

DRAWN BY AND RETURN TO: SMITH & GOODWIN, Attorneys, P. O. Box 782, Monroe, N.C. 28111

STATE OF NORTH CAROLINA

053232

COUNTY OF UNION

Filed for record
Date 7-19-95
Time 11:25 o'clock A. M.
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BARBEE FARMS

THIS DECLARATION, made on the date hereinafter set forth by J.
LEROY RUSHING and wife, FAIR P. RUSHING, hereinafter referred to as
"Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property
described, on Schedule A attached hereto (the "Property") on which
Declarant intends to develop a planned unit development known as
Barbee Farms (the "Neighborhood"); and

WHEREAS, the Declarant desires to insure the attractiveness of
the individual lots, community facilities, entrances and the common
areas and open spaces located in the Neighborhood, and to prevent
any future impairment thereof, to prevent nuisances, to preserve,
protect and enhance the values of amenities of the said property
and to provide for the continued maintenance of the common area,
open spaces, gateway easements, entrances, walkways, private
roadways, recreational facilities and other community facilities
located in the Neighborhood, and, in order to accomplish these
objectives, deems it advisable to subject the Property, to the
covenants, conditions, restrictions, easements, charges and liens
hereinafter set forth; and

WHEREAS, Declarant deems it desirable in order to insure the
efficient preservation, protection and enhancement of the values in
the Neighborhood and the residents' enjoyment of the specific
rights, privileges and easements in the community properties and
facilities, that an organization be created to which will be
delegated and assigned the powers of owning and maintaining common
areas and easement areas, and of administering and enforcing the
covenants and restrictions and collecting and disbursing the
assessments and charges hereinafter imposed; and

WHEREAS, Declarant has caused to be created for the purposes
aforesaid, a North Carolina non-profit corporation under the name
and style of Barbee Farms Homeowners Association, Inc.

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NOW, THEREFORE, the Declarant declares that the Property is and shall be owned, held, transferred, sold, conveyed, and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run the real property (except as provided in Article VI, Section 10 hereafter) and be binding upon and inure to the benefit of all owners thereof, their heirs, personal representatives, successors and assigns.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean Barbee Farms Homeowners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

Section 2. "Committee" shall mean the Architectural Review Committee established for the purpose of administering architectural review as provided in Article VIII of this Declaration.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners and designated as "Common Area," "Common Open Space," or "Private Road," including, but not limited to, parks, ponds, lakes, paths, private roadways, walkways, playground areas, and subdivision entrances on any plat of any portion of the Property duly recorded in the Union County Public Registry in accordance with the provisions of this Declaration. The Common Area which Declarant intends to convey to the Association at the time of Declarant's conveyance to any third party of the first lot shall be that Common Area shown on that plat of the Property to be recorded in the Union County Registry by the Declarant; provided, however, that any land designated as open space which is dedicated to public use on such plat and which is accepted for maintenance purposes by a public authority shall not be part of the Common Area.

Section 4. "Declarant" shall mean J. Leroy Rushing and wife, Faire P. Rushing, as well as its successors and assigns, if Declarant shall make an express conveyance of their rights hereunder to such successor or assign.

Section 5. "Landscape Easements" shall mean any easements designated "Landscape Easement" on any duly recorded plat of any portion of the property recorded in the Union Public Registry. The Landscape Easement shall be in favor of the Association and shall

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be for the maintenance of any landscaping, fencing, signs or irrigation systems located thereon as provided in Article V hereof.

Section 6. "Lot" shall mean and refer to any lot of land, with delineated boundary lines, shown upon any plat of any portion of the Property duly recorded in the Union Public Registry, with the exception of any streets or easements shown on any such recorded plat. In the event any lot is increased or decreased in size by recombinations or resubdivisions, through recordation of new subdivision plats, any such newly platted lot shall thereafter constitute a lot for the purposes of this Declaration.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 8. "Owner" shall mean and refer to the record owners, 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 and owners of an equity or redemption, but excluding those having such interest in a lot solely as security for the performance of an obligation.

Section 9. "Property" shall mean that certain approximately 104.105-acre tract of land located in Union County, North Carolina known as the Barbee Farms Tract, which is more particularly described in Schedule A, attached hereto and incorporated herein by reference.

Section 10. "Sign Easement" and "Landscape Easement" shall mean and refer to any easement designated "Sign Easement" or "Landscape Easement," respectively, on any plat of any portion of the Property duly recorded in the Union Public Registry and annexed into the Properties under the Declaration or Supplementary Declaration under Article II of the Declaration. Any Sign Easement or Landscape Easement shall be in favor of the Association and shall be for the maintenance of any subdivision signs, fences, irrigation systems, and landscaping located within the easement as provided in Article V hereof.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. Section One Property. That certain portion of the Property which is, and shall be held, transferred, sold,

conveyed, and occupied subject to this Declaration, is located in the Union County, North Carolina and is shown in Plat Cabinet D, File 959 of the Union County Public Registry. Additional portions of the Property may be brought within the scheme of this declaration and the jurisdiction of the association by filing of record Supplementary Declarations of Covenants, Conditions and Restrictions with respect to the additional Properties. Said Supplementary Declarations may contain such complimentary additions and modifications of the Covenants, Conditions and Restrictions contained in this Declaration as may be necessary to reflect only the different character of the added properties which shall not be inconsistent with the other provisions of this Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessments shall be a member of the Association. The Membership of the Association shall consist of Class A Members and Class B Members defined below.

