

20571

BOOK 1729 PAGE 646

Prepared by and Hold for: Kristoff Law Offices

STATE OF NORTH CAROLINA

COUNTY OF JOHNSTON

**DECLARATION OF THE HOMEOWNERS ASSOCIATION
FOR SOUTHWICK FARM SUBDIVISION**

THIS DECLARATION, made on the date hereinafter set forth, by Southwick Development Co., L.L.C., the record owner of Southwick Farm Subdivision, Johnston County, North Carolina, hereinafter set forth as "Declarant."

WITNESSETH:

WHEREAS, Declarant has determined that it would be desirable to all lot owners in Southwick Farm Subdivision, to form a Homeowners Association for Southwick Farm Subdivision, in order to maintain and preserve the front entrance sign and surrounding entrance sign area for said subdivision; and

WHEREAS, Declarant has previously conveyed lots located in Southwick Farm Subdivision which are not bound by the terms of this document unless any such lot owner(s) agrees to be bound to the terms and obligations of this document in a writing signed by the record owner(s) of such lots.

NOW, THEREFORE, Declarant declares that all of Southwick Farm Subdivision, which was conveyed to Declarant in Deed Book 1552 , Page 921 , Johnston County Registry, shall be held, sold, and conveyed subject to this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting 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 Southwick Farm 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 as may hereinafter be brought within the jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners.

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 Southwick Development Co., L.L.C..

ARTICLE II 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. Any lot owner in Southwick Farm Subdivision who acquired their lot in Southwick Farm Subdivision prior to the recordation of this Declaration shall have the option of joining the Association. Such lot owner electing to be bound by this Declaration shall execute a writing to be recorded at the Johnston County Register of Deeds which binds such lot to this Declaration. Any lot owner who elects to join the Association shall have all of the rights and privileges granted by this Declaration and such membership in the Association shall be appurtenant to and may not be separated from ownership of such lot.

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

Class A. Class A member(s) shall be all Owners, with the exception of 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. The right of a Class A member to vote in the Homeowners Association shall vest when the Declarant shall own five (5) or less lots in Southwick Farm Subdivision.

Class B. The Class B member shall be the Declarant and shall be the only Owner entitled to vote in the Southwick Farm Homeowners Association until the Declarant shall own five (5) or less lots in Southwick Farm Subdivision. Once Declarant shall own five (5) or less lots in Southwick Farm Subdivision, Declarant's voting rights in the Southwick Farm Homeowners Association shall terminate.

ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligations 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 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 became 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 for the maintenance of the front entrance sign and surrounding entrance area for Southwick Farm Subdivision. This purpose may be changed or amended by vote of the members of the Southwick Farm Homeowners Association.

Section 3. Maximum Annual Assessment.

Until Declarant owns five (5) lots or less in Southwick Farm Subdivision, there will be no annual assessment for the Southwick Farm Homeowners Association.

From and after when Declarant owns five (5) lots or less in Southwick Farm Subdivision, the maximum annual assessment shall be agreed upon a vote of two-thirds (2/3) of Class A members who are voting in person or by proxy, at a meeting duly called for this purpose.

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 any purpose agreed upon by the members of the Association, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the 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 & 4.

Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 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 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 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 and may be collected on a monthly basis.

Section 7. 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 percent (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 for any reason.

Section 8. Subordination of the Lien to Mortgages.

The lien of the assessments provide 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
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 not affect any other provision 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.

IN TESTIMONY WHEREOF, the Declarant has hereunto set its hand and seal the day and year first above-written.

SOUTHWICK DEVELOPMENT CO., L.L.C., Declarant

By: Philip S. York (SEAL)
Manager

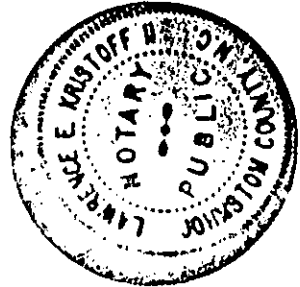
NORTH CAROLINA
JOHNSTON COUNTY

I, a Notary Public of the County and State aforesaid, certify that Philip S. York, Manager of Southwick Development Co LLC personally appeared before me and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal this 28th day of July, 1998.

Lawrence E. Kristoff
Notary Public

My Commission Expires: 3/29/2000



State of North Carolina-Johnston County

The foregoing certificate(s) of

Lawrence E. Kristoff

Notary (Notaries) Public is (are) certified to be correct.

This instrument was presented for registration and recorded

in Book 1729 Page 651

This 28 July 1998 at 2:30 PM

Phyllis N Wall
Register of Deeds

Jocelyn Tomarcon
Deputy Register of Deeds