

Carolina Realty

Prepared by:
H. Paul Averette, Jr.

FIRST AMENDMENT TO THE
DECLARATION OF PROTECTIVE COVENANTS
for
SWEETWATER FARMS

THIS AMENDMENT, made and entered into this 14th day of October, 1989, by and between the Board of Directors of Sweetwater Farms Association and a majority of the owners of all lots entitled to vote on any amendment to the original Declaration of Protective Covenants for Sweetwater Farms;

W I T N E S S E T H :

WHEREAS, the parties hereto are the owners of certain real property located in Dunns Rock Township, Transylvania County, North Carolina, as more particularly described in Exhibit "A" as set forth and attached to that certain Declaration of Protective Covenants for Sweetwater Farms in Deed Book 209 at Page 370 in the office of the Register of Deeds of Transylvania County, and made a part hereof by reference; and

WHEREAS, said Covenants hereinabove referred to provide in Article X that the same may be amended by the affirmative vote a majority of the owners of all lots entitled to vote by recording an amendment duly executed by the requisite number of such owners; and

WHEREAS, said owners, as evidenced by their signatures affixed hereto, intend to amend and supplement said Declaration of Protective Covenants as hereinafter set forth, all for the purpose of imposing and modifying certain mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan or scheme of improvements for the benefit of all lots

and parcels in the development and for the owners and future owners thereof as well as to enhance and protect the value and attractiveness of the property affected by said covenants; and

WHEREAS, the parties do hereby intend to modify and amend said original protective covenants as they are recorded in Deed Book 209 at Page 370 in the office of the Register of Deeds of Transylvania County;

NOW THEREFORE, the parties do hereby set forth, declare and amend said covenants as follows:

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

(a) "Declaration" means this Declaration of Protective Covenants for Sweetwater Farms, dated the _____ day of _____, 19___, as the same may be supplemented or amended from time to time.

(b) "Development" means Sweetwater Farms, as the same is described in the attached Exhibit "A."

(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 Board of Directors, who holds 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 Sweetwater Farms.

(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 single-family dwellings 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 1500 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 the Board of Directors, 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 12 months. A request to extend this period must be submitted to the Board of Directors for approval. Improvements not so completed, or upon which construction has ceased for 180 consecutive days, or which have been partially or materially damaged and not rebuilt within 6 months shall be deemed nuisances. The Board of Directors 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 the Board of Directors, 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 without express approval of the Board of Directors.

9. 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.

10. Re-subdivision of lots. No lot may be subdivided into parcels or tracts of less than two and one-half (2 1/2) acres. Only one single-family dwelling shall be permitted on each 2 1/2 acre lot.

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

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

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

14. No livestock or other animals, except household pets shall be kept or maintained on any lot within the development.

15. All plans and specifications for all constructions must be submitted to and approved by the Board of Directors prior to the starting of construction. Refusal of approval of plans by the Board of Directors may be upon any ground, including aesthetic reasons. No alterations in plans or specifications as approved by the Board of Directors may be made without the prior approval of the Board of Directors.

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 the Board of Directors and its licensees.

1. Utilities. A 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 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 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 the Board of Directors or its 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. Each property owner shall, by reason of ownership, become a member of the Sweetwater Farms Association. All road easements within Sweetwater Farms reserved by the Board of Directors shall be transferred to the

Association which shall thereafter have complete responsibility for the maintenance and repair of the road constructed thereon. In order to accept this responsibility and to further and promote the common interest of property owners in Sweetwater Farms, the Association shall be authorized to levy and collect annually assessments which shall be determined on a pro-rata of annual costs, based on the accepted budget of the period and allocated to each lot owner as determined by the Association. At any time after conveyance to the Association of the easement for any road the Association may, upon the affirmative vote of three-fourths of its members, offer the easement for any such road for dedication to public use. Such offer shall be subject to acceptance by the appropriate governmental authority pursuant to its then applicable standards.

V. REMEDIES.

(a) Enforcement. The Board of Directors 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 difference violation.

VI. 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 whether from Declarant 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 the Board of Directors. 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 the Board of Directors 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.

VII. 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 provision shall become applicable again in their entirety.

VIII. 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.

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

X. 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 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, the Board of Directors and a majority of the owners of all lots entitled to vote have executed this Declaration this the _____ day of _____, 1989.

SWEETWATER FARMS ASSOCIATION

By: _____
Irene N. Wardell, President

Attest: _____
Donald Duncan, Secretary

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

I, _____, a Notary Public of the State and County aforesaid, do hereby certify that DONALD DUNCAN personally appeared before me this day and acknowledged that he is the Secretary of SWEETWATER FARMS ASSOCIATION, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.