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

(a) Class A The Class A Members shall be every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which by covenants of record is subject to assessment by the Association, except Class B Members as defined below. The foregoing is not intended to include persons or entities who hold an interest in a Lot merely as security for the performance of any obligation. Such membership shall be apurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Class A Members shall be entitled to one (1) 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 among themselves determine, but in no event shall a fraction of a vote be cast or more than one vote be cast with respect to any Lot.

(b) Class B The Class B Members shall be the Declarant and any and all builders who have purchased a

lot for construction of a dwelling for sale to others. Initially, the builder category of Class B members shall be Cherry Homes, Inc. The Class B members shall be entitled to three votes for each lot that it owns or as to which it has a contract to sell shown on the Plat for Barbee Farms approved by the City of Monroe or other appropriate local authority, as that plan is from time to time amended and approved. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership;

(ii) ten (10) years from the date of this Declaration is recorded in the Office of the Register of Deeds, Union County, North Carolina.

When Class B membership ceases to exist and is converted to Class A membership, former Class B members shall have the same voting rights as other Class A Members.

ARTICLE IV

PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Except as limited by Section 2 of this Article IV, and except in the event of dedication to public use of certain "Common Open Space" as provided herein, every Owner shall have a right and easement of enjoyment in and to the Common Area, which right and easement shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) the right of the Board of Directors on behalf of the Association (1) to dedicate or transfer all or any part of the Common Area to any municipality, or any public agency, authority, or utility for the installation and maintenance of sewerage, utilities, including CATV, and drainage facilities upon, over and across the Common Area without the assent of the membership when such

easements, in the opinion of said Board of Directors, enhance the use and enjoyment of the Properties; (11) to dedicate or transfer all or any part of the Common Area to any municipality or any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members and (11i) to dedicate or transfer all or any part of the Common Area to any municipality or any public agency, authority, or utility for such purposes and subject to such conditions as may be required under the zoning for the Property or by any agreement between Declarant and any municipality or governmental agency as a condition to approval of the zoning of the Property. In the latter event, the Association shall effectuate such dedication or transfer promptly upon written request therefore by such municipality or agency, and the Board of Directors is hereby empowered to effectuate any such transfer or dedication upon receipt of such written request, without the assent of the membership. No such dedication or transfer as provided in clause (11) of the preceding sentence shall be effective unless the members entitled to cast at least two-thirds (2/3) of the votes of the Class A membership and at least two-thirds (2/3) of the votes of the Class B membership agree to such dedication or transfer and signify their agreement by a signed and recorded written document.

(b) the right of the Association, with the assent of members entitled to cast least two-thirds (2/3) of the votes of each class of membership (Class A and B), to mortgage, pledge, deed of trust, or otherwise hypothecate any or all of its real or personal property, including, but not limited to the Common Area, as security for money borrowed or debts incurred.

(c) the right of the Association to suspend the voting rights of an Owner and the Owner's right to use any recreational facilities for any period during which any assessment against his lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations.

(d) the right of the Association to impose regulations for the use and enjoyment of the common area and improvements thereon, which regulations may further restrict the use of the Common Area;

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

(f) the right of the Association, by and through its Board of Directors, to exchange portions of Common Area with the Declarant for substantially equal areas of the Properties for the purpose of eliminating unintentional conveyances of Common Areas or unintentional encroachments of improvements onto portions of the common Areas or for the purpose of enhancing the utility of the Common Areas to be retained by the Association.

Section 2. Delegation of Use.

(a) Family. The right of easement of enjoyment granted to every Owner in Section 1 of this Article IV may be exercised by members of the Owner's family who occupy the residence of the Owner within the Properties as their residence of the Owner within the Properties as their principal residence in Union County.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section I of this Article IV may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Properties, or a portion of said residence, as their principal residence in Union County, North Carolina.

