

Prepared by and return to: Charles G. Beemer, P.A.

NORTH CAROLINA

DECLARATION OF COVENANTS, CONDITIONS

AND RESTRICTIONS FOR FOREST COURT

ORANGE COUNTY

THIS DECLARATION, made and entered into this the th day of September, 1982, by BOLIN INVESTMENT GROUP, a North Carolina Limited Partnership, hereinafter referred to as Declarant, 410 Airport Road, Chapel Hill, Orange County, North Carolina, 27514

WITNESSETH:

WHEREAS, Declarant is the owner of all that certain real property located in the Town of Carrboro, Orange County, North Carolina, which is more particularly described in Exhibit A attached hereto and incorporated herein by reference.

AND WHEREAS, Declarant intends to convey townhouse lots from said property and further intends to annex five additional phases into this project and to convey townhouse lots therefrom, subject to the Covenants, Conditions and Restrictions contained in this Declaration.

NOW, THEREFORE, Declarant declares that all the property described in the attached Exhibit A shall be held, sold, and conveyed subject to the following restrictions, covenants and conditions. The purpose of said restrictions, covenants and conditions is to protect the value, desirability and attractiveness of the aforesaid real property. Said restrictions, covenants and conditions shall be appurtenant to and run with the land and shall be binding on all parties having any right, title or interest in the described real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE ONE

DEFINITIONS

Section 1 - "Association" shall mean and refer to Forest Court Homeowners' Association, Inc., its successors and assigns.

Section 2 - "Owner" shall mean and refer to the record owner, 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, but excluding those having such interest merely as security for the performance of an obligation.

Section 3 - "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto, or phases, as may hereafter be brought within the jurisdiction of the Association subject to this Declaration.

Section 4 - "Common Area" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners, subject to this Declaration and the By-Laws of the Homeowners' Association. The Common Area to be owned by the Association at the time of the conveyance of the first lot is more particularly described in Exhibit B attached hereto and incorporated herein by reference.

Section 5 - "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, and any phases or additional lands annexed thereto, with the exception of the Common Area.

Section 6 - "Declarant" shall mean and refer to Bolin Investment Group, a North Carolina limited partnership, its successors and assigns, if such successors and assigns should acquire more than one undeveloped lot from Declarant for the purpose of development.

ARTICLE TWO

PROPERTY RIGHTS

Section 1 - Owners' Easements of Enjoyment: Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

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

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency,

authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3 of each class of members has been recorded.

Section 2 - Delegation of Use: Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE THREE

MEMBERSHIP AND VOTING RIGHTS

Section 1 Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A - Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one 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 determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B - The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. 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:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on January 1, 1988.

ARTICLE FOUR

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 accep-

tance 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) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3 Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be

dollars (\$) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the

Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5 Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7 Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area including those Lots owned by Declarant but not yet conveyed to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reason-

able charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

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 the rate of 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE FIVE

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and speci-

fications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE SIX

PARTY WALLS, ROOFS, FOUNDATIONS AND FOUNDATION WALLS

Section 1 General Rules of Law to Apply. Each wall, roof, foundation and foundation wall which is built as a part of the original construction of the homes upon the Properties and placed on or traverse to the dividing line between the Lots and all reconstruction or extensions of such structures shall constitute a party wall, roof, foundation and foundation wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and lateral support in below-ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2 Sharing of Repair. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall or benefit therefrom in proportion to such use and benefit.

Section 3 Destruction by Fire or other Casualty. If a party wall, roof, foundation or foundation wall is destroyed or damaged by fire or other casualty, any Owner who has used the structure may restore it, and if the other Owners thereafter make use of the structure, they shall contribute to the cost of restoration thereof in proportion to such use; without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4 Easement for Construction. The Owner of any Lot may construct, reconstruct or extend a party wall, roof, foundation or foundation wall in any direction (subject to and within the limitations of architectural control and other limitations of this Declaration) with the right to go upon the adjoining Lot to the extent reasonably necessary to perform such construction. Such construction shall be done expeditiously. Upon completion of such construction, such Owner shall restore the adjoining Lot

to as near the same condition which prevailed on it before the commencement of such construction as is reasonably practicable.

Section 5 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6 Right of Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7 Certification by Adjoining Property Owner that No Contribution is Due. If any Owner desires to sell his property, he may, in order to assure a prospective purchaser that no adjoining property owner is owed any money under any right of contribution as provided for hereunder, request the adjoining property owner or property owners to certify that no money is then due under any right of contribution. It shall be the duty of each adjoining property owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining property owner claims an amount of money due under a right of contribution the certification shall contain a recital of the amount so claimed.

Section 8 Arbitration. In the event of any dispute arising concerning a party wall or other external improvements covered by the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE SEVEN

STAGED OR PHASED DEVELOPMENT

Additional land with the area designated as Lot 96, Cluster "C" as shown on Plat Book 33, Page 42, Orange County Registry, to which plat reference is hereby made, may be annexed by Declarant without the consent of members within five years of the date of this instrument provided that the FHA and the VA determine that

the annexation is in accordance with the general plan heretofore approved by them.

