. **(A) Common Areas.** The existing wooded area of parcel in common area shall generally be left in its natural state at this time. The Association may add walking trails and/or related improvements. All other common areas (natural areas, islands, inside and outside rights-of way, entry, entry buffer along Academy Street, and all tree plantings, and landscaping within rights-of-way of all streets) shall be maintained by the Association. If areas defined as full maintenance should fail to be maintained reasonably, the Town may at its discretion maintain or contract services and assess the Association reasonable charges for the work required.

(B) Yard Areas. The homeowners association shall keep all lawns mowed and free of debris and may, at the election of the association, prune and maintain shrubbery and trees within a yard. No shrubbery or trees may be planted without the prior written consent of the architectural committee in existence at the time of the request. A home owner may have a small defined garden area that has been approved in writing by the homeowners association but the home owner shall be solely responsible for the maintenance and care of the defined garden area and shall not hold the homeowners association liable or responsible for any damage caused by any maintenance personnel supplied by the homeowners association.

Section 4. **Street Lighting.** Should the Declarant and/or the Association desire to install street lights different from those furnished by the Power Company for Town, then the Declarant and Association shall be responsible for cost difference and difference in the electrical bill in proportion of wattage difference. Declarant reserves the right to subject the above described property to a contract with Carolina Power and Light Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Carolina Power and Light Company by the owner of each lot within said property.

ARTICLE II

USE RESTRICTIONS

Section 1. **Rules and Regulations.** The Board of Directors of the Association shall have the power to formulate, publish, amend and enforce reasonable rules and regulations concerning the use and enjoyment of the front and side yard space of each lot and the Common Areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section 2. **Use of Properties.** No portion of the Properties (except for temporary office and/or storage of the Declarant and/or model houses used by Declarant) shall be used except for residential and street purposes and for purposes incidental or accessory thereto.

Section 3. **Quiet Enjoyment.** No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 4. **Animals.** No animals, livestock or poultry shall be raised, bred or kept in any portion of the Property except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgement of the Board of Directors of the homeowners association) such as, but without limitation, by noise, odor, damage or destruction of property or refuse.

Section 5. **Dwelling Specifications.** No dwelling shall be constructed or permitted to remain on any lot having an area of the main structure, exclusive of open porches and decks, of less than 1300 square feet of heated area.

Section 7. **Screening.** All garbage containers and utility meters shall be permanently screened from view from all street rights-of-ways except on the day of garbage pick-up.

Section 8. **Mailboxes.** All mailboxes will be initially installed by the developer and any changes must have the approval of the Association. Maintenance of mailboxes will be the duty of the Association.

Section 9. **Recreational Vehicles.** Recreational vehicles will not be allowed to be parked on the premises or driveway except that a guest of any lot owner shall be allowed to park a recreational vehicle or camper trailer in the driveway of the owner for a maximum of 10 consecutive days only at which time it must be removed and not to return until 14 days has past.

Section 10. **Zero lot line easements.** Lots and any common area adjoining lots with improvements situated on the zero setback line whereon a wall of the main dwelling or a fence is placed shall be subject to a five foot access easement for the construction, repair and maintenance of improvements located upon any adjacent lot where said improvements are located on the zero setback line of the adjacent lot and to a permanent 8 inch fence support column, "coin corner" for the main structure and roof overhang, if so constructed. The zero setback line lot owner must replace any fencing, landscaping or other items on the adjoining lot that he may disturb during such construction, repair or maintenance. Additionally, this easement, when used, must be cleaned up of debris and left unobstructed unless the easement is actively being utilized for construction, repair or maintenance and any items removed must be replaced by the party that removed them. The zero setback line lot owner must notify the adjacent lot owner of his intent to do any construction, repair or maintenance upon the zero setback line wall at least twenty four (24) hours before any work is started, with the hours that such access easement may be utilized being restricted to between the hours of 8:00 A.M. to 5:00 P.M., Monday through Friday and 9:00 A.M. to 6:00 P.M. on Saturdays, unless an emergency exists requiring immediate attention. Any lots in Charleston Commons that share a common rear line may have a fence or brick wall built on the line to be equally divided between the lots sharing said common rear line, i.e. four inches of the wall on each lot and eight inches of the support column on each lot. Charles C. McLaurin and Sarah S. McLaurin, as the developers, shall be authorized to waive up to a 4 inch violation of any common property line having either a zero clearance or sharing a common rear line.

ARTICLE III

EASEMENTS

All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities as shall be established by the Declarant or by his predecessors in title, prior to the subjecting of the Properties to this Declaration, and the Association shall have the power and authority to grant and establish upon, over, under and across the Common Areas conveyed to it; subject further easements as are requisite for the convenient use and enjoyment of the Properties.

An easement is hereby established over the common areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

All lots and common areas shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant or anyone approved by the Declarant to the extent that such initial improvements actually encroach including eaves, gutters and downspouts, fences, decks and walls.

The owner of each Lot shall be required to provide a maintenance easement as required by the ordinances of the Town of Fuquay-Varina, which easement shall be adjacent to the side of the dwelling that has the Zero Lot Line (to serve adjoining dwelling). Carolina Power and Light Company or its successors shall be permitted to install and maintain underground electric utility cables within said maintenance easement.

