

NORTH CAROLINA

Book 386 Page 449

CHATHAM COUNTY

DECLARATION

THIS DECLARATION, made this 3rd day of December, 1974, by
FITCH CREATIONS, INC., hereinafter referred to as "Declarant";

W I T N E S S E T H :

THAT WHEREAS, Declarant is the owner of certain property in
Baldwin Township, Chatham County, North Carolina, which is more particularly
described as:

Being all of the property shown on plat of Polks Landing, Phase I,
prepared by Robert J. Ayers, Surveyor, dated July 15, 1974, and
recorded in Plat Book 16, Page 64, Chatham County Registry.

NOW, THEREFORE, Declarant hereby declares that all of the properties
described shall be held, sold and conveyed subject to the following easements,
restrictions, covenants, and conditions, which are for the purpose of protect-
ing the value and desirability of, and which shall run with, the real property
and be binding on all parties having any right, title or interest in the
described properties or any part thereof, their heirs, successors and assigns,
and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Polks Landing
Homeowners Association, Inc., a nonprofit corporation organized under the
laws of North Carolina, 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, 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 as may hereafter
be brought within the jurisdiction of the Association or this Declaration.

Section 4. "Common Area" shall mean all real property owned by the
Association for the common use and enjoyment of the owners. The Common Area
to be owned by the Association on or before the time Declarant has sold all
of the Lots in Polks Landing, but in any event no later than December 1, 1979,

is described as follows:

Tract 1:

Being all of Lot No. 1 as shown on plat of Polks Landing, Phase 1, prepared by Robert J. Ayers, Surveyor, dated July 15, 1974, and recorded in Plat Book 16, Page 64, Chatham County Registry.

Tract 2:

BEGINNING at a stake in the Southeast property line of a street named "Creeks Edge", said stake being located North 47° 00' East 69.47 feet from the intersection of the present West boundary of the Fitch Creations, Inc. property with the Southeast property line of Creeks Edge, all as shown on plat of Polks Landing as prepared by Robert J. Ayers, Surveyor, dated July, 1974, and recorded in Plat Book 16, Page 64, Chatham County Registry; running thence from said point of Beginning with the Southeast property line of Creeks Edge North 47° 00' East 209.97 feet to a stake; thence South 84° 30' East 52.41 feet to a stake in the Southwest property line of a street named "Stones Throw"; thence with the property line of Stones Throw South 36° 00' East 164.66 feet to a stake; thence continuing with the property line of Stones Throw and along the arc of a circle to the right with a radius of 177.94 feet in a Southerly direction a distance of 132.30 feet to a stake; thence South 66° 56' West 115.09 feet to a stake; thence North 83° 24' West 110.00 feet to a stake; thence North 40° 15' West 201.35 feet to a stake, the point or place of Beginning; and containing 1.50 acres, more or less.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Fitch Creations, Inc., its successors and assigns.

ARTICLE II

PROPERTY RIGHTS

Section 1. 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;
- (b) The right of the Association to suspend the voting rights and right to the 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 sixty (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 signed by two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded.

Section 2. 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 immediate family who reside with him. A tenant occupying a residence on a Lot in Polks Landing shall have the same rights to the use of the Common Area as the Owner of the Lot.

ARTICLE III

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. Voting Rights. Until such time as Declarant has deeded the Common Area in Polks Landing Subdivision to the Association, only Declarant shall have voting rights. Following such time the Owner of each Lot (including Declarant) 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 (provided that in the event a corporation, partnership, or more than one family owns a Lot, they may select only one family to enjoy the membership privileges of the Association). The vote for such Lot shall be exercised as the Owners may among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

ARTICLE IV

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 acceptance 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 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.

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 such time as Declarant has deeded the Common Area to the Association, there shall be no assessment. In the first year following the deeding of the Common Area to the Association, the annual assessment shall not exceed Thirty Dollars (\$30.00) per Lot.

(a) From and after the time Declarant has deeded the Common Area to the Association, the maximum annual assessment may be increased each year not more than five per cent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after the time Declarant has deeded the Common Area to the Association, the maximum annual assessment may be increased above five per cent (5%) by vote of two-thirds (2/3) of the members who are voting in person or by proxy, at a meeting duly called for this purpose; provided in no event shall the annual assessment exceed the amount of the annual Chatham County ad valorem real property taxes for a house and lot without the unanimous consent of all Lot Owners.

(c) The Board of Directors of Polks Landing Association 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 vote of the

members who are voting in person or by proxy at a meeting duly called for this purpose; and provided further that the total assessment plus annual dues may not exceed the amount of the annual Chatham County ad valorem real property taxes for a house and lot without the unanimous consent of all Lot Owners.