ARTICLE EIGHT

EXTERIOR MAINTFNANCE

Section 1 In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint and/or stain, grass mowing, leaf raking, sidewalk snow removal, repair, replace and care of roofs, gutters, downspouts, and all original exterior improvements, excluding glass surfaces. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association and its duly authorized agents the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as herein provided.

Section 2 The Owner of any Lot may, at his election, plant harmonious trees, shrubs, flowers and grass in the Lot's yard space; provided, however, that such plantings and voluntary Owner maintenance does not hinder the Association in performing its maintenance of the exterior of the townhouse, the Common Area, and the reamining yard space. No such maintenance by a Lot Owner shall reduce the assessment payable by him to the Association.

Section 3 In the event that the need for maintenance or repair is caused by or through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. It is specifically contemplated that such maintenance as provided for herein shall arise from normal usage and weathering and does not include maintenance made necessary by fire or other casualty.

ARTICLE NINE

EASEMENTS

Section 1 All of the Property, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewer lines, storm drainage facilities, gas lines, cable TV, telephone and electric power lines and other public utilities as shall be or shall have been granted by the Declarant or by its predecessors in title.

The Association shall have the power and authority through its Board of Directors to grant and establish upon, over, under and across the Common Area conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 2 All Lots shall be subject to easements for encroachment of initial improvements constructed on adjacent Lots or the Common Area to the extent that such initial improvements actually encroach, including, but not limited to, such items as overhanging eaves, gutters and downspouts, steps, porches and walls.

ARTICLE TEN

USE RESTRICTIONS

Section 1 Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot and the Common Area.

Section 2 Bolin Forest Use Restrictions. Each Lot owner in Forest Court is subject to that certain Declaration of Covenants, Restrictions, and Affirmative Obligations for Bolin Forest Subdivision as set forth in said Declaration recorded in Book 358, Page 660, Orange County Registry. The use restrictions set forth therein are incorporated herein by reference.

Section 3 Use of Property. No portion of the Property (except for temporary office of the Declarant and/or model townhouses used by Declarant for sale's purposes) shall be used except for residential purposes and related incidental purposes.

Section 4 Quite Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that this shall not be construed to prohibit temporary deposits of trash, rubbish, and other such for pickup by governmental or other similar garbage/trash removal services.

Section 5 Signs. No signs of any kind, other than those specifically permitted with the written consent of Bolin Forest Associates, as set forth in the Bolin Forest Declaration, and those signs used by the Declarant in the advertising of the Property, shall be displayed for public view in and about the premises.

Section 6 Use of Common Area. No planting or gardening shall be done upon or in any Common Area except as authorized by the Board of Directors of the Association.

ARTICLE ELEVEN

EASEMENT FOR CONSTRUCTION PURPOSES

The Declarant, or its duly authorized agents, shall have full rights of ingress and egress to and through, over and about the Common Area during such period of time as the Declarant is engaged in any construction or improvement work on or within the Property described herein or any additional property which may, subject to the provisions of this Declaration, be annexed to the Property. Declarant shall further have an easement for the purposes of storage of materials, vehicles, tools, equipment and so forth which are being utilized in such development or construction. No Lot owner, his guests, licensees, clients or invitees shall in any way interfere or hamper Declarant, its employees, successors, agents, or assigns in connection with construction.

ARTICLE TWELVE

PARKING

Ownership of each Lot shall entitle the owner or owners thereof to the use of not more than two automobile parking spaces which shall be located as near and convenient to said Lot as is reasonably practicable, together with the right of ingress and egress in, upon and through that portion of the Common Area wherein the parking spaces are located.

ARTICLE THIRTEEN

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

this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event 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 wise affect any other provisions which shall remain in full force and effect.

Section 3 Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) 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 during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

Section 4 Annexation. Additional residential property and Common Area, except that within Lot 96, Cluster "C" as stipulated hereinabove, may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5 FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, other than additional phases within Lot 96, Cluster C, dedication of Common Area, and amendment of this Declaration.

IN WITNESS WHEREOF, the undersigned, as General Partners of the Declarant, have hereunto set their hands, this the day of September, 1982.

BOLIN INVESTMENT GROUP, a North Carolina Limited Partnership, Declarant

By: [Signature]
General Partner

By: [Signature]
General Partner

By: [Signature]
General Partner

RIFFEL CORPORATION
General Partner

By: [Signature]
President

Attest:
[Signature]
Secretary

CHARLES G. BEEMER, P.A.
ATTORNEY AT LAW
UNIVERSITY MALL
AP N. C. 27514

NORTH CAROLINA

ORANGE COUNTY

I, Susan T. Cornacchione, a Notary Public, do hereby certify that Martha S. Block personally came before me this day and acknowledged that she is Secretary of Riffel Corporation, a General Partner in Bolin Investment Group, a North Carolina Limited Partnership, and that by authority duly given and as the act of said corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by said Secretary.

