

NORTH CAROLINA

458 HENDERSON COUNTY

RESTRICTIVE COVENANTS OF

WHISPERWOOD SUBDIVISION

This Declaration of limitations, restrictions and uses made and entered into this 22nd day of January, 1973, by Bob Oates Builders, Inc. of Henderson County, North Carolina,

WITNESSETH:

WHEREAS, the undersigned Bob Oates Builders, Inc. (hereinafter called the Developer), is the owner of real property as described in Deed Book 494 at page 197 and at page 207, Henderson County Registry, and as shown on a plat which is recorded in Plat Book 9 at page 74, entitled "Whisperwood" Subdivision filed of record in the office of the Register of Deeds for Henderson County, State of North Carolina, and

WHEREAS, the said Developer desires to subject all of said tract of land described in said deeds and shown on said plat to the following limitations, restrictions and uses, which shall run with the land and be binding not only upon the undersigned Developer but upon all its successors in title;

NOW, THEREFORE, the said Developer does hereby make the following declaration as to limitations, restrictions and uses to which the above described tracts of land known as "Whisperwood" Subdivision shall be subject:

1. All lots in the "Whisperwood" Subdivision shall be used solely for residential purposes, and said lots shall not be used for any business or commercial activity. No commercial structure of any type shall be placed upon or constructed in the Subdivision.

2. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached one-family dwelling and necessary garages and outbuildings incidental to residential use. No building shall be erected of exposed cement or cinder block and no building shall be built where the siding shall consist of asbestos shingles, nor shall there be any metal roofing on any structure except soldered copper. There shall be no prefabricated buildings placed upon any of the property within the Subdivision, except prefabricated

components of buildings, such as window units, door units, roof trusses, cabinet units, etc. which shall be permitted.

3. No residence shall be constructed on any lot of less than 30,000 square feet of land. No lot can be divided without written permission from the Developer, its agents or successors.

4. The liveable finished floor area provided in each family unit, whether one or two stories, shall not be less than one thousand four hundred (1,400) square feet. Unfinished basements, attic space, other storage space, garages, porches or any area not enclosed by the main structure shall not be considered floor space.

5. The building line of any dwelling house or the buildings appurtenant thereto constructed on any of said lots shall not be less than sixty (60) feet from the street on which the dwelling house fronts; and not less than thirty (30) feet from either side line, not less than thirty (30) feet from the rear line, and not less than thirty (30) feet from the street line of a side street if the property is on a corner.

In those instances where the above set back distances are exceeded by any governmental zoning authority, the set back distances shall increase to the zoning authority's distances at the time of construction, unless the owner acquires permission for variance from said zoning body or appropriate board of review. In no instances will buildings be allowed closer to property lines than the above noted distances even if the zoning ordinance permits lesser distances.

In the event property owned by one property owner shall consist of more than one lot, his lot lines, for this purpose of these restrictions, shall be the outside perimeter of the entire contiguous tract owned by that property owner.

6. No swimming pool may be erected in front of a residence or closer than twenty (20) feet of any side lot line and any swimming pool placed upon any lot or lots in this Subdivision shall be properly fenced in or enclosed in such a manner as not to cause a hazard to this subdivision.

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7. All plans including elevations and specifications shall be submitted to the Developer, its agent or its successors, for approval before construction is commenced.

8. No structure of a temporary character, trailer, mobile home, travel trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot as a residence, either temporarily or permanently. Any camping travel trailers or portable "camping equipment" parked or stored on the property on any lot in the Subdivision must be kept within an enclosed garage or fenced utility yard and must not be left visible from the street or adjacent property. Mobile homes are absolutely forbidden to be placed, parked or stored on any lot or lots in the Subdivision.

9. No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than four square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

10. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes.

11. Any fence erected within twenty-five (25) feet of the right of way of any street shall be of an ornamental nature, and not more than three (3) feet in height.

12. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall

be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such lines.

13. No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

14. No unsanitary condition prejudicial to the public health shall be permitted. All sewage shall be disposed of by septic tanks, approved by the State Board of Health, until such times as a city sewage system is put into effect and being properly used. No liquid wastes of any description shall be drained, dumped or disposed of in any way into open ditches or watercourses. Trash, garbage or other wastes shall be kept in sanitary containers until disposed of. No lot, or any portion thereof, shall be used or maintained as dumping ground for rubbish.

15. No building of any kind shall be moved from any other place onto any of the said lots or from one lot onto another lot within the subdivision.

16. Easements five (5) feet wide are reserved along the side lot lines and ten (10) feet wide along the rear lot lines for the installations and maintenance of telephone lines, electric lines, and maintenance of telephone lines, electric lines, water lines, gas lines and other public utilities, and for drainage facilities. Provided, however, that where two or more adjoining lots are owned by the same person or persons, no such easements are reserved along the interior lot lines.

17. All areas indicated as streets on said "Whisperwood" Subdivision plat are hereby dedicated to public use and for such uses forever.