ARTICLE V

SIGN EASEMENTS AND LANDSCAPE EASEMENTS

The Association, its successors and assigns, shall have an easement over those portions of lots designated "Sign Easement" or "Landscape Easement" on the recorded maps for the Neighborhood. Such easements shall be for the purpose of installation, such Declarant or the Association elect, subdivision signs, fences or irrigation systems and for the purpose of maintaining any such structures erected by the Declarant or the Association and landscaping such easement areas. No fences, structures, driveways, plantings, swings or any other objects, temporary or permanent, shall be permitted in such areas, other than those installed by

Declarant or the Association, without the Association's prior written approval. Declarant and the Association shall at all times have the right of access for its employees, agents and subcontractors over such easement for the purpose of installing, maintaining, repairing and replacing the Neighborhood's signs, fences and irrigation systems for the purpose of landscaping, planting, mowing and maintaining the area within such easements. The designation of a portion of a lot as a Sign Easement or a Landscape Easement shall not, in and of itself, give rise to any maintenance obligation. In the event Declarant or the Association elects or erect a sign, fence or irrigation system within any such easement, the Association shall maintain such structure and the cost of such maintenance shall be a Common Area expense, until such time as the Association, in its sole discretion, may elect to remove the structure, in which event, the Association shall have no further maintenance obligation.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within 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) an initial assessment of \$50 shall be paid by the home buyer upon the conversion of a Class B lot to a Class A lot; (2) annual assessments or charges and (3) special assessments for capital improvements; such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Any payments made to the Association shall be first applied to costs and attorneys' fees related to collection efforts, then to late charges, then to interest, and only then to such assessments. Each such assessment, together with interest, costs and reasonable attorney fees, shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such property at the time when the assessment fell due, but such personal obligation shall not be imposed upon such Owners' successors in title unless expressly assumed by them. Although unpaid assessment charges are not the personal obligation upon such Owner's

successors in title unless expressly assumed by the successors in title, the unpaid assessment charges continue to be a lien upon the property against which the assessment has been made.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property, the enforcement of this Declaration and the rules of the Association, and in particular for the improvement, and maintenance of the Common Area and providing the services and facilities devoted to this purpose and related to the use and enjoyment of any Sign Easements and Landscape Easements, and other areas maintained by the Association, including but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed, the procurement and maintenance of insurance in accordance with the Bylaws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Without limiting the generality of the above-described purposed, the assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planning) and maintenance of dams, ponds or other bodies of water, parks, or other "Common Open Space", walking paths, playground areas, entranceways, roadways, and the maintenance of any Sign Easement and Landscaping Easements areas, Common Areas and other areas to be maintained by the Association under this Declaration. The assessments may also be used to pay the cost of street lighting within the neighborhood.

Section 3. Maximum Annual Assessment. January 1 of 1996, the annual assessment shall be \$50.00 for each lot owned by Class A Members and \$20 for each lot owned by Class B Members.

(a) From and after January 1 of 1997, the maximum annual assessment may be increased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase shall not exceed 10% of the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of 1997, the maximum annual assessment may be increased without limitation if such increase is approved by no less than two-thirds

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(2/3) of the votes cast by each class of members (Class A and Class B), cast in person or by proxy, at a meeting duly called for this purpose.

(c) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by the Board.

Section 4. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessment(s) for the purpose of defraying, in whole or in part, the cost of any construction, repair, replacement of and additions or improvements to capital improvement(s) upon Common Area and any Sign Easement or Landscape Easement areas.

Section 5. Assessment Rate. Except for the difference

between assessments for lots owned by Class A Members and lots owned by Class B Members, both annual and special assessments must be fixed at a uniform rate for all lots and shall be collected on a monthly, quarterly or annual basis as decided by the Board of Directors of the Association.

Section 6. Notice of Quorum for any Action Authorized

Under Sections 3 and 4. Written notice of any meeting called for any action authorized under Sections 3 and 4 above shall be given sixty (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%) percent of all the votes of each class of members (Class and Class B) shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 7. Date of Commencement of Annual Assessments:

Due Date: Certificate of Payment. The annual assessment provided for herein shall commence as to all recorded lots on the first day of January 1996. Thereafter, annual assessments shall continue on January 1 of each following year. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each lot and at least fifteen (15) days before January 1 of each year shall send written notice of any increase in the amount of the assessment over the previous year's annual assessment to every Owner subject thereto. Failure by the

Board of Directors to send the written notice of any such increase shall not affect the obligation of the Owner to pay the assessment. The due dates for the payment of annual and special assessments 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.

Notwithstanding Sections 1 and 7 hereof, the Declarant may, at its election, postpone, in whole or in part, the date in which the assessment shall commence provided that the Declarant maintains any sign easements, landscape easements and common areas for which no assessment is being collected during the period of such postponement.

Section 8. Effect of Nonpayment of Assessments. Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a minimum rate of twelve (12%) percent per annum or at the rate established by the Board of Directors at the beginning of the fiscal year of the Association, whichever is less. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney fees of such action or foreclosure shall be added to the amount of such assessment. In addition to the accrual of default interest, the Association may impose a penalty not to exceed four percent (4%) of the amount due for any assessment more than fifteen days (15) past due. No Owner herein by nonuse of the common area or abandonment of his lot, nor shall damage to or destruction of any improvements on any lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

Section 9. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a lot sale or transfer of any lot shall not affect any assessment lien. However, the sale or transfer of any lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lien of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the line of any first mortgage or deed of trust.

