

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth by J. R. YORKE CONSTRUCTION COMPANY, INC., hereinafter referred to as "DECLARANT".

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property in Winterville Township, City of Greenville, County of Pitt, State of North Carolina, which is more particularly described as follows:

That certain tract or parcel of land lying and being situate in Winterville Township, Pitt County, North Carolina, and more particularly described as follows:

BEGINNING at an iron set in the Eastern Right-of-Way of Oakmont Drive at a point which is South 49 degrees 45 minutes West 397.61 feet, more or less, from the Southern Right-of-Way of North Carolina Highway No. 43 (Charles Street), and running thence from said iron set in the Eastern Right-of-Way of Oakmont Drive, the point of beginning, South 40 degrees 15 minutes East 337.47 feet, more or less, to an iron set; thence South 40 degrees 15 minutes East 23.18 feet, more or less, to a point in the center line of a ditch, cornering; thence North 79 degrees 40 minutes West 59.03 feet, more or less; to a point in the center line of said ditch; thence North 83 degrees 33 minutes West 64.89 feet, more or less, to a point in the center line of said ditch; thence South 84 degrees 52 minutes West 19.33 feet, more or less, to a point in the center line of said ditch; thence South 68 degrees 27 minutes West 49.90 feet, more or less, to a point in the center line of said ditch; thence South 26 degrees 32 minutes West 11.96 feet, more or less, to an iron found in the corner of the Ralph Tucker property, cornering; thence North 40 degrees 15 minutes West 239.01 feet, more or less, to an iron found in the Eastern Right-of-Way of Oakmont Drive, cornering; thence North 49 degrees 45 minutes East 123.0 feet, more or less, to an iron set in the Eastern Right-of-Way of Oakmont Drive, the point of BEGINNING, containing 1.12 acres, more or less, in area, all as is shown on plat entitled "Lexington Square, Winterville Township, Greenville, Pitt County, North Carolina", dated August 4, 1980, prepared by Rivers and Associates, Inc., Consulting Engineers, Greenville, North Carolina, reference to which is hereby made for a more accurate and complete description. This property formerly being Lot No. 42 and the Northern 75 feet of Lot No. 41 of Oakmont Professional Plaza as recorded in Map Book 22, at Page 118, Pitt County Public Registry. Reference is hereby made to Book C-43, at Page 829, Pitt County Public Registry.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following covenants, 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 Lexington Square Homeowners Association, Inc., 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 (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

That certain tract or parcel of land lying and being situate in Winterville Township, Pitt County, North Carolina, and more particularly described as follows:

BEGINNING at an iron set in the Eastern Right-of-Way of Oakmont Drive at a point which is South 49 degrees 45 minutes West 397.61 feet, more or less, from the Southern Right-of-Way of North Carolina Highway No. 43 (Charles Street), and running thence from said iron set in the Eastern Right-of-Way of Oakmont Drive, the point of beginning, South 40 degrees 15 minutes East 337.47 feet, more or less, to an iron set; thence South 40 degrees 15 minutes East 23.18 feet, more or less, to a point in the center line of a ditch, cornering; thence North 79 degrees 40 minutes West 59.03 feet, more or less, to a point in the center line of said ditch; thence North 83 degrees 33 minutes West 64.89 feet, more or less, to a point in the center line of said ditch; thence South 84 degrees 52 minutes West 19.33 feet, more or less, to a point in the center line of said ditch; thence South 68 degrees 27 minutes West 69.90 feet, more or less, to a point in the center line of said ditch; thence South 26 degrees 22 minutes West 11.96 feet, more or less, to an iron found in the corner of the Ralph Tucker property, cornering; thence North 40 degrees 15 minutes West 239.01 feet, more or less, to an iron found in the Eastern Right-of-Way of Oakmont Drive, cornering; thence North 49 degrees 45 minutes East 175.0 feet, more or less, to an iron set in the Eastern Right-of-Way of Oakmont Drive, the point of BEGINNING, containing 1.12 acres, more or less, in area, all as is shown on plat entitled "Lexington Square, Winterville Township, Greenville, Pitt County, North Carolina", dated August 4, 1980, prepared by Rivers and Associates, Inc., Consulting Engineers, Greenville, North Carolina, reference to which is hereby made for a more accurate and complete description. This property formerly being Lot No. 42 and the Northern 75 feet of Lot No. 41 of Oakmont Professional Plaza as recorded in Map Book 22, at Page 113, Pitt County Public Registry. Reference is hereby made to Book C-48, at Page 829, Pitt County Public Registry.

There is EXCEPTED from the foregoing tract, the area shown upon the plat of Lexington Square lying and being situate in the City of Greenville, Pitt County, North Carolina, and being all of Lots No. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Building A, and Lots No. 1, 2, 3, 4, 5, 6, and 7, Building B, as shown on Map of Lexington Square Townhouses, all as will be seen in Map Book 30, Page 34, Pitt County Registry.

Also, that certain property lying and being situate in the City of Greenville, Pitt County, North Carolina, and being shown on the Map of Lexington Square Townhouses, all as will be seen in Map Book 30, Page 34, Pitt County Registry, and being those certain strips of land lying adjacent to and at the end of Building A and Building B, 4 to 5 feet in width and being more particularly described as to the said 4 parcels as follows:

Parcel 1: BEGINNING at the northwest corner of Lot No. 1, Building A, and run thence South 49 degrees 45 minutes West 44 feet to a point, a corner; turning running thence North 40 degrees 15 minutes West 4.8 feet to an iron stake set, a corner; turning running thence North 49 degrees 45 minutes East 44 feet to an iron stake set, a corner; turning running thence South 40 degrees 15 minutes East 4.8 feet to the point of BEGINNING.