18. These covenants, limitations, restrictions, reservations and uses are to run with the land and to take effect immediately upon recordation and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded at which time these said covenants, limitations, restrictions, reservations and uses shall be automatically extended for successive periods of ten (10) years each unless it

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is agreed by vote of the majority of the owners of the lots of said "Whisperwood" Subdivision to change the same. Each lot owner may have as many votes as the number of lots owned by said lot owner.

19. If any lot owners or their heirs and assigns shall violate or attempt to violate any of the limitations, restrictions, reservations, covenants or uses to which the lots may be put, then it shall be lawful for any person or persons or any other parties owning any lot or lots in said subdivision to prosecute proceedings at law or in equity against the person, persons or parties violating or attempting to violate any such limitations, restrictions, reservations, covenants, or uses, or to recover damages or other dues for such violation. Failure to commence an action or proceedings, however, shall not be considered a waiver to prosecute such actions to such violation or any other violations that have or may occur.

20. Invalidation of any one of these covenants, limitations, restrictions or uses by Judgment or Court Order shall not in any way affect any of the other provisions which shall remain in full force and effect.

21. A lake is located within the "Whisperwood" Subdivision property and as shown on the recorded plat of said "Whisperwood" Subdivision as recorded in Plat Book 9 at page 74, Henderson County Registry, the said lake being within a single outside perimeter and described as follows:

Beginning at an iron pipe standing in the north edge of Whisperwood Circle, said iron pipe also being the northwesternmost corner of Lot 10 of the Whisperwood Subdivision as recorded in Plat Book 9 at page 74 of the Henderson County Registry; thence from said beginning point N. 65 deg. 26 min. 40 sec. E. 136.52 feet to an iron pipe; thence N. 83 deg. 17 min. E. 85.59 feet to an iron pipe; thence N. 19.00 feet to an iron pipe; thence N. 19 deg. 55 min. W. 73.39 feet to an iron pipe; thence N. 59 deg. 02 min. W. 75.80 feet to an iron pipe; thence N. 78 deg. 14 min. W. 49.03 feet to an iron pipe; thence S. 70 deg. 37 min. W. 114.49 feet to an iron pipe; thence S. 7 deg. 03 min. E. 89.68 feet to an iron pipe; thence S. 54 deg. 07 min. W. 73.17 feet to an iron pipe in the north edge of said Whisperwood Circle; thence along the north edge of said circle S. 69 deg. 49 min. 50 sec. E. 69.74 feet to an iron pipe in the edge of the circle; thence continuing with the edge of the circle a curve to the right, said curve having a radius of 99.77 feet and an arc distance of 22.00 feet to the point and place of beginning.

The above property being all of that land designated as a lake as shown on a plat of the Whisperwood Subdivision as recorded in Plat Book 9 at page 74, Henderson County Registry.

22. The above described lake, shall be owned by the Whisperwood Homeowners Association, Incorporated (a non-profit corporation) and said lake shall be made available by the said Whisperwood Homeowners Association, Incorporated, for use by each and every lot owner in the Subdivision. All lot owners in said "Whisperwood" Subdivision agree, by the acceptance of a deed conveying a lot or lots in said Subdivision to become and shall become a member of the said Whisperwood Homeowners Association, Incorporated, and in which membership shall be limited to the purchasers or owners of lots in said "Whisperwood" Subdivision.

23. The said Whisperwood Homeowners Association, Incorporated and its members thereunder shall hold and own the above described lake property subject to the following restrictions which restrictions shall be enforced by the lot owners or by the Whisperwood Homeowners Association, Incorporated in the same manner as heretofore provided:

(a) Nothing shall be done around the margin of the lake which shall cause or permit erosion or weakening of the said margins of the lake.

(b) No activity other than fishing and boating by the lot owners and immediate families shall be permitted on the lake. No boat propelled by any motor of any type whether inboard or outboard or otherwise, shall be permitted on the lake.

(c) Neither the Whisperwood Homeowners Association, Incorporated nor its members thereunder shall fluctuate the water level or drain the said lake at any time.

(d) There is reserved to the Developer, its successors or assigns, the right to install utilities across any portion of the lake, whether pipes, wires or otherwise, and to inspect, replace and maintain these lines.

24. It is understood and agreed, and subsequent grantees expressly agree by acceptance of a deed conveying any lot within this Subdivision, that any portion of the restrictive covenants may be released, changed, modified or amended by majority vote of the then property owners of this Subdivision. Each lot owner, including the Developer, Bob Oates Builders, Inc., shall have one vote for each and every lot then owned by that lot owner within this Subdivision.

464 The written and recorded modifications of these restrictions, signed by owners of a majority of the lots in the Subdivision shall be sufficient to constitute an amendment of these restrictions without notification to any person or persons.

