

BK 1626 PG 264

Rev. 290 Merrimon Ave.
Asheville, NC 28801

STATE OF NORTH CAROLINA REGISTERED

COUNTY OF BUNCOMBE

'90 OCT 12 P3:08

RESTRICTIVE AGREEMENT

THIS RESTRICTIVE AGREEMENT, made and entered into this the 20th day of August, 1990, by and between RAINBOW MANAGEMENT SERVICES, INC., a Florida Corporation, hereinafter referred to as "Developer", and the Future Owners of Lots in Sunset Hills subdivision.

W I T N E S S E T H :

THAT WHEREAS, Developer is the owner of a parcel of land known as Sunset Hills, as shown on Plat recorded in Plat Book 54, at Page 124, of the Buncombe County, N.C. Register's Office, hereinafter called "Property", and

WHEREAS, Developer desires for the benefit of future purchasers and owners of lots to be created out of the Property that the Property shall be developed as a restricted subdivision and used exclusively as hereinafter set forth; and

WHEREAS, Developer in the future will convey lots within Sunset Hills by reference to said Plat recorded in Plat Book 54, at Page 124, of the Buncombe County, N.C. Register's Office or by reference to the revised Plat referred to above and to be recorded in the Buncombe County, N.C. Register's Office, and reference to either plat shall be effective to embody this Restrictive Agreement for the lot conveyed by said Deed.

NOW THEREFORE, in consideration of the premises and for the advantage which the Developer will receive from the sale of such lots in a restricted subdivision, Developer for itself, its heirs, assigns and successors in title, covenants and agrees and hereby restricts the above referred to Property as follows:

1.

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2000, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by mutual consent of those persons claiming through the Developer and those persons claiming through the Developer's Grantees it is agreed to change said covenants in whole or in part. These restrictions shall apply only to the Property above referred to and not to any surrounding property which may be subdivided later and have a different type restriction.

2.

If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for the Developer or a person or persons as successor to the Developer or any other person or persons owning any residential lot comprising the Property 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 him or them from so doing, or to recover damages or other dues for such violation. However, it is expressly understood and agreed that the Developer or his designated agent or agents (which agents may include a duly appointed or elected committee if activated in the future) shall and does have the right to waive, by written instrument, any unintentional violation of any side or front building set back lines. It is understood and agreed that such waivers are to be in the sole discretion of the Developer or its agent or agents and there shall be no requirement of approval or joinder from any other person, corporation or entity, especially including any owner or lien holder of any lot or lots in Sunset Hills Subdivision.

3.

Invalidation of any of these covenants by judgement or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

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4.

The Property shall be known and described as private residential lots and none of such lots shall be used for any other purpose, and particularly, no trade or commercial enterprise of any type shall be carried on upon any lot. No structure shall be erected, altered, placed or permitted to remain on such lot other than one detached single-family residence not to exceed two stories in height.

5.

The Property shall not be re-subdivided so as to create an additional lot, except that Developer may divide in any manner which in his opinion is in the best interest of the Development.

6.

No trade or business and no noxious or offensive activities shall be carried on upon the Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. All dogs and cats must be confined to the owner's lot and may not be kept, bred or maintained for any commercial purposes.

7.

No basement, tent, shack, garage, or other outbuildings erected on the Property shall be, at any time, used as a residence, temporarily or permanently. No vehicle shall be parked or stored outside unless it is in a driveable condition and regularly used and licensed.

8.

The minimum size of any residence on any of the lots shall be not less than 720 square feet of heated living space. Mobile Homes are allowed. All Mobile Homes must be underpinned with materials and workmanship approved by Developer in writing and must be completed within ninety (90) days after home is placed on property.

9.

No building shall be located nearer than twenty (20) feet from the front street lot lines, ten (10) feet from any side lot lines and ten (10) feet from any rear lot lines.

10.

No sign of any kind shall be displayed on the Property other than one sign not more than three (3) square feet in size offering the Property for sale. This provision shall not apply to the Developer or Developer's successors and assigns during the marketing of the Property.

11.

Easements twenty (20) feet in width are reserved around all lot lines and along road right of way and affecting all lots of the Property for installation and maintenance of utilities and drainage facilities. Neither Developer nor any utility company using the easement herein referred to shall be liable for any damage done by them to shrubbery, trees, or flowers, or to the property of the owner situated on the land covered by said easement in the installation, maintenance or replacement of any of such utilities or drainage facilities.