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 VII

RESTRICTION AGREEMENT

SECTION 1. USE OF LAND. All lots in the tract shall be known and described as residential lots. No structures shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single-family dwelling, not to exceed two and one-half stories in height, and a private garage for not more than two cars and other outbuildings incidental to residential use of the plot.

SECTION 2. MINIMUM SIZE OF RESIDENCE. No one-story residence shall be constructed or permitted to remain on any lot unless it shall have at least 1,000 square feet of heated floor space. No residence of more than one-story shall be constructed or permitted to remain on any lot unless it shall have at least 1,200 square feet of heated floor space.

SECTION 3. LOCATION OF BUILDINGS. No building, unattached garage or carport shall be erected on any lot nearer any front or side street line than the building setback line shown on the recorded map, which map is incorporated by reference herein.

SECTION 4. SIZE OF LOTS. No residential structure shall be placed or erected on any lot which has an area less than the minimum square footage required by the applicable zoning ordinances in effect as of the date hereof or a width less than the minimum width at the front setback lines required by the applicable zoning ordinances in effect as of the date hereof. No lot may be subdivided by sale or otherwise unless such subdivision is agreed to in writing by the Declarant, or by its successors or assigns, and the written agreement to such subdivision is recorded in Union County Public Registry.

SECTION 5. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth Declarant reserves the right by and with the

mutual written consent of the owner or owners for the time being of such lot to change the building line restrictions set forth in this instrument provided however, that such change shall not exceed ten (10) percent of the marginal requirements of such building restriction.

SECTION 6.

CONDITIONS.

A. Motor Vehicles:

1. No more than three motor vehicles may be parked at a house on a regular basis;
2. All vehicles must be in good working condition and well-maintained, must have all parts (including tires and hubcaps) and must be properly registered;
3. Driving or parking on the lawns is prohibited;
4. Street parking is allowed up to two hours per day.

B. Recreational and Commercial Vehicles:

Recreational and commercial vehicles such as campers, boats, trucks, trailers, buses, RV's, etc. must be parked in a garage and must not be visible to neighbors.

C.

Garage Doors: All garages shall have doors and when not in use, garage doors are to be left in the closed position.

D.

Radio, Television, Solar and Other Equipment:

1. No equipment, antennae, panels, etc. may be on the front side of the house or yard;
2. Equipment, antennae, panels, etc. must not be visible from the front street or to neighbors;
3. Satellite dishes exceeding 20" in diameter and large antennae are prohibited altogether.

E.

Fencing:

1. Fencing is allowed in the back and side yards, not the front yards;
2. All fencing is subject to architectural review and approval prior to installation;
3. Standard fencing must not exceed a height of 4 feet except for posts which may be slightly taller; privacy fencing may be up to 7 feet tall;

4. Homeowners must treat and maintain their wooden fences with CWF or comparable solution annually;
5. chain link and barbed wire fencing are prohibited.

F. Additions and Exterior Structures:

1. All such structures (garages, storage buildings, etc.) must be built and painted to match the residence and must be constructed of the same materials (shingles, siding, cornice, etc.) as the residence.
2. Such structures must have a roof pitch of 7/12 or steeper;
3. All such structures are subject to architectural review and approval prior to construction.

G. Signage:

1. One standard size real estate "For Sale" sign is permitted per lot. Other "For Sale" signs are prohibited;
2. "For Rent", "For Lease" signs etc. are prohibited;
3. Small political signs are permitted immediately preceding a political election;
4. All other signage is prohibited except for the developer's entry monuments and temporary marketing signs erected by the builder and/or the builder's agent.

H.

Storm Doors: All storm doors and screen doors are subject to architectural approval. Six panel wooden and all-view white aluminum storm doors are allowable at the front door.

I.

Animals:

1. No animals or fowl other than domesticated household pets shall be kept on a lot;
2. No more than three such household pets are permitted in any given household;
3. Dogs must be kept on a leash or in a fenced yard at all times.

J.

Clothes Drying:

No temporary or permanent outside clothes lines are permitted.

K. House and Yard Maintenance:

Each homeowner must keep his/her house and yard attractive and well-maintained including any exterior structures and fencing.

L. Illegal, Noxious, and/or Harmful Activities:

These activities and any activity which interferes with a neighbor's "quiet enjoyment" are prohibited.