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 above shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty per cent (60%) of all the votes 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 sixty (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.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence as to all Lots on the date the Common Area is deeded to the Association. The first annual assessment shall be adjusted according to the number of days 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 request, for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

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 six per cent (6%) 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 V

RESTRICTIONS AS TO INDIVIDUAL LOTS

The residential lots in Polks Landing Subdivision shall be subject to the following restrictive covenants which shall run with the land:

1. That the said property shall be used for residential purposes and nothing but one single or double family dwelling/or residence and appurtenant garage shall be erected on any plot of this subdivision.
2. That the said property or any building thereon shall not be at any time used for the purpose of trade, business or manufacturing.
3. That no residential structure shall be erected or placed on any plot which structure does not have a minimum area of at least 1,000 square feet not excluding basement, attic, outside porches and garages.
4. No building or improvement of any kind shall be erected, moved onto, or maintained on the premises herein described until the design and location thereof have first been submitted to and approved in writing by Fitch Creations, Inc., its duly authorized agent or committee, or, upon a relinquishment of all lots by said corporation, then by a committee of three persons appointed by the President of Polks Landing Homeowners Association, Inc. In the event that Fitch Creations, Inc. or the committees designated herein are not in existence, the design shall be in harmony with the other dwellings in the tract.
5. All conveyances of Lots in Polks Landing are made and accepted subject to any easements or rights of ways that may have been granted for power, light and telephone lines and drainage facilities, or as shown on the recorded

plat of "Polks Landing". An easement is also reserved for the water system and pipes now or hereafter located on the property and Fitch Creations, Inc., its agents, employees, successors and assigns shall have the right to go upon the property for the purpose of making repairs to the water pipes and system.

6. That no building shall be placed on any lot nearer than 35 feet to the front of the lot or nearer than 12 feet to any side line without the written consent of the adjoining owner affected thereby, and no nearer than 15 feet to the rear line without the written consent of the owner affected thereby; provided, however, that the side and rear line restrictions shall not apply to a garage located on the rear one-quarter of any lot.

7. That no lot shall be subdivided; provided, however, that this restriction shall not prohibit adjoining property owners from exchanging small portions of their lots to provide better building sites. The exchanged portions become part of the lot and the restrictions shall apply to the modified plots.

8. No animals except dogs and cats shall be kept by the owners and occupants in the subdivision, and these pets shall be confined to the occupant's premises.

9. That no house trailer, tents or mobile homes, or temporary structure may be located in this subdivision.

10. That no junk cars may be abandoned in this subdivision or otherwise be parked on the lots.

11. That no tubular or other receptacles for newspapers or advertising publications nor any mail boxes shall be placed in the front yards or within the street rights of way in front of any house.

12. Minor violations of setback lines and square footages of less than ten per cent (10%) shall not be cause for corrective action by other record Owners of Lots.

13. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and failure by any party hereto to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce any or all restrictions thereafter.

ARTICLE VI

RESTRICTION AS TO CERTAIN PORTION OF COMMON AREA

That portion of the Common Area described as Tract 2 is subject to a perpetual easement in favor of Fitch Creations, Inc., its successors and assigns, for wells, machinery and apparatus for the operation of a water system. It is understood that Fitch Creations, Inc. will assign the rights for providing a water system to a separate private firm and that Fitch Creations, Inc., has no personal obligation, liability, or responsibility in connection with the water system.

ARTICLE VII

ADDITIONS

Declarant, its successors and assigns, and the Association shall have the right to bring within the plan and operation of this Declaration additional properties in future stages of development.

The additions shall be made by filing of record of Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient in the judgment of Declarant to reflect a different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration.

Lot owners in such additions to "Polka Landing" shall be entitled to all the rights and privileges of the original lot owners and shall also be subject to the same obligations and duties imposed upon lot owners by this Declaration or by rules and regulations adopted by the Association.

ARTICLE VIII

AMENDMENT

These covenants and restrictions shall run with the land and shall be binding on all parties and all persons claiming title to any property to which the restrictions may apply until December 31, 2004, at which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended prior to December 31, 2004, by an instrument signed by not less than ninety per cent (90%) of the lots owners and thereafter

by an instrument signed by not less than seventy-five per cent (75%) of the lot owners. Any amendment to the restrictive covenants must be recorded in the Office of the Register of Deeds of Orange County.

ARTICLE IX

SEVERABILITY

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Fitch Creations, Inc. has caused this instrument to be signed in its name by its President and attested by its Secretary and its corporate seal to be hereto attached, all by order of its Board of Directors, as of the day and year first above written.

FITCH CREATIONS, INC.

By: Roy B. Fitch, Jr.
President

ATTEST:

Miles M. Fitch
Secretary

NORTH CAROLINA

Durham COUNTY

This 3rd day of December, 1974, personally came before me, Miles M. Fitch, who being by me duly sworn, says that he knows the common seal of Fitch Creations, Inc. and is acquainted with Roy B. Fitch, Jr., who is the President of said Corporation and that he, the said Miles M. Fitch, is the Secretary of the said Corporation, and saw the said President sign the foregoing instrument, and saw the said common seal of said Corporation affixed to said instrument by said President, and that he, the said Miles M. Fitch, signed his name in attestation of the execution of said instrument in the presence of said President of said Corporation. Let the same with this certificate be registered.

Witness my hand and notarial seal, this 3rd day of December, 1974.

Bobbie B. Vaughan
Notary Public

My commission expires: May 31, 1976

NORTH CAROLINA, CHATHAM COUNTY

The foregoing certificate(s) of Bobbie B. Vaughan, a Notary

is (are) certified to be correct. This instrument was presented for registration at 11:20 o'clock A.M. on December 12, 1974, and recorded in Book 386, Page 449.

LEMUEL R. JOHNSON
Register of Deeds
ORANGE COUNTY, NORTH CAROLINA

By: Margaret C. Baker
Assistant Deputy