

RECORDED
JUN 28 11 11 AM '84
KENNETH C. HARRIS
REGISTER OF DEEDS
WAKE COUNTY, NC

Prepared by and return to:
Charles Hinton Law Office
Post Office Box 31268
Raleigh, North Carolina 27622

NORTH CAROLINA

PROTECTIVE COVENANTS FOR
THORNEWOOD SUBDIVISION
CARY, NORTH CAROLINA

WAKE COUNTY

THESE PROTECTIVE COVENANTS, made this the 18th day of June, 1984, by ROBERT D. SWAIN COMPANY (hereinafter "Swain");

W I T N E S S E T H :

Swain hereby declares that the following described real property, of which it is owner, located in Swift Creek Township, Wake County, North Carolina, is and shall be held, transferred, sold and conveyed, subject to the protective covenants hereinafter set forth:

BEING all of the property shown on map entitled "Phase One, Thornewood Subdivision, Robert D. Swain Co., Owner, Swift Creek Twsp., Wake County, North Carolina", as shown on Map recorded in Book of Maps 1984, Page 793, Wake 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 Swain. Swain 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 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 made 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 Swain, its successors or assigns, or 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 re-subdivided 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 the Architectural Committee referred to in Paragraph 4 hereof; and, provided, further, that Swain shall have the right, specifically reserved in Paragraph 21 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 stores in height, and, unless otherwise approved by the Architectural Committee, a private garage for not more than two cars.

4. Architectural Committee; Approval Required. Swain shall designate and appoint an Architectural Committee comprised of three (3) persons. 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, clotheslines, 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 Architectural Committee, and the Committee 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 materials thereof with existing structures and improvements in the area.

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

5. Reconveyance. In the event that the Architectural Committee refuses approval of the design or location of any proposed initial structures, facilities, or other improvements, and the owner of the building site does not wish to make the revisions of such design or location necessary to secure approval of the Architectural Committee, Swain (or its successor to the right to appoint an Architectural Committee), at any time after ninety (90) days' notice in writing from the owner of the building site that he does not desire to revise such design or location, will purchase the building site from the owner thereof at such purchase price as is established by an MAI appraiser approved by both the owner and Swain; provided, that if one such appraiser cannot be agreed upon by both parties, each party shall appoint one MAI appraiser, the two of whom shall then appoint a third, and the price established by any two such appraisers shall be binding on all parties. The owner of the building site shall bear the cost of all fees, including title examination.

6. Existing and Additional Improvements. Following the initial construction and installation of the dwelling house and improvements, no alteration or modification thereof, 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, facilities, or other improvements shall be undertaken without the prior express written consent of Swain, its successors and assigns.

7. 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 Swain to control, inhibit, or prevent erosion and sedimentation of streams and impoundments resulting from erosion. Each owner shall maintain his building site in such manner as to prevent erosion of soil into adjoining lots or adjoining property. If, in the opinion of the Architectural Committee, an owner does not properly maintain his building site as herein provided, then Swain may have the required work done, and the costs thus incurred by Swain shall be paid by the owner of the building

site. Swain 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.

8. 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 Swain.

9. 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 Swain 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 Swain unless the tree is dead or diseased or poses an imminent threat or danger to persons or property.

10. Clearances. Except with the prior written approval of the Architectural Committee or Swain, no building of any kind, including garages, shall be located on any building site less than thirty (30) feet from the front lot line; provided, however, that on a corner lot, a dwelling may be located not nearer than twenty (20) feet to one street if the dwelling is at least thirty (30) feet from the other street. No building shall be located nearer than ten (10) 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 100 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 minor violations of the setback and side line requirements set forth in this paragraph (Violations not in excess of 10% of the minimum requirements shall be deemed minor). Waivers shall be in writing and signed by Declarant or the Architectural Committee.

11. Minimum Square Footage. The ground floor area of the main structure, exclusive of porches, breezeways, steps and garages, shall be not less than 1,600 square feet for a one-story dwelling, nor less than 800 square feet of the first floor of a dwelling with more than one story.

12. Lot Area and Width. Except for lots any portion of which fronts on a cul-de-sac, no dwelling shall be erected or placed on any lot having a width less than 80

feet at the minimum building setback line, nor shall any dwelling be erected or placed on any lot having an area of less than 15,000 square feet, provided that a dwelling may be constructed on each lot shown on the aforesaid recorded map.