ARTICLE VIII

ARCHITECTURAL REVIEW

Section 1. No dwelling, building, fence, wall, outbuilding or any accessory feature to the dwelling or any other structure or improvement of any kind upon any lot shall be commenced, erected, placed, maintained or altered on any lot or combination of contiguous lots, until the complete construction plans (the "plans") are approved, in writing, by the Committee or its designated agent. The plans include the complete construction plans, the lot plan (showing proposed location and elevation of such building, fences, walks, drives, parking area, etc.), proposed building plans and specifications, exterior color, finish and materials and the proposed landscaping plan. The areas over which the approval shall be required shall include but shall not be limited to the size and plan of the principal residential structure, and all accessory buildings, the location of the principal residential structure and all accessory buildings, structures and improvements on the lot, the size and plan of the garage or attached carport, location and manner of construction of each driveway, swimming pool, utility building, patio, tennis court and other improvements for athletic, recreational or gymnastic purposes, and all other exterior improvements, the composition and color of raw and finished materials used on the exterior of all structures and the location and type of any shrubbery and other plantings. The Committee or its designated agent shall have 30 days after physical receipt of the plans to accept or reject the same in whole or in part. If no response by the Committee shall be made in writing within said 30 days, the lot owner or his builder shall notify the Committee by certified mail at the address for such notices set forth in the current edition of the Architectural Guidelines for the subdivision that not response has been made to

the plans submitted and that the committee has 15 days left to make such response or the plans will be automatically approved as submitted. Thereafter, if no approval is given within 15 days after such notice is given the Committee and provided the plans and specification submitted are complete and do not violate the restrictions set forth in Article VII, hereof, the plans shall be deemed approved and after the Committee gives written permission for construction to begin, the actual construction shall be commenced and completed in accordance with the approved plans, together with the requirements in the Declaration. The actual construction shall be the responsibility of the Owner of the lot and his builder. Any permission granted for construction under this covenant shall not constitute or be construed as approval by Declarant or the Committee or its designated agent of the structural stability, design or quality of any building or other improvement. The architectural review committee, or its successors and assigns, after initial approval.

Section 2. The right of approval set forth herein shall be vested in a committee which shall initially be composed of the Declarant, alone, ---- until all Class B lots are converted to Class A lots. Thereafter, the committee shall be composed of three persons who are elected by a majority vote at a meeting of the association called for, among other things, such purpose. Any denial of requested approval by the committee may be appealed to the Association's Board of Directors. In addition, the Board of Directors may promulgate guidelines and standards for review and approval of plans and specification submitted to the Committee and/or the Board. Nothing herein shall be construed to limit or interfere with Declarant's right to improve and develop the Properties so long as said development follows the general plan of development for the Property previously approved by the Union County, and Declarant need not seek approval of the Committee for improvements erected on the Properties by or at the direction of the Declarant.

Section 3. The driveways, walkways, landscaping and the exterior of all houses and other structures must be completed within one year after the construction of same has commenced except where such completion is impossible or would result in great hardship to the Owner or builder due to causes beyond their reasonable control as determined by the Committee or its designated agent.

ARTICLE IXEASEMENTS

Easements for installation and maintenance of driveway, walkway, parking area, water line, gas line, cable television, telephone, electric power line, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plats of the Neighborhood. Further, easements ten feet in width for such purposes are reserved over, under and through and along the rear lot lines of all lots shown on recorded plats, and easements five feet in width for such purposes are reserved over, under and through and along all side lot lines of all lots shown on recorded plats, as well as temporary easements five feet in width along the front lot lines for construction, maintenance and repair purposes. The Association may reserve and grant easements for the installation and maintenance of sewerage utility including CATV, and drainage facilities over, under and through the Common Areas as provided in Article IV, Section 1(C). Within any such easements above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. Declarant also reserves such easements on, across and over the Common Area as shall be reasonably necessary for the exercise by Declarant of any right herein reserved, including without limitation, Declarant's right to annex additional land to the Properties as described in Article II, Section 2 above.

ARTICLE XRIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

Section 1. Entities Constituting Institutional Lenders. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan association, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

Section 2. Obligations of Association to Institutional Lenders. So long as any Institutional Lender shall hold any first

lien upon any Lot, or shall be the owner of any Lot, such Institutional Lender shall have the following rights:

- (a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of any annual financial statement or report of the Association.
- (b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed material amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or By-Laws of the Association and assume self-management by the Association.
- (c) To receive notice of any condemnation or casualty loss affecting the Common Areas or any portion thereof.
- (d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (e) To have the right to approval of any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association under Article IV hereof.

Section 3. Requirements of Institutional Lenders.

Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address of the registered agent for service of process with the office of the Secretary of State identifying the Lot or Lots upon which any such Institutional Lender holds any first line or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

Section 4. Approval of Owners and holders of First Deeds of Trust. Unless at least seventy-five percent (75%) of the owners

and holders of the first deeds of trust on lots located within the Property, have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association. The granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause.
- (b) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner.
- (c) Fail to maintain fire and extended coverage insurance on insurable improvements in the Common Area on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value.
- (d) Use the proceeds of any hazard insurance policy covering losses to any part of the Common Area for other than the repair, replacement or reconstruction of the damaged improvements.