ARTICLE IV

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 of 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 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 until December 31, 2015, 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 eighty-five percent (85%) of the Lot Owners (inclusive of the ownership of the Declarant herein), and thereafter by an instrument signed by no less than seventy percent (75%) of the Lot Owners. For purposes of these covenant, each lot shall be entitled to one vote and multiple owners of a lot shall decide between themselves who shall cast that one vote.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. **General.** No site preparation on any Lot or change in grade or slope of any Lot or erection of buildings or exterior additions or alterations to any building situated upon the Property or erection of or changes or additions in fences, hedges, plants, trees, walls and other improvements, shall be commenced, erected or maintained on any Lot until the Architectural Control Committee (herein called the "ACC") appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements and specify who has responsibility for maintenance.

Section 2. **Composition.** Until all Lots are sold, Declarant shall annually appoint the members of the ACC which will be composed of up to three (3) individuals. Each member will be generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards with the Project. In the event of the death or resignation of any member of the ACC, Declarant, for as long as it has the authority to appoint the members of the ACC, and thereafter, the remaining members of the ACC, shall have full authority to designate and appoint a successor, No member of the ACC shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct of such member) arising out of services performed pursuant to this Declaration. Subsequent to all Lots being sold, the Board of Directors of the association shall appoint the members of the ACC on an annual basis.

Section 3. **Procedure.** No improvement of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the ACC, as to:

(i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;

(ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces;

(iii) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon and drainage arrangement;

(iv) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the ACC, or matters in which the ACC has been vested with the authority to render a final interpretation and decision.

Final plans and specifications for all Improvements proposed to be constructed on a Lot shall be submitted in duplicate to the ACC for approval or disapproval. The ACC is authorized to request the submissions of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the ACC, one complete set of plans and specifications will be retained by the ACC and the other complete set of plans and specifications will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these covenants, conditions and restrictions of if found to be otherwise unacceptable to the ACC pursuant hereto, one set of plans and specifications shall be returned to the Lot Owner marked "Disapproved", accompanied by a reasonable statement of items found not to be in compliance with these covenants, conditions, and restrictions or otherwise being so unacceptable. Any modifications or changes to the ACC approved set of plans and specifications must again be submitted to the ACC for its inspection and approval. The ACC's approval or disapproval, as required herein, shall be in writing. The ACC may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions, and restrictions. Although the ACC shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsible to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these covenants, conditions and restrictions and are incorporated herein by reference.

Section 4. **Jurisdiction.** The ACC is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on a Lot which may, in the reasonable opinion of the ACC, adversely affect the living enjoyment of one or more Owners or the general value of the Property or the Project.

Section 5. **Enforcement.** The ACC shall have the specific, nonexclusive right (but not obligation) to enforce the provisions contained in this Article of Declaration and/or to prevent any violation of the provisions contained in this Article of Declaration by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article of Declaration. The ACC shall further be authorized to file liens pursuant to North Carolina General Statute §44A-7 et seq. for failure to pay dues and/or assessments and/or costs of repairs if the repairs have to be performed by the Association.

Section 6. **Improvements** No improvements may be made to any property until the same has been approved by the ACC, The definition of Improvements does include both original Improvements and all later changes to Improvements.

Section 7. **Failure of the ACC to Act** If the ACC fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within thirty (30) days after submittal thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the ACC, it shall be conclusively presumed that the ACC has approved such conforming plans and specifications and other submittals, EXCEPT that the ACC has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in the Declaration. If plans and specifications

or other submittals are not sufficiently complete or are otherwise inadequate, the ACC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance. The ACC is authorized to request the submission of samples of proposed construction materials.

Section 8. **Limitation of Liability.** Neither the ACC nor the members thereof nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or failure to approve or disapprove any plans or specifications.

Section 9. **Miscellaneous.** No member of the ACC shall be entitled to compensation for, or be liable for, claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of or services performed pursuant to this Article. The Association shall reimburse members of the ACC for reasonable out-of-pocket expenses.

IN TESTIMONY WHEREOF, the declarants state that any reference to the neuter or singular herein shall equally apply to the singular, plural, feminine or male gender and that they have hereunto set their hands and seals, this the 25th day of April, 1996.

Charles C. McLaurin (SEAL)

Charles C. McLaurin

Sarah S. McLaurin (SEAL)

Sarah S. McLaurin

Ruby S. Gibson (SEAL)

Ruby S. Gibson, owner of Lot 8

Eugene Chosy (SEAL)

Eugene Chosy, owner of Lot 5

Ruth G. Chosy (SEAL)

Ruth G. Chosy, owner of Lot 5

NORTH CAROLINA
COUNTY OF WAKE

I, the undersigned, do hereby certify that **CHARLES C. McLAURIN and wife, SARAH S. McLAURIN, RUBY S. GIBSON and EUGENE CHOSY and wife, RUTH G. CHOSY**, each personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notary seal, this the 25th day of April, 1996.

Larry A. Stephenson, Notary Public

LARRY A. STEPHENSON NOTARY PUBLIC WAKE COUNTY, N.C.

My commission expires: 3/3/2000

The foregoing certificate of Larry A. Stephenson, Notary Public of Wake County, is certified to be correct. Filed for registration and recorded in this office at the date and time and in the book and page shown on the first page hereof.

by: _____ Kenneth L. Wilkins, Register of Deeds
Assistant/Deputy Register of Deeds