

Prepared by and Hold for:
J. Peter Rascoe, III
Law Office of Charles L. Hinton, III
Post Office Box 550
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NORTH CAROLINA

PROTECTIVE COVENANTS FOR PHASE ONE,
PART A, ASHLEY FOREST EAST, ASHLEY
FOREST SUBDIVISION, RECORDED IN BOOK
OF MAPS 114, PAGE 62, DURHAM COUNTY
REGISTRY

DURHAM COUNTY

THESE PROTECTIVE COVENANTS, made this the 15th day of MAY, 1987, by THE
NEW FORTIS CORPORATION (hereinafter "Declarant");

W I T N E S S E T H :

Declarant hereby declares that the following described real property, of which it
is owner, located in Oak Grove Township, Durham County, North Carolina, is and shall
be held, transferred, sold and conveyed, subject to the protective covenants herein-
after set forth:

BEING all of Phase One
Part A, Ashley Forest East
Ashley Forest Subdivision
As shown on map recorded in
Book of Maps 114, Page 62,
Durham County Registry.

1. Preamble. The above described lands, which are subject to these protective
covenants, and other lands, which now or hereafter will be subject to similar
covenants (collectively called "the subdivision"), are being developed by Declarant.
Declarant reserves the authority to approve or disapprove architectural plans of
proposed construction and the location of improvements on each lot in the subdivision
as provided in Paragraphs 4 and 6 hereof.

2. Purpose. The real property above described is hereby made subject to the
protective covenants and restrictions hereby declared for the purpose of insuring the
best use and most appropriate development and improvement of the subdivision and each
building site therein; to protect the subdivision and the owners of building sites
therein against such improper use of surrounding building sites as will depreciate
the value of the property of each; to preserve so far as practicable, the natural
beauty of the real property and especially the trees growing thereon; to guard
against the erection thereon of poorly designed or proportioned structures, and
structures built of improper or unsuitable materials; to obtain harmonious color
schemes; to insure the highest and best development of said property; to encourage

Waiver
BK 1416
p 829
11-24-87

Declare/Annex.
BK. 1470
Pg. 538-539
8-9-88

Waiver
BK 1615
Pg 445
9/10/90

Waiver
BK 1505
Pg 963-964
2/1/89

1400

and secure the proper siting and erection of attractive homes thereon; to secure and maintain proper setbacks from streets, and adequate free space between structures; and, in general, to provide adequately for a high type and quality of improvements on said property, and thereby to enhance the values of investments and by purchasers of building sites therein.

3. Residential Building Sites. Each lot above described shall constitute a residential building site (hereinafter called "building site") and shall be used for residential purposes only. The lay of the lots as shown on the recorded plat shall be substantially adhered to; provided, however, with the prior written approval of Declarant, its successors or assigns, (including the Architectural Committee hereinafter referred to) the size and shape of any building site may be altered; provided further, that no building site or group of building sites may be resubdivided so as to produce a greater number of building sites than shown on the aforementioned recorded map. More than one lot may be used as one building site, provided the location of any structure permitted thereon is approved in writing by Declarant, its successors or assigns, including the Architectural Committee referred to in Paragraph 4 hereof; and, provided, further, that Declarant shall have the right, specifically reserved in Paragraph 20 hereof, to make any relocations of easements that it determines to be necessary by reason of such use. Except as provided in this paragraph, no structure shall be erected, altered, placed, or permitted to remain on any building site, other than one detached single family dwelling not to exceed two and one-half stories in height, and, unless otherwise approved by the Declarant, its successors or assigns, a private garage for not more than two cars.

4. Architectural Committee; Approval Required. The Declarant shall designate and appoint an Architectural Committee comprised of three (3) persons and their successors or assigns who may or may not be owners of building sites. No site preparation and no construction, erection or installation of any structures, facilities, or other improvements whatsoever (including, but specifically not limited to, residences, other buildings, fences, screen plantings, mail and newspaper boxes, and outside lighting) shall be undertaken on any building site within the subdivision until the building plans, specifications, and plot plans have been submitted to the Declarant, and the Declarant has given written approval of the location of the proposed structures, facilities, and improvements with regard to topography, flowing and impounded waters, beginning and finished ground elevation, existing trees and

shrubs, trees and shrubs to be planted, and neighboring structures; and has also given written approval of the proposed structures, facilities, and improvements with respect to the conformity and harmony of the external design and external color and materials thereof with existing structures and improvements in the area.

Note: The right of the Declarant to withhold approval of any proposed initial structures, facilities, or improvements or of the location thereof is absolute and may be withheld arbitrarily.