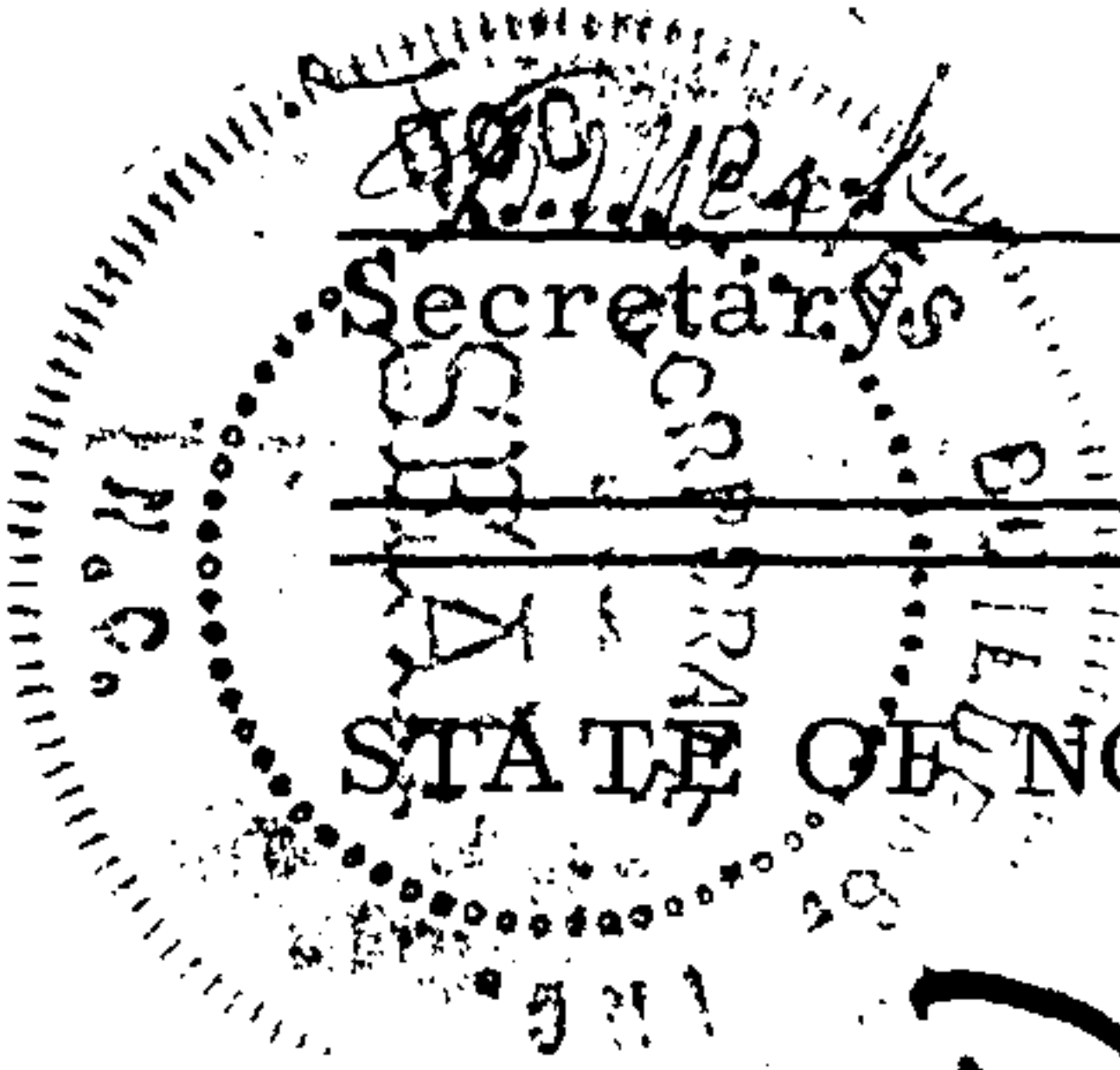
25. Notwithstanding the above preceding paragraph, it shall take a unanimous vote and consent of all the then lot owners within this Subdivision to release, change, modify or amend the restrictions relating to the lake property as set forth in paragraph twenty-three (23) of these restrictions.

The undersigned Developer does hereby declare that the advantages accruing to its property from the covenants and restrictions hereinabove set out constitute good and valuable consideration for the execution of this instrument.

IN WITNESS WHEREOF, the undersigned Developer, Bob Oates Builders, Inc., has caused these presents to be signed in its name by its President and attested by its Secretary, and its corporate seal to be hereto affixed, the day and year first above written.

ATTEST:

BOB OATES BUILDERS, INC.



BY:

Alfred E. Perkins
President

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

I, Don H. Ellens, a Notary Public in and for said County and State, do hereby certify that Alfred E. Perkins, who, being duly sworn, says that he is President of Bob Oates Builders, Inc., and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed by him in behalf of said corporation by its authority duly given. And the said Alfred E. Perkins acknowledged the said writing to be the act and deed of said corporation.

My commission expires:

10/15/77

Don H. Ellens
NOTARY PUBLIC

North Carolina, Henderson County

The foregoing certificate(s) of Don H. Ellens

Notary Public (Notaries Public) is/are certified to be correct. This instrument presented registration and recorded in this office this 2 day of February 19 73 at 11:25 A.M. in Book 504 Page 458

Marjorie Walker
Register of Deeds