

JUDITH A GIBSON REG OF DEEDS MECK NC

FILED FOR REGISTRATION 04/30/98 10:23

STATE OF NORTH CAROLINA

DECLARATION OF RESTRICTIONS  
OF WINGHURST, PHASE II

COUNTY OF MECKLENBURG

THIS DECLARATION OF RESTRICTIONS is made this 27th day of April, 1998 by and between WINGHURST ASSOCIATES, a North Carolina partnership and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described. As used herein the term "Developer" shall mean and refer to Winghurst Associates, a North Carolina partnership and any other person, firm, corporation or other entity to whom they assign their rights, privileges, duties and obligations, or any one or more of them hereunder.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 45 lots (hereinafter "Lots") known as WINGHURST PHASE II as the same is shown on a plat thereof recorded in Map Book 29 at Pages 223 and 224 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof.

1. Land Use and Building Type. All Lots in the Development shall be known and described as residential lots and shall be used for residential purposes only. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling not to exceed two and one-half stories in height and a private garage or carport for not more than three (3) cars and other accessory buildings and structures incidental to the residential use of the Lots. Provided, however, that the Developer reserves to itself, as well as the right to assign to builders during construction, the right to use one or more such dwellings or temporary sales trailers as

DRAWN BY/MAIL TO:

L. Cameron Caudle, Jr.  
Caudle & Spears, P.A.  
2600 Interstate Tower  
Charlotte, NC 28202 (R/D #64)

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an administrative office, information center and real estate sales office.

2. Building Setback Lines. No building, fence, or wall shall be erected on any Lot nearer to any front street right-of-way or side street right-of-way line than minimum building setback lines shown on the recorded plat. No building shall be located nearer to an interior side lot line than the minimum building setback lines, if any, shown on the recorded plat, or than permitted by applicable current zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, porches, terraces, eaves, wing-walls, chimneys, fireplaces and steps extended beyond the outside wall of a structure shall not be considered as part of the structure; provided, however, that this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. Unintentional Violation. In the event of the unintentional violation of any building setback line requirements as set forth herein, Developer hereby reserves the right, by and with the written consent of the owner or owners for the time being of such Lot, to change the building setback line requirements set forth in this instrument; provided, however, that no such change shall exceed ten percent (10%) of the marginal requirements of such building setback line requirements, or be in violation of any applicable zoning ordinances.

4. Lot Area and Width. No residential structure shall be erected or placed on any Lot having an area or a width at the front building setback line of less than that required by applicable zoning ordinances.

5. Temporary Structures and Off-Street Parking. No tent, shack, trailer, bus, camper or motor home or temporary structure of any kind shall be erected, kept, had or allowed at any time on any Lot or parked on the street or road adjacent thereto; provided, however, that a camper or motor home may be parked in an enclosed garage where such recreational vehicle is not visible from the street, or adjoining homes, and also provided such garage meets all requirements for buildings and improvements contained in these restrictions. Notwithstanding the provisions contained in this paragraph, Developer, its successors and assigns, shall have the right to erect, keep and allow to remain

on any one or more Lots, a temporary sales trailer for administrative, informational or real estate sales purposes and shall have the right to permit builders of homes within the Development to maintain such trailers upon such terms, and for so long, as Developer, in its absolute discretion, shall determine.

6. Construction Standards.

(a) No residence shall be constructed upon any Lot containing less than 1600 square feet of heated living area in the case of a one-story residence, or less than 1750 square feet of heated living area in the case of a split level or more than one-story residence. As used herein, the term heated living area shall not include basements, garages, carports or porches. Notwithstanding the above requirements, a residence having less than the required minimum square footage of heated living area may be constructed on any Lot so long as (a) the residence is completely finished outside; (b) the residence contains not less than 1300 square feet of finished heated living area; (c) the residence contains not less than the required minimum (1600 or 1750 square feet, as applicable) of enclosed, heated potential living area; and (d) prior to construction thereof, the plans and specifications for such residence have been submitted to, and approved by, Developer in accordance with paragraph 11 below. In addition, all windows in any unfinished portions of any such residence having less than the required minimum square footage of heated living area which windows are visible from any street within the Development or from U.S. Highway 521 shall be covered from the inside of such residence by draperies, shutters or other window treatments.

(b) All exterior walls must be of brick, stone or wood veneer construction or other comparable construction as may be approved by Developer in accordance with paragraph 11 below.

(c) All Lots shall have a concrete or asphalt driveway leading from the street to the side yard of the residence constructed thereon, which driveway shall be constructed in such a manner that at least two standard sized automobiles can be comfortably parked side by side on the end of the driveway nearest to the residence.