13. When Approval Implied. Where any owner or builder must secure prior approval of Swain under these covenants before undertaking any activity or work, request for approval shall be submitted in writing, and failure of Swain 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.

14. Signs. No sign, billboards, or posters of any nature shall be erected, placed, exhibited, or maintained on any building site except 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 Architectural Committee.

15. 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 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.

16. 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.

17. Pets and Other Animals. No animals, livestock, poultry or animals of any kind other than house pets, shall be kept or maintained in any part of said property.

18. Fences. No fence, wall, hedge, or mass planting shall be permitted except upon the prior approval of the Architectural Committee.

19. 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, and owners of building sites covenant and agree not to park their automobiles, boats, and other

vehicles on the streets located in the residential areas of this subdivision. Further, owners covenant and agree that boats, trailers, campers and recreational vehicles shall only be parked in garages or approved enclosures.

20. 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 buildings located on each building site shall be concealed and located underground so as not be visible.

21. Easement Reserved. Swain, 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 Swain in its sole discretion deems it necessary and appropriate, Swain 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, Swain reserves the right to subject real property in this subdivision to a contract with Carolina Power & Light 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 Carolina Power & Light Company by the owner of each building.

22. Rights Exclusive. All rights herein created for, held by, or reserved to Swain shall belong exclusively to Swain 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 Thornwood Subdivision has been fully constructed, Swain will have no further economic interest in the subdivision and may then wish to transfer to its successors or its assigns its right to appoint an Architectural Committee, its right to prohibit erosion, and other such rights.

23. Term of Covenants. These covenants are to run with the land and shall be binding on all parties claiming under them until January 1, 2027, 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 the subdivision, whether covered by these or other substantially similar covenants, it is agreed to change said covenants in whole or in part.

24. Amendment. This Declaration may be amended during the first twenty (20) year period by an instrument signed by the owners of not less than ninety per cent (90%) of the lots, and thereafter by an instrument signed by the owners of not less than seventy five per cent (75%) of the lots. All amendments shall be recorded in the Wake County Registry. All amendments shall become effective upon recordation.

25. Amendment of Declaration Without Approval of Owners. Swain, without the consent or approval of any other owner, shall have the right to amend these Protective Covenants to conform to the requirements of any law or governmental agency having legal jurisdiction over the property or to qualify the property or any lots and improvements thereon for mortgage or improvement loans made by, guaranteed by, sponsored by or insured by a governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by, or under the substantial control of the United States of America or the State of North Carolina, regarding the purchase or sale of such lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of the property, including, without limitation, ecological controls, construction standards, aesthetics, and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration (VA), U.S. Department of Housing and Urban Development (HUD), the Federal Home Loan Mortgage Corporation, Government National Mortgage Association, the Federal National Mortgage Association, or any agency of the State of North Carolina requiring an amendment as a condition of approval, or suggesting an amendment, shall be sufficient evidence of the approval of such amendment of VA, HUD and/or such corporation or agency.

No amendment made pursuant to this Section shall be effective until duly recorded in the Wake County Registry.

26. 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 any other person or persons owning any real property in any single family residential area 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.

27. 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.

28. Additional Lands. Swain, 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 Wake County.

IN WITNESS WHEREOF, Swain has caused this instrument to be signed in its name, by its President and its corporate seal to be hereunto affixed by authority of its Board of Directors, all as of the day and year first above written.

ROBERT D. SWAIN COMPANY

By *Robert D. Swain* (SEAL)
President

(CORPORATE SEAL)

ATTEST:

James H. Pardee
Assistant Secretary



NORTH CAROLINA - WAKE COUNTY

I, Arlene F. Livengood a Notary Public in and for said State and County, do hereby certify that JAMES PARDOE personally appeared before me this day and acknowledged that he is Assistant Secretary of ROBERT D. SWAIN COMPANY, 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 President, Robert D. Swain, sealed with its corporate seal, and attested by himself as its Assistant Secretary.

WITNESS my hand and notarial seal this the 18th day of June, 1984.

Arlene F. Livengood
Notary Public

My commission expires: _____

ARLENE F. LIVENGOOD
NOTARY PUBLIC
WAKE COUNTY, N. C.
My Commission Expires 9-28-87

NORTH CAROLINA - WAKE COUNTY

The foregoing certificate of Arlene F. Livengood

Notar(y) Public is
(are) certified to be correct. This instrument and this certificate are duly registered at the date and time
and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds

By P. Anne Redd
Asst./Deputy Register of Deeds