Parcel 2: BEGINNING at the northeast corner of Lot No. 10, Building A, and run thence south 40 degrees 15 minutes east 5 feet to an iron stake set, a corner; turning running thence south 40 degrees 45 minutes west 44 feet to an iron stake set, a corner; turning running thence north 40 degrees 15 minutes west 5 feet to a point, a corner; turning running thence north 49 degrees 45 minutes east 44 feet to the point of BEGINNING.

Parcel 3: BEGINNING at the northwest corner of Lot No. 1, Building B, and run thence south 49 degrees 45 minutes west 44 feet to a point, a corner; turning running thence north 40 degrees 15 minutes west 4 feet to an iron stake set, a corner; turning running thence north 49 degrees 45 minutes east 44 feet to an iron stake set, a corner; turning running thence south 40 degrees 15 minutes east 4 feet to the point of BEGINNING.

Parcel 4: BEGINNING at the northeast corner of Lot No. 7, Building B, and run thence south 40 degrees 15 minutes east 5 feet to an iron stake set, a corner; turning running thence south 49 degrees 45 minutes west 44 feet to an iron stake set, a corner; turning running thence north 40 degrees 15 minutes west 5 feet to a point, a corner; turning running thence north 49 degrees 45 minutes east 44 feet to the point of BEGINNING.

There is also EXCEPTED from the said tract all of Oakmont Drive as shown on the aforesaid map, said street having a right of way of 50 feet.

All of the foregoing excepted portions are accurately shown on map made by Rivers and Associates, Inc., Consulting Engineers, Greenville, North Carolina, dated August 4, 1940, entitled "Lexington Square", which duly appears of record in the Pitt County Public Registry at Map Book 30, Page 34, reference to which is hereby made for a more accurate and complete description of the same.

Section 5. "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 6. "Declarant" shall mean and refer to J. R. Yorke Construction Company, Inc., 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 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II

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:

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

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

(c) 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.

Section 2. Poleation 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 purchases 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 two 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 one vehicle parking space for each dwelling.

ARTICLE III

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 separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class 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. Class B members(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 in 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 the Class B membership, or
- (b) on July 1, 1982.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned with 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, maintenance and repairs, and 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 assessment is made.

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 of the Properties and in particular for the acquisition, improvements and maintenance of Properties, and of the homes situated upon the Properties, services and facilities devoted to this purpose and related to the exterior maintenance of homes situated upon Lots or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Basis and Maximum of Annual Assessments. Until January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred Sixteen Dollars (\$216.00) per Lot.

(a) From and after January 1st of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1st of each year without a vote of membership by five (5%) per cent.

(b) 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 that established by Section 3, Paragraph (a) by a vote of the members for the next succeeding two (2) years, for each succeeding period to two (2) years, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(c) 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, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this 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 30 days nor more than 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) per cent 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 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

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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 Assessment - 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) per cent 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 or deny 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 assessments 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 assessments 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.

Section 10. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

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

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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 the 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 VI

EXTERIOR MAINTENANCE

Section 1. Types of 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 and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each lot at all reasonable times to perform maintenance as provided in this Article.

Section 2. Costs Subject to Assessments. In the event that the need for maintenance, repair, or replacement is caused through the willful or negli-

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gent act of the Owner, his family, guests, or invitees, or tenants, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a 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. For the purpose of this Article, storm windows and a storm door on the rear entrance may be placed and maintained on Lots without need for approval of the architectural committee; but a storm door placed and maintained at the entrance, or front door, to a Lot must be approved by the architectural committee in accordance with the provisions of this Article.

ARTICLE VIII

USE RESTRICTIONS

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes.

Section 2. Nuisance. No noxious or offensive activity shall be conducted upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Animals. No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs,

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cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes.

Section 4. Outside Antennas. No outside radio or television antennae shall be erected on any Lot unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

ARTICLE IX

EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

ARTICLE X

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 restrictions 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, 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) per cent of the Lot Owners, and thereafter, by an instrument signed by not less than seventy-five (75) per cent of the Lot Owners. Any amendment must be recorded.

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Section 4. Annexation. Except as provided in Section 5 in this Article, additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration of the Veterans Administration: (a) annexation of additional properties, dedication of Common Area, and (b) amendment to this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, J. R. YORKE CONSTRUCTION COMPANY, INC., the Declarant herein, has caused this instrument to be executed in its name by its duly authorized officers, this the 17th day of November, 1981.

J. R. YORKE CONSTRUCTION COMPANY, INC.

BY Jean Rogers Yorke
JEAN ROGERS-YORKE, PRESIDENT



MICHAEL WHITLEY YORKE,
SECRETARY

NORTH CAROLINA
PITT COUNTY



I, Judith M. Danner, a Notary Public of the aforesaid County and State, hereby certify that MICHAEL WHITLEY YORKE personally appeared before me this day and acknowledged that he is Secretary of J. R. YORKE CONSTRUCTION COMPANY, INC., a 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, JEAN ROGERS-YORKE, sealed with its corporate seal and attested by its Secretary.

Witness my hand and Notarial Seal, this 1st day of December 1981.

Judith M. Danner
NOTARY PUBLIC

My commission expires:

Feb 9, 1985
NORTH CAROLINA
PITT COUNTY

The foregoing certificate of Judith M. Danner, a Notary Public of the aforesaid County and State, is certified to be correct.

This the 1st day of December, 1981.

Quinn J. Allred
REGISTER OF DEEDS, PITT COUNTY,
NORTH CAROLINA

RECEIVED PITT CO. N.C.
REGISTER OF DEEDS
Quinn J. Allred
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