Section 5. Payment of Taxes and Insurance Premiums. The owners and holders of first deeds of trust on lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the person, firms or corporations making such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE XI

EXTERIOR MAINTENANCE

The owner of each lot shall maintain the grounds and improvements situated on his lot, including, but not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner, promptly repairing any damage thereto by fire or other casualty. Upon the Owner's failure to do so, the Association may, at its option, after approval by a majority vote of the Board of Directors, and after giving the Owner ten (10) days written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs, and vegetation cut when and as often as the same is necessary in its judgment, and have the dead trees, shrubs and plants removed from such lot, and replaced, and may have any portion of the lot resodded or landscaped, and all expenses incurred by the Association for such work shall be a lien and charge against the lot on which the work was done and the personal obligation of the then-owner of such lot.

Upon the Owner's failure to maintain the exterior of any structure, including the roof, in good repair and appearance, the Association may, at its option, after approval by a majority vote of the Board of Directors and after giving the Owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance of such structure in a reasonable and workmanlike manner. The cost of any such work performed by the Association upon the owner's failure to do so shall be immediately due and owing from the then-owner of the lot on which the work was performed and shall constitute an assessment against the lot and the personal obligation of such Owner, collectable in a lump sum, and secured by the lien against the lot as herein provided.

The Owners of any lots that are subject to the sign or landscaping easements described in Article V above shall maintain the area around such signs or landscaping that are not maintained or landscaped by the Declarant or the Association pursuant to such easement. The reservation of such easements imposes no obligation on DECLARANT, its successors and assigns, to continue to maintain the landscaping and entrance signs for the Neighborhood.

ARTICLE XII

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

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this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no way ever 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 and bind the land, for a term of twenty-five (25) 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 by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots; provided, however, no amendment purporting to revoke or curtail any right herein conferred to Declarant shall be effective unless executed by Declarant. Any amendment must be properly recorded. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof shall not constitute an "amendment."

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed this 19th day of July, 1995.

J. Leroy Rushing
J. Leroy Rushing

Fair P. Rushing
Fair P. Rushing
By: *John Leroy Rushing*
John Leroy Rushing
Attorney-in-Fact

BK797PG206

STATE OF NORTH CAROLINA

COUNTY OF UNION

I, Quay D. Murphy, a Notary Public, do hereby certify that J. LEROY RUSHING personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 19th day of July, 1995.

Quay D. Murphy
Notary Public

My Commission Expires: 9-1-96

STATE OF NORTH CAROLINA

UNION COUNTY

I, Quay D. Murphy, a Notary Public for said County and State, do hereby certify that JOHN LEROY RUSHING, attorney-in-fact for FAIR P. RUSHING, personally appeared before me this day and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said FAIR P. RUSHING, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Union, State of North Carolina, on the 2nd day of May, 1990, in Book 627, Page 194, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said JOHN LEROY RUSHING acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said FAIR P. RUSHING.

WITNESS my hand and official seal, this 19th day of July, 1995.

Quay D. Murphy
Notary Public

My Commission Expires: 9-1-96



NORTH CAROLINA - Union County

The foregoing certificate(s) of

Ann K. Murphy

Notary Public of Union Co, N.C.

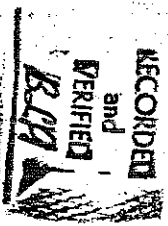
is (are) certified to be correct. This instrument was presented for registration and recorded in this office at Book 797, Page 185

this 19th day of July, 1995 at 11:45 o'clock A. M.

By: Judy G. Price, Register of Deeds

SCHEDULE "A"