(d) Construction of new buildings only shall be permitted, it being the intent of this covenant to prohibit the

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moving of any existing building onto a Lot and remodeling or converting same into a dwelling unit in this subdivision.

(e) Any outbuilding or other appurtenant structure constructed on any Lot shall be built of the same exterior materials of which the residence on such Lot is constructed in order to make all structures on a single Lot of the same materials.

(f) No above ground swimming pools shall be built, placed or allowed to remain on any Lot.

(g) Construction of any residence on a Lot shall be completed within nine (9) months following commencement thereof.

7. Nuisances. No noxious, offensive or illegal activity shall be carried on upon any Lot nor shall anything be done on any Lot which may be or may become an annoyance or nuisance to the Development. No clothesline may be erected or maintained on any Lot. All rubbish, garbage and trash shall be kept in closed cans, or other suitable containers, which shall be placed and kept in such manner as to be out of sight from the street, or neighbor's house. The Lot, property and premises shall be kept clean at all times. No Lot shall be used, in whole or in part, for storage of rubbish of any character whatsoever; nor shall any substance, thing or material be kept upon any Lot which will emit foul or noxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for pickup by garbage and trash removal service units. No animals or poultry of any kind other than dogs, cats, or other household pets shall be kept or maintained on any Lot. All garage doors shall remain closed except for ingress and egress. The provisions of this paragraph shall not apply to Lots upon which houses are under construction.

8. Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten (10) feet and each side ten (10) feet of each Lot in the Development. In addition to, and notwithstanding, the dedication of the aforesaid easements, Developer reserves for itself, for so long as it owns

any land in the Development or any land contained within the property described on Exhibit A attached hereto, the exclusive right and easement, to use, for the purpose of gaining access, and granting to others access, to that certain 15 foot sanitary sewer right-of-way located one foot from the rear property lines of Lots 55, 56 and 57 in Winghurst Phase I as shown on Plat recorded in Map Book 24 at Page 455 in the Mecklenburg County, North Carolina Public Registry, that certain strip or parcel of land, at least one foot in width, located between the rear line of the aforesaid Lots and the aforesaid 15 foot sanitary sewer easement. 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 drainage facilities 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. The easement area of each Lot shall be maintained continuously by the owner of the Lot except in cases where a public authority or utility company is responsible for such maintenance.

9. Fencing. Any fencing placed upon any Lot shall be constructed of wood, shall be no more than six (6) feet in height, and shall be erected no closer to any street line than the minimum building setback line shown upon the recorded plat.

10. Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 35 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

11. Approval of Plans. No residence, building, fence, wall or other structure shall be commenced or maintained within the Development, nor shall any exterior addition to or change or alteration therein be made, including the erection of antennas, aerials, satellite dishes, awnings, the placement of reflective

or other material in the windows of a homeowner's residence or other exterior attachment by any homeowner following purchase of a home in this Development, during the period up to and including the last sale of a Lot in this Development by Developer, until the plans and specifications showing the nature, kind, shape, heights, building materials and location of same shall have been submitted to and approved in writing as to design, materials, plan, number of rooms, harmony of external design and location in relation to surrounding structures and topography by Developer. In the event Developer fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to them approval will not be required and this Paragraph will be deemed to have been fully complied with. Nothing herein shall be construed to permit interference with the construction of the Development by Developer in accordance with its general plan of construction.

12. Subdivision of Lots. No subdivision or recutting of Lots nor combination of two or more Lots by sale or otherwise shall be made, except that Developer shall have the right to combine one lot and any portion or whole of one or more additional lots into one integral building lot, and Developer shall have the right to subdivide a Lot or group of Lots, if because of land topography, drainage or limitations on on-site sewage disposal systems which can be maintained upon such Lot or Lots, the said Lot or groups of Lots shown on a recorded map is deemed by Developer not to be feasible as a building Lot or Lots.

13. Signs. No sign of any kind shall be displayed to the public view on any Lot except one (1) professional sign of not more than one (1) square foot, and one (1) sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during construction and sales period. During the initial period of construction on the vacant Lots, no sign shall be placed on any Lot unless the style and design thereof shall have been approved in writing by the Developer, its successors or assigns.

