

Prepared by:
James Grant Pouse, Atty

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DECLARATION OF PROTECTIVE COVENANTS
For
STONEY BROOK

THIS DECLARATION, made this 23 day of December,
1980, by PAUL W. JACKSON and wife, JUDY B. JACKSON, hereinafter
referred to as Declarants.

W I T N E S S E T H :

THAT WHEREAS, Declarants are the owners of certain real
property located in Dunns Rock Township, Transylvania County,
North Carolina, more particularly described in Exhibit "A"
hereto attached and made a part hereof by reference; and

WHEREAS, Declarants intend to create on the property
hereinabove described a community known as Stoney Brook,
and to sell therefrom lots and parcels of land, and before
doing so desire to impose upon said property and the lots
and parcels to be sold therefrom mutual beneficial restrictions,
covenants, equitable servitudes and charged under a general
plan or scheme of improvements for the benefit of the lots
and parcels in said Development and the owners and future
owners thereof.

NOW, THEREFORE, Declarants declare that all of the
property hereinabove described and referred to and all of the
lots and parcels therein are held and shall be held, conveyed,
hypothecated or encumbered, leased, rented, used, occupied and
improved, subject to the provisions of this Declaration, all
of which are declared and agreed to be in furtherance of a plan
for the development, improvement and sale of said lots and
parcels and are established and agreed upon for the purpose of
enhancing and protecting the value, desirability and
attractiveness thereof. The provisions of this Declaration
are intended to create mutual equitable servitudes upon each
of said lots and parcels in favor of each and all other lots
and parcels; to create reciprocal rights between the respective

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owners of all such lots and parcels, to create privity of contract and estate between the grantees of such lots, their heirs, successors and assigns, and to operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective owners, present and future.

1. DEFINITIONS. The following terms as used in this Declaration are defined as follows:

(a) "Declaration" means this Declaration of Protective Covenants for Stoney Brook, dated the 23rd day of December, 1980, as the same may be supplemented or amended from time to time.

(b) "Development" means Stoney Brook, as the same is described in the attached Exhibit "A" and as may appear from time to time upon subsequent recordation by the Declarants of Plats in the Transylvania County Registry designated as "Stoney Brook".

(c) "Improvements" means all buildings, outbuildings, streets, roads, driveways, parking areas, fences, retaining and other walls, hedges, poles, antennae, and any other structure of any type or kind.

(d) "Lot" means any numbered lot designated on a plat of the Development.

(e) "Parcel" means any numbered lot designated on a plat of the Development.

(f) "Owner" means:

1. Any person, including Declarants, who hold fee simple title to any lot.

2. Any person or legal entity who has contracted to purchase fee simple title to a lot pursuant to a written agreement, in which case Seller under said agreement shall cease to be the owner while said agreement is in effect.

(g) "Plat" means the recorded maps or plats of Stoney Brook.

(h) "Homestead" means a lot or parcel of land to be used for residential purposes only.

(i) "Single-family Dwelling" means a residential dwelling for one or more persons, each related to the other by blood, marriage or legal adoption, or a group of not more than three adult persons not so related, together with his or their domestic servants, maintaining a common household in such dwelling.

(j) "Dwelling" means a building constructed for residential purposes only.

II. LAND USE. Only one single-family dwelling and such outbuildings as are usually accessory thereto shall be permitted on any lot within the development. The following restrictions shall apply specifically to such lots:

(a) Minimum area. Each dwelling constructed shall have fully enclosed floor area, (exclusive of roofed or unroofed porches, terraces, garages, carports or other outbuildings) of not less than 1,000 square feet, and shall not be erected of exposed cement or cinder blocks.

(b) Setbacks. Each such dwelling shall be at least:

1. Seventy-five (75) feet from the front boundary line.

2. Thirty (30) feet from any side line.

3. Forty (40) feet from the rear lot line.

(c) Residential restrictions. The following shall be applicable to all lots within the Development, and each owner, as to his lot, covenants to observe and perform the same.