beginning at a p.k. nail in the center of the right of way of S. H. 1501 (known as Secret Short Cut Road) said nail being located North 16 degrees 20 minutes 01 seconds West 1927.31 feet from a corner of the property of Covenant Baptist Church, said corner also being a corner of the existing City of Monroe Corporate Limits, and running from said beginning p.k. nail with the center of the right of way of S. H. 1501 as follows: 1st, North 16 degrees 50 minutes 06 seconds West 305.39 feet to a p.k. nail in the center of the right of way of S. H. 1501, a corner of the property of F. Barble (Book 201, Page 02, Union County Registry); thence with the F. Barble property as follows: 1st, North 50 degrees 19 minutes 06 seconds East 213.60 feet to an iron pin set at 540.57 feet; 2nd, North 22 degrees 05 minutes 16 seconds East 213.60 feet to an iron pin found at 540.57 feet; a total distance of 552.57 feet to a point, 3rd, North 60 degrees 00 minutes 16 seconds West 100.00 feet to a point in Black Branch, said point being a common corner of the Davis property (Book 200, Page 795, Union County Registry) and the Fowler property (Book 260, Page 211 Book 305, Page 315 and Book 210, Page 261, Union County Registry); thence with the Fowler property and Black Branch as follows: 1st, North 60 degrees 05 minutes 29 seconds East 190.72 feet; 2nd, North 17 degrees 19 minutes 19 seconds East 200.00 feet; 3rd, North 50 degrees 19 minutes 19 seconds East 200.00 feet; 4th, North 40 degrees 19 minutes 19 seconds East 200.00 feet; 5th, North 39 degrees 19 minutes 19 seconds East 200.00 feet; 6th, North 28 degrees 19 minutes 19 seconds East 100.00 feet; 7th, North 09 degrees 10 minutes 16 seconds West 100.00 feet to a point; 8th, North 18 degrees 10 minutes 16 seconds West 300.00 feet; 9th, North 37 degrees 10 minutes 16 seconds West 100.00 feet; 10th, North 40 minutes 16 seconds West 200.00 feet to a point in the center of Stuart's Fork Creek; thence continuing with the Fowler property and Stuart's Fork Creek as follows: 1st, South 56 degrees 40 minutes 16 seconds East 321.00 feet; 2nd, South 01 degrees 10 minutes 16 seconds East 339.00 feet; 3rd, South 76 degrees 40 minutes 16 seconds East 300.00 feet; 4th, South 25 minutes 16 seconds East 331.00 feet; 5th, South 56 degrees 10 minutes 16 seconds East 100.00 feet; 6th, South 26 degrees 10 minutes 16 seconds East 130.00 feet to a point in said creek, a corner of the property of J. A. Barble and wife, Patricia Barble (Book 312, Page 112, and Book 313, Page 112, Union County Registry); thence with the Barble property as follows: 1st, North 06 degrees 40 minutes 16 seconds West 300.00 feet; 2nd, South 60 degrees 19 minutes 19 seconds West 110.00 feet; 3rd, South 28 degrees 19 minutes 19 seconds West 100.00 feet; 4th, South 20 degrees 10 minutes 16 seconds East 315.00 feet; 5th, North 59 degrees 19 minutes 19 seconds East 700.00 feet to a point; 6th, North 02 degrees 19 minutes 19 seconds East 100.00 feet; 7th, South 38 degrees 10 minutes 16 seconds East 202.00 feet; 8th, South 02 degrees 19 minutes 19 seconds West 75.00 feet; 9th, South 79 degrees 21 degrees 19 minutes 16 seconds East 300.00 feet to a point in Stuart's Fork Creek, a corner of the property of I. F. Plyler, Jr. and Jane P. Vandiver (Book 100, Page 115, Union County Registry); thence with the property of I. F. Plyler, Jr. and Jane P. Vandiver as follows: 1st, South 58 degrees 56 minutes 10 seconds West (crossing an iron pin set at 25.00 feet) a total distance of 106.37 feet to an iron pin found (old axle); 2nd, South 47 degrees 11 minutes 19 seconds West 174.06 feet to an iron pin found; 3rd, North 09 degrees 10 minutes 16 seconds West 160.50 feet to an iron pin found (old axle); 4th, South 79 degrees 19 seconds West 653.00 feet to an iron pin found (old axle); 5th, South 00 degrees 10 minutes 16 seconds East 200.00 feet to a one-inch iron pin found, corner of the Deese property (Book 260, Page 716, Union County Registry); thence with the Deese property South 69 degrees 32 minutes 12 seconds West 757.47 feet to the beginning p.k. nail, and containing 103.77 acres, more or less, as shown on copy of map of survey prepared by Bacon-Davis & Associates, Inc., dated June 21, 1900.



BK803PG029

STATE OF NORTH CAROLINA
COUNTY OF UNION

Filed for record
Date 8-11-95
Time 12:05 P M.
JODY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

Refused
JGM

SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF BARBEE FARMS

0550.00

THIS DECLARATION made on the date hereinafter set forth by J. LEROY RUSHING and wife, FAIR P. RUSHING, hereinafter referred to as "Declarant" and any and all persons, firms or corporations now owning and hereinafter acquiring any of the within described property.

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in Union County, North Carolina which is more particularly described by plat thereof recorded in Plat Cabinet D, File 959 in the Union County Public Registry to which reference is hereby made for a more complete description; and

WHEREAS, Declarant is the Declarant in that Declaration recorded in Book 797, Page 185 covering Barbee Farms subdivision as described therein; and

WHEREAS, Declarant desires that the property described on plat recorded in Plat Cabinet E, File 41 & 42 as Barbee Farms, Phase II, and in Plat Cabinet E, File 43 & 44 as Barbee Farms, Phase III, be added to said original Declaration.

NOW, THEREFORE, the Declarant hereby declares that all of the property described on said plats shall be held, sold and conveyed subject to those easements, restrictions, covenants and conditions more particularly set out in that original Declaration dated the 19th day of July, 1995 and recorded in Book 797, Page 185 in the Union County Registry.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed, this the 11th day of August, 1995.

J. Leroy Rushing (SEAL)
J. Leroy Rushing

Fair P. Rushing (SEAL)
Fair P. Rushing

BY: John Leroy Rushing (SEAL)
John Leroy Rushing
Attorney-in-Fact

LAW OFFICE OF
HENRY B. SMITH JR., P.A.
P. O. BOX 782
MONROE, N. C. 28110

DEAMUN 84 +
RETURN TO:

BK803PG030

STATE OF NORTH CAROLINA

COUNTY OF UNION

I, James J. Murphy, a Notary Public, do hereby certify that J. LEROY RUSHING personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 11th day of August, 1995.

James J. Murphy
Notary Public

My Commission Expires: 9-1-96

STATE OF NORTH CAROLINA

UNION COUNTY

I, James J. Murphy, a Notary Public for said County and State, do hereby certify that JOHN LEROY RUSHING, attorney-in-fact for FAIR P. RUSHING, personally appeared before me this day and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said FAIR P. RUSHING, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Union, State of North Carolina, on the 2nd day of May, 1990, in Book 627, Page 194, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said JOHN LEROY RUSHING acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said FAIR P. RUSHING.

WITNESS my hand and official seal, this 11th day of August, 1995.

James J. Murphy
Notary Public

My Commission Expires:

9-1-96

The foregoing certificate(s) of Jm J. Murphy, ALP of Union Co., NC

Were certified to be correct. This instrument and certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Judy G. Price BY: Shirley S. Medline
Register of Deeds
Union County, NC
Assistant Deputy-ROD

PREPARED BY & RETURN TO:
Smith & Goodwin
310 W. Franklin Street
Monroe, NC 28112

STATE OF NORTH CAROLINA
COUNTY OF UNION

RECORDED

and

VERIFIED

BCS

BK832PG362

Filed for record

Date

Time

4:40

12-18-95

PM

JODY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

AMENDMENT TO DECLARATION

OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BARBEE FARMS

THIS AMENDMENT, made this the 15th day of December, 1995 by J.
LEROY RUSHING and wife, FAIR P. RUSHING, hereinafter referred to as
"Declarants":

064897

WITNESSETH:

WHEREAS, Declarant executed and recorded the Declaration of
Covenants, Conditions and Restrictions for Barbee Farms on the 19th
day of July, 1995 and they are recorded in Book 797 at Page 185 in
the Union County Registry; and

WHEREAS, Declarant caused additional properties to become
subject to said Declaration by executing and recording the
Supplemental Declaration of Covenants, Conditions and Restrictions
of Barbee Farms on the 11th day of August, 1995 and they are
recorded in Book 803 at Page 29 in the Union County Registry; and

WHEREAS, Declarant desires to amend the original Declaration
and the Supplemental Declaration by adding thereto a new Section to
be referred to as Article XII, Section 4, as follows:

Section 4. HUD/VA Approval. Annexation of
additional properties, dedication of common area, and
amendment of the Declaration of Covenants, Conditions and
Restrictions, requires HUD/VA prior approval as long as
there is a Class B. Membership.

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Declarant affirms that there are no Class A members of the Barbee Farms Homeowners Association and that he remains the owner of more than seventy five percent (75%) of the lots subject to the Declaration and Supplemental Declaration.

IN WITNESS WHEREOF, the Declarants have hereunto set their hands and seals the day in the first above written.

J Leroy Rushing
J. Leroy Rushing

Fair P. Rushing
Fair P. Rushing

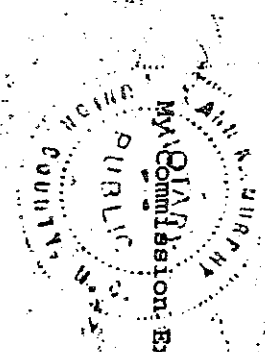
By: John Leroy Rushing
John Leroy Rushing
Attorney-in-Fact

STATE OF NORTH CAROLINA
COUNTY OF UNION

I, John Leroy Rushing, a Notary Public, do hereby certify that J. LEROY RUSHING personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 15th day of December, 1995.

John Leroy Rushing
Notary Public



BK832PG364

STATE OF NORTH CAROLINA

UNION COUNTY

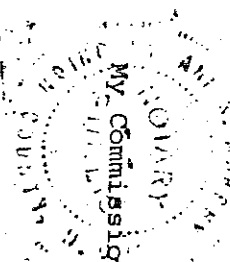
I, Don J. Murphy a Notary Public for said County and State, do hereby certify that JOHN LEROY RUSHING, attorney-in-fact for FAIR P. RUSHING, personally appeared before me this day and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said FAIR P. RUSHING, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Union, State of North Carolina, on the 2nd day of May, 1990, in Book 627, Page 194, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said JOHN LEROY RUSHING acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said FAIR P. RUSHING

WITNESS my hand and official seal, this 15th day of December, 1995.

Don J. Murphy
Notary Public

My Commission Expires: 9-1-96



The foregoing certificate(s) of Don J. Murphy, A.P. of Union Co., NC

is/are certified to be correct. This instrument and certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Judy G. Price BY: Jeffrey D. McDermott
Register of Deeds
Union County, NC Assistant/Deputy