14. Maintenance. In the event the owner of any Lot permits any underbrush, weeds, etc., to grow upon a Lot to a height of one (1) foot or permits the accumulation of trash, rubbish or similar items or material in violation of paragraph 7 above and on request fails to have the Lot cut or cleared within thirty (30) days, agents of Developer may enter upon said land and remove the same at the expense of the purchaser, provided,

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however, that such expense shall not exceed Three Hundred Dollars (\$300.00) monthly. Developer may likewise enter upon said land to remove any trash which has collected on the property without entrance and removal being deemed a trespass, all at the expense of the owner of said Lot; provided, however, that such expense shall not exceed Three Hundred Dollars (\$300.00) monthly. This provision shall not be construed as an obligation on the part of Developer to provide garbage or trash removal services.

15. Subdivision Entrances. Developer, for itself, its successors and assigns, reserves an easement over Lot 1 and Lot 80 in Winghurst Phase I as shown on a plat thereof recorded in Map Book 24 at Pages 454 and 455 in the Mecklenburg County Public Registry for the constructing, maintaining and reconstructing of subdivision entrance signs and fences and for the purpose of landscaping the area around the signs. The owner(s) of said Lot(s) shall maintain the area around the signs not maintained or landscaped pursuant to this easement. Developer shall have the right to assign this easement to a neighborhood homeowners association or garden club. The reservation of this easement imposes no obligation on Developer, its successors and assigns, to continue to maintain the landscaping and entrance signs.

16. Enforcement. Enforcement of this Declaration of Restrictions shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages.

17. Severability. Invalidation of any of these covenants by Judgment or court order shall not affect any of the other provisions set forth herein which shall remain in full force and effect.

18. Duration. These covenants shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration of Restrictions is recorded, after which time these covenants shall be automatically extended for successive period of ten (10) years each unless an instrument signed by majority of the then owners of the Lots (exclusive of trustees in deeds at trust and owners and holder of notes secured by said deeds of trust) in the Development has been recorded agreeing to change this Declaration Of Restrictions in whole or in part.





JUDITH A GIBSON REG OF DEEDS MECK NC  
FILED FOR REGISTRATION 06/16/98 10:52  
BK: 09737 PG: 0344/0345 #:0104 10.00

STATE OF NORTH CAROLINA

FIRST AMENDMENT TO THE DECLARATION  
OF RESTRICTIONS FOR WINGHURST, PHASE II

COUNTY OF MECKLENBURG

This First Amendment to the Declaration of Restrictions for Winghurst, Phase II (the "Amendment") is made this 5 day of June, 1998, by and between Winghurst Associates, a North Carolina partnership (the "Developer").

Statement of Purpose

The Developer recorded the Declaration of Restrictions for Winghurst Phase II on April 30, 1998. Said Declaration (the "Original Declaration") is recorded in Book 9648 at Page 324 of the Mecklenburg County Registry.

The Developer desires to clarify two sections of the Original Declaration, as set for herein.

Amendment

As to Section 6(b), vinyl siding shall be deemed to be "comparable construction" and shall be deemed to be acceptable to use in construction in the Subdivision.

As to Section 6(c), this restriction shall not be deemed to require side-entry garages.

Except as modified, the Original Declaration remains in full force and effect.

IN WITNESS WHEREOF, the Developer has set its hand and seal the date first noted above.



Attest:  
*James W. Royster, Jr.*  
Asst. Secretary

WINGHURST ASSOCIATES,  
A North Carolina partnership

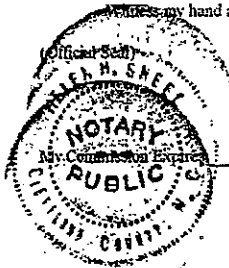
By: Capitol Funds, Inc.  
General Partner

By: *David W. Royster, Jr.*  
David W. Royster, Jr.  
President

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

Cleveland  
I, Helen H. Sneed, Notary Public for said County and State, certify that David W. Royster, Jr. personally came before me this day and acknowledged that he is ASST SECRETARY of Capitol Funds, 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, sealed with its corporate seal, and attested by himself/herself as its ASST SECRETARY.

Witness my hand and official seal, this the 5<sup>TH</sup> day of June, 1998.



10-5-99

*Helen H. Sneed*  
Notary Public

prepared by Mick Mulvaney mail to

Mulvaney & Associates  
1330 E 4th St  
Suite 110  
Charlotte NC 28204  
MO

State of North Carolina, County of Mecklenburg  
The foregoing certificate(s) of

*Helen H. Sneed*

Notary(ies) Public is/are certified to be correct. DATE:

JUNE 16 1998

JUDITH A. GIBSON, REGISTER OF DEEDS By:

*Reem L. Canale*

Deputy Register of Deeds  
RD93-598