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12.

The Property shall not be used or maintained as a dumping ground for rubbish, trash or garbage. All waste shall be kept in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

13.

Grass and weeds are to be kept down on the property to prevent an unsightly and unsanitary condition. This is an obligation of the lot owner and is to be done at the lot owner's expense.

14.

No hedge, fence or wall shall be erected or planted between the street curb and the building set-back line without the written approval of the Developer or its authorized successors or agent. No fence, hedge or wall shall be erected on the remaining portion of a residential lot which shall give undue offense to owners of adjoining lots, which shall be unsightly in the opinion of the Developer, or which shall in any way interfere with vision of all streets so as to endanger the safety of pedestrians or drivers of vehicles.

15.

All Homes, Mobile Homes, Trailers, Outbuildings, Fences, or any other structure must be approved by Developer in writing prior to being placed on property.

16.

The Property is served by roadways as shown on Plat recorded in Plat Book 54, at Page 124, of the Buncombe County, N.C. Register's Office, leading from New Stock Road, a State maintained road, to the Property. Until Developer records a revised Plat showing that said roadways have been accepted for maintenance by the State of North Carolina Department of Transportation, the Developer does hereby dedicate as private roadways said road rights of way leading from New Stock Road to the Property and the various lots within Sunset Hills subdivision. Developer makes no promises or guarantees that roads within Sunset Hills will be accepted by the State of North Carolina. The roadways being considered as private roadways shall be jointly maintained by all lot owners within Sunset Hills subdivision until the State of North Carolina shall assume maintenance of said roadways. Each lot owner shall be subject only to his pro rata share of said private road maintenance costs, said pro rata share being determined by the total cost divided by the number of lots within Sunset Hills subdivision. This covenant of maintenance shall be a covenant running with Sunset Hills subdivision forever, and may be enforceable as a lien against a defaulting lot owner as if said lien were a statutory lien enforceable in accordance with Article 2, of Chapter 44A, of the North Carolina General Statutes.

17.

All outside construction work, grading, landscaping and clean-up of unused material shall be completed within twelve (12) months of the start or commencement of construction, except Mobile Home set-up, underpinning and all other requirements in these covenants must be completed within three (3) months of start-up.

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18.

In the event that Developer (or its agent or agents) determines in its sole discretion to create a Homeowners' Association to administer Sunset Hills subdivision and the rights of Developer reserved and granted herein, all owners of lots within Sunset Hills shall automatically become irrevocable members of said Association and shall be liable for assessments as may be later assessed for road maintenance as provided in Paragraph 16, above. Said assessments shall be levied, collected and enjoy the same lien rights as granted "Common Expenses" and an "Association of Unit Owners" by Chapter 47A - Unit Ownership Act of the General Statutes of North Carolina as presently enacted or later amended. If the Developer (or his agent or agents) does not create a Homeowners' Association, then the Developer shall be considered as an Association of Unit Owners as to rights reserved and vested therein.

19.

Any Lots on a common shared well will be responsible for their pro rata share of the electricity and maintenance or replacement of pump, pipes, well or other cost incurred in the well system. Any assessment not paid within thirty (30) days of invoice will automatically terminate that Lot's right to use water from said well.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed in its corporate name, by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

DEVELOPER

RAINBOW MANAGEMENT SERVICES, INC.,
A Florida Corporation

BY: [Signature]
PRESIDENT

ATTEST:

[Signature]
ASSISTANT SECRETARY

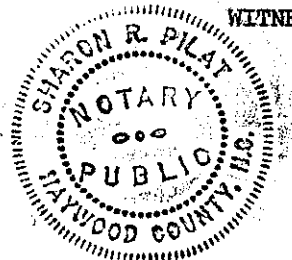


STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, Sharon R. Pilat, a notary public of the aforesaid State and county do hereby certify that Jessica L. Mills personally came before me this day and acknowledged that she is Assistant Secretary of RAINBOW MANAGEMENT SERVICES, INC., a Florida 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 herself as its Assistant Secretary.

WITNESS my hand and notarial seal this 20th day of August 1990.



(NOTARY SEAL)

Sharon R. Pilat
NOTARY PUBLIC

MY COMMISSION EXPIRES:

July 12, 1995

State of North