Declarant, at or prior to the conveyance of its last lot in the subdivision, may convey its rights hereunder to the Architectural Committee. Such conveyance shall be recorded in the Durham County Register of Deeds Office.

5. Existing and Additional Improvements. Following the issuance of a Certificate of Occupancy by the appropriate municipal authority, no alteration or modification of the dwelling house or improvements, including change of exterior color, shall be undertaken (other than normal maintenance and repairs), and no construction, erection, or installation of any additional new structures, including doghouses, facilities, or other improvements, except by the Declarant, shall be undertaken without the prior express written consent of the duly designated Architectural Committee.

6. Erosion Control. During site preparation and initial construction, the owner of the building site and the builder shall take such action as may be required by Declarant to control, inhibit, or prevent erosion and sedimentation of streams and impoundments resulting from erosion. If, in the opinion of the Declarant, an owner does not properly maintain his building site as herein provided, then Declarant may have the required work done, and the costs thus incurred by Declarant shall be paid by the owner of the building site. Declarant shall have all easements, including the right of entry, necessary to enter upon the building site and perform such work or cause such work to be performed.

7. Grading and Filling. No grading, filling, or other alteration of the topography or elevation of any building site shall be undertaken prior to or during initial construction without the prior express written approval of Declarant.

8. Removal of Trees. No trees or other vegetation, except weeds, deadwood, underbrush, or grass, may be cut or removed from any building site prior to or during initial construction unless written approval of Declarant is first secured. Following initial construction of improvements on any building site, no trees having a trunk diameter exceeding six (6) inches, four (4) feet above ground level, shall be

removed therefrom without the prior express written approval of Declarant, unless the tree is dead or diseased or poses an imminent threat or danger to persons or property.

9. Clearances. Except with the prior written approval of the Architectural Committee or Declarant, no building of any kind, including garages, shall be located on any building site less than twenty-five (25) feet from the front lot line; provided, however, that on a corner lot, a dwelling may be located not nearer than fourteen (14) feet to one street if the dwelling is at least twenty-five (25) feet from the other street. No building shall be located nearer than eight (8) feet to an interior lot line except that a five (5) foot side yard shall be permitted for a garage or other permitted accessory building located 80 feet or more from the minimum setback line. For the purpose of this covenant, eaves and steps shall not be considered a part of a building; provided, however, this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. Declarant and/or the Architectural Committee reserves the right to waive violations of the setback and side line requirements set forth in this paragraph. Waivers shall be in writing and signed by Declarant or the Architectural Committee.

10. When Approval Implied. Where any owner or builder must secure prior approval of Declarant under these covenants before undertaking any activity or work, request for approval shall be submitted in writing, and failure of Declarant to give or deny approval within thirty (30) days following receipt of the written request shall be deemed to constitute approval, unless suit has been or is instituted to enjoin the proposed activity or work or the completion thereof.

11. Signs. No signs, billboards, or posters of any nature shall be erected, placed, exhibited, or maintained on any building site except: 1) for one sign of not more than five square feet advertising the property for sale or rent, or signs used by Declarant, or 2) with the prior approval of, and in conformity with the size, design, and format, and for such time period, as is or may be prescribed from time to time by the Declarant or the Architectural Committee.

12. Nuisances. No noxious or offensive activity shall be carried on upon any building site, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No trade materials or inventories may be stored upon the premises and no trucks, pick-ups, tractors or commercial vehicles displaying the name of any firm or produce may be stored or regularly parked on the premises

except in garages or well screened approved enclosures. No satellite dish-type antennas, or outside clothes lines, shall be constructed, erected, or placed on the building site. No business activity or trade of any kind whatsoever shall be carried on upon any building site except those activities normal and incident to the initial construction and sale of dwelling units on the site.

13. Temporary Buildings Prohibited. No trailer, basement (unless said basement is a part of a residence erected at the same time), tent, shack, barn or other outbuilding shall be erected or placed on any building site covered by these covenants, except as specifically permitted herein.

14. Pets and Other Animals. No animals or poultry of any kind other than house pets, shall be kept or maintained in any part of said property, provided they are not kept or maintained for commercial purposes. Further, no pens or runs shall be allowed on any lot. The fencing of yards shall be subject to the provisions of Paragraph 15.

15. Fences. No fence, wall, hedge, or mass planting shall be permitted except upon the prior approval of the Declarant. No type of metal fence shall be permitted whatsoever unless required by law, with the exception of the use of such by the Declarant for security of the pool and any related common area facilities. No fence shall be permitted nearer the front lot line than the front house or dwelling line.

16. Parking. Adequate off-street parking shall be provided by the owner of each building site for the parking of automobiles and other vehicles owned or controlled by such owner, members of the owner's family, or employees of the owner. Owners of building sites covenant and agree not to park their automobiles, motorcycles, boats, vehicles of 3/4 ton weight or more, and other vehicles on the streets located in the residential areas of this subdivision. Further, owners covenant and agree that boats, motorcycles, trailers, campers and recreational vehicles shall only be parked in garages or approved enclosures and not on any part of a lot exposed to view either from the street, another lot or from any common area.

17. Utility Connections. All telephone, electric and other utility lines and connections between the main utility lines and connections between the main utility lines and residence and other building located on each building site shall be concealed and located underground so as not be visible.

18. Easement Reserved. Declarant, for itself and its successors and assigns, hereby reserves, and is given a perpetual easement, privilege, and right, including

right of entry, for utility, television antenna system, and drainage purposes, on, in, and under a ten (10) foot strip along the rear line of each building site and on, in, and under a five (5) foot strip along the interior side lot line of each building site and as shown on the aforementioned recorded map. In the event that more than one lot is used as one building site as provided in Paragraph 3 hereof, or in the event Declarant in its sole discretion deems it necessary and appropriate, Declarant specifically reserves the right exclusively unto itself (See Paragraph 22 hereof) to relocate, remove and/or re-establish the easement provided for herein or the easements provided on the map recorded of the subdivision, which easements may be located on, in and under the lots or recombination of lots utilized as the building site.

Further, Declarant reserves the right to subject real property in this subdivision to a contract with Duke Power Company for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Duke Power Company by the owner of each building.

19. Rights Exclusive. All rights herein created for, held by, or reserved to Declarant shall belong exclusively to Declarant and to such person, firm or corporation to whom they are expressly conveyed, and none of them shall be deemed transferred to the purchaser of any property unless the instrument effecting such transfer expressly recites the transfer of such rights. By way of illustration and not of limitation, at the time these covenants are drawn, it appears probable that when the development of all of Ashley Forest East has been fully constructed, Declarant will have no further economic interest in this phase of the subdivision and may then wish to transfer to the Ashley Forest Association of Durham its right to appoint an Architectural Committee, its right to prohibit erosion and other such rights.

20. Term of Covenants. These covenants are to run with the land and shall be binding on all parties claiming under them until January 1, 2031, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of a majority of the then owners of the building sites in Ashley Forest East, whether covered by these or other substantially similar covenants, it is agreed to change said covenants in whole or in part.

21. Enforcement. If the parties hereto, or any of them, or their heirs, successors, or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Ashley Forest Association or any other person or persons

shall be lawful for the Ashley Forest Association or any other person or persons owning any real property in Ashley Forest East or which is subject to these covenants to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, and either to prevent it, her, him or them from so doing or to recover damages or other dues for such violation.

22. Invalidation. Invalidation of any of these covenants or any part hereof by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

23. Additional Lands. Declarant, or any person, firm, or corporation to whom it may expressly convey and transfer its rights hereunder by appropriate written instrument, may subject additional land within the subdivision to these Protective Covenants, by filing an express written declaration to that effect. The declaration shall describe the additional land to be subject to these covenants; shall incorporate the provisions of these covenants, either by reference or by fully setting out said provisions therein; and shall become effective upon filing in the Registry of Durham County.

IN WITNESS WHEREOF, Declarant has caused this Agreement to be executed in its corporate name by its proper officers thereunto duly authorized, all as of the day and year first above written.

THE NEW FORTIS CORPORATION

FILED 138-144
BOOK 1368 PAGE BY

Vice President

MAY 5 11 28 AM '87

RUTH C. GARRETT
REGISTER OF DEEDS
DURHAM COUNTY, NC

ATTEST:

Assistant Secretary



NORTH CAROLINA WAKE COUNTY

I, ARLENE F. LIVENGOOD, a Notary Public in and for said State and County, do hereby certify that JEFFREY P. SWAIN personally appeared before me this day and acknowledged that he is (Assistant) Secretary of THE NEW FORTIS CORPORATION, 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 Assistant Vice President, James M. Nicholson, sealed with its corporate seal, and attested by herself as its (Assistant) Secretary.

WITNESS my hand and notarial seal this the 1st day of MAY, 1987.

ARLENE F. LIVENGOOD
NOTARY PUBLIC
WAKE COUNTY, N.C.
My Commission Expires 9-30-87

My commission expires:

Arlene F. Livengood
Notary Public

State of North Carolina-Durham County
The foregoing certificate(s) of Arlene F. Livengood
A Notary (Notaries) Public for the Designated Government
units is (are) certified to be correct.

This the 5 day of May A.D. 1987
Ruth C. Garrett
Register of Deeds
By: Janice Balu
Assistant, Deputy
Register of Deeds