Witness my hand and official seal, this 8th day of September, 1982.

Susan T. Cornacchione
NOTARY PUBLIC
ORANGE COUNTY, NC

My commission expires: 4/20/87

NORTH CAROLINA

ORANGE COUNTY

I, Susan T. Cornacchione, a Notary Public in and for said county and state, do hereby certify that Norman E. Block, Robert N. Anderson, Jr., and Donald E. Stewart, all General Partners in Bolin Investment Group, a North Carolina Limited Partnership, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal, this 8th day of September, 1982.

Susan T. Cornacchione
NOTARY PUBLIC
ORANGE COUNTY, NC

My commission expires: 4/20/87

CHARLES G. BEEMER P.A.
ATTORNEY AT LAW
UNIVERSITY MALL
AP N.C. 27514

EXHIBIT A
METES AND BOUNDS DESCRIPTION
PHASE I, FOREST COURT

BEGINNING at an iron in the eastern right of way line of Bolin Creek Drive, the southwest corner of Lot 41, Bolin Forest Subdivision, said iron being shown on plat recorded in Plat Book 33, Page 42, Orange County Registry, to which plat reference is hereby made for said point; thence along and with the southern line of Lot 41, South 55° 17' 44" East 32.17 feet and South 73° 21' 50" East 128.65 feet to an iron, the southeast corner of Lot 41; thence along and with the east line of Lots 41 and 40, North 16° 38' 11" East 123.18 feet and North 37° 50' 59" East 46.97 feet to an iron; thence South 71° 33' 54" East 174.75 feet to a point; thence a new line through Lot 96, Cluster "C," Bolin Forest Subdivision, South 18° 26' 06" West 141.0 feet; thence South 16° 31' 57" East 71.44 feet; thence South 55° 41' 20" West 27.0 feet; thence North 74° 18' 40" West 113.0 feet; thence North 47° 44' 46" West 8.94 feet; thence North 74° 18' 40" West 88.36 feet to an iron in the northeast corner of Lot 42, Bolin Forest Subdivision; thence along and with the northern line of said lot North 73° 21' 50" West 127.20 feet and North 88° 15' 01" West 31.73 feet to an iron on the eastern right of way of Bolin Creek Drive; thence along and with said right of way North 15° 37' 56" East 78.14 feet to the point and place of BEGINNING, and being the northwest portion of Lot 96, Cluster "C", containing 1.2 acres more or less, and being known and identified as Phase I, Forest Court, all as shown on plat and survey entitled "~~Bolin Forest Forest Court~~ Townhouses, Phase I," by Engineering Surveys, Inc., recorded in Plat Book , Page , Orange County Registry, to which plat reference is hereby made.

EXHIBIT B
METES AND BOUNDS DESCRIPTION
COMMON AREA, PHASE I, FOREST COURT

The Common Area for Forest Court, Phase I, is Phase I, as is more particularly described in Exhibit A attached hereto and incorporated herein by reference SAVE AND EXCEPT FROM THE AFORESAID DESCRIPTION OF PHASE I the following area which collectively identifies, by metes and bounds description, Lots 1 - 6, Phase I, Forest Court to wit: BEGINNING at a point within Lot 96, Cluster "C" as shown on Plat Book 33, Page 42, Orange County Registry, said point being located North 16° 38' 11" East 26.09 feet and South 76° 20' 16" East 32.17 feet from the southeast corner of Lot 41, Bolin Forest Subdivision, as shown on the aforesaid recorded plat and running thence from said point North 13° 39' 44" East 55.40 feet; thence South 76° 20' 16" East 36.0 feet; thence North 13° 39' 44" East 18.02 feet; thence South 76° 20' 16" East 18.33 feet; thence North 13° 39' 44" East 5.33 feet; thence South 76° 20' 16" East 18.33 feet; thence North 13° 39' 44" East 4.67 feet; thence South 76° 20' 16" East 18.33 feet; thence South 13° 39' 44" West 7.33 feet; thence South 76° 20' 16" East 18.33 feet; thence South 13° 39' 44" West 12.23 feet; thence South 76° 20' 16" East 36.0 feet; thence South 13° 39' 44" West 55.20 feet; thence North 76° 20' 16" West 36.0 feet; thence South 13° 39' 44" West 2.83 feet; thence North 76° 20' 16" West 18.33 feet; thence North 13° 39' 44" East 2.67 feet; thence North 76° 20' 16" West 18.33 feet; thence South 13° 39' 44" West 3.0 feet; thence North 76° 20' 16" West 18.33 feet; thence South 13° 39' 44" West 2.33 feet; thence North 76° 20' 16" West 18.33 feet; thence South 13° 39' 44" West 3.17 feet; thence North 76° 20' 16" West 36.0 feet to the point and place of BEGINNING, and being Lots 1 - 6, Forest Court Townhouses, all as shown on plat and survey entitled "Bolin Forest Townhouses, Phase I," by Engineering Surveys, Inc., recorded in Plat Book , Page , Orange County Registry, to which plat reference is hereby made.