1. Accessory outbuildings. Without the approval of Declarants, no accessory outbuilding shall be erected on any lot prior to the erection thereon of a dwelling. In no event shall any such accessory outbuildings, or any partially completed or temporary structures, ever be used for human occupancy or habitation.

2. Completion of construction. Construction of any improvements, once commenced, shall be completed within twelve (12) months. Improvements not so completed, or upon which construction has ceased for one-hundred eighty (180) days, or which have been partially or materially damaged and not rebuilt within six (6) months shall be deemed nuisances. Declarants may remove any such nuisance or repair or complete the same at the cost of the owner.

3. Prohibition against used structures. Without approval of Declarants, no used buildings or structures intended for use as a dwelling shall be placed on any lot.

4. Maintenance of lots. All lots, whether occupied or unoccupied, and all improvements placed thereon, shall at all times be maintained in such manner as to prevent their becoming unsightly, unsanitary or a hazard to health.

5. Disposal of sanitary waste. No outside toilet shall be constructed on any lot. All plumbing fixtures, dishwashers, toilets or sewage disposal systems shall be connected to a septic tank or other sewage system approved by appropriate governmental authorities.

6. Nuisances. No noxious or offensive activities shall be carried on or permitted upon any lot, nor shall anything be done thereon which may be or become an annoyance or a nuisance to the community.

7. Garbage and refuse disposal. No owner shall accumulate on his lot junk vehicles or litter, refuse or garbage, except in receptacles provided for such purposes.

8. Restrictions on temporary structures. No travel trailer, mobile home or tent shall be placed or erected on any lot.

9. Removal of trees. To insure that the rustic character of the development is maintained, any clearing of trees must be submitted to Declarants or their designated agent for approval.

10. Ditches and swales. Each owner shall keep drainage ditches and swales located on his lot free and unobstructed and in good repair, and shall provide for the installation of such culverts upon his lot as may be reasonably required for proper drainage.

11. Lots within Stoney Brook must be a minimum of two and one-half (2½) acres in size, including later subdivision.

12. No rocks, stone or natural material shall be removed from the streams on any homestead.

13. No drilling, refining, quarrying or mining operations of any kind shall be permitted on any lot.

14. No hunting shall be engaged in or permitted on any homestead.

15. Until such time as Declarants appoint an Environmental Committee and makes provision for the appointment of successor members thereof all plans and specifications for all construction must be submitted to and approved by Declarants prior to the starting of construction. Refusal of approval of plans by Declarants may be upon any ground, including aesthetic reasons. No alterations in plans or specifications approved by Declarants may be made without the prior approval of Declarants.

III. EASEMENTS.

(a) Reservations. The following easements over each lot, and the right to ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to Declarants and their licensees.

1. Utilities. A ten (10) foot wide strip running along the inside of the street and all other lot lines of each homestead, for the installation, maintenance and operation of utilities, including radio and TV transmission cables, and the right to cut, trim or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation.

2. Slope and drainage. A thirty (30) foot wide easement running along the inside of all lot lines coincident with street right-of-way lines for the purpose of cutting, filling, drainage and maintenance of slopes and drainage courses.

3. A thirty (30) foot wide easement running along the street or road side of all lot lines for road purposes.

4. Other easements. Any other easements shown on the plat.

(b) Use of and maintenance by owners. The areas of any lots affected by the easements reserved shall be maintained continuously by the owner of such lot, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purpose herein set forth. Improvements within such area shall be maintained by the owner except those for which a public authority or utility company is responsible.

(c) No owner shall have any claim or cause of action against Declarants or their licensees arising out of the exercise or non-exercise of any easement reserved hereunder or shown on the plat except in cases of willful or wanton misconduct.

IV. MAINTENANCE OF ROAD EASEMENTS.

(a) Main Roads.

1. Roads designated main roads on the development plan are built to State specification so that maintenance of those roads will be taken over by the State. Primary road easements shall be turned over to the State upon acceptance of these roads.

2. These main roads will be paved by developer upon construction of homes in fifty (50%) percent of the parcels in a development phase. A one (1) year period must be allowed for road settling prior to paving.

130 (b) Secondary Roads.

(1) Roads designated secondary roads will be maintained by property owners whose property is served by those roads or whose property is contiguous with those roads.

(2) Secondary roads shall be maintained by those commonly served and/or contiguous owners. According to a pro-rata formula based upon the percentage of road used.

V. WATERFALL AREA.

(a) A one (1) acre park area around the waterfall designated on the development plan shall be maintained jointly with and for the mutual benefit of Sweetwater Farms and property owners within Stoney Brook.

VI. PHASED DEVELOPMENT.

(a) Developer intends to develop Stoney Brook in three or four phases over the next three (3) years. Phase I, designated "Stoney Brook, Section I," consists of approximately fifty (50) acres.

VII. REMEDIES.

(a) Enforcement. Declarants and each person to whose benefit this Declaration inures may proceed at law or in equity to prevent the occurrence, continuation or violation of any provision of this Declaration, and the Court in such action may award the successful party reasonable expenses in prosecuting such action, including attorney's fees.

No delay or failure on the part of an aggrieved party to invoke an available remedy in respect of a violation of any provision of this Declaration shall be held to be a waiver by that party of any right available to him upon the recurrence or continuation of such violation or the occurrence of a different violation.

VIII. GRANTEES ACCEPTANCE. Each grantee or purchaser of any lot shall, by the acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof,

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whether from Declarants or a subsequent owner of such lot or parcel, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and to the jurisdiction, rights, powers, privileges and immunities of Declarants. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with Declarants and the grantee or purchaser of each other lot, to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration.

IX. SUSPENSION OF RESTRICTIONS. The provisions on improvements, use and occupancy set forth herein shall be suspended as to any lot or other area while and so long as the same is owned by or leased to the State of North Carolina or any governmental agency, public or private utility, whenever and to the extent, but only to the extent, that such provisions shall prevent the reasonable use of such lot or area for such purposes. On cessation of such use, such provisions shall become applicable again in their entirety.

X. SEVERABILITY. Every provision of this Declaration is hereby declared to be independent of and severable from every other provision hereof. If any provision hereof shall be held by a Court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions shall continue unimpaired and in full force and effect.

XI. CAPTIONS. Captions in this Declaration are for convenience only and do not in any way limit or amplify the terms or provisions hereof.

XII. TERM AND AMENDMENT. The provisions of this Declaration shall affect and run with the land and shall exist and be binding upon all parties claiming an interest in the

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Development for a period of twenty-five (25) years from this date, after which the same shall be extended for successive periods of ten (10) years each. This Declaration may be amended by the affirmative vote of a majority of the owners of all lots in the Development entitled to vote recording an amendment to this Declaration duly executed by the requisite number of such owners required to effect such amendment. For the purpose of such vote the owner or owners of each lot shall be entitled to one vote only, regardless of the number of owners of said lot.

IN WITNESS WHEREOF, Declarants have executed this Declaration this the 23 day of December, 1980.

Paul W. Jackson (SEAL)
PAUL W. JACKSON

Judy B. Jackson (SEAL)
JUDY B. JACKSON

STATE OF FLORIDA

COUNTY OF Pineas

I, Karen M. Hannon, a Notary Public in and for said County and State do hereby certify that PAUL W. JACKSON and wife, JUDY B. JACKSON, personally appeared before me this day and acknowledged the due execution by them of the foregoing Declaration of Restrictive Covenants for Stoney Brook for the purposes therein set forth.

WITNESS my hand and notarial seal, this the 23rd day of December, 1980.

Karen M. Hannon
Notary Public

My Commission Expires:
NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES OCT. 3 1984
~~BONDED THRU GENERAL INS. UNDERWRITERS~~

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

The foregoing certificate of Karen M. Hannon a Notary Public, is certified to be correct. This instrument was presented for registration and duly recorded in this office in Book 246, Page 124, Records of Deeds.

This 9 day of January, 1981, at 4:00 o'clock
P. M.

Fred H. Israel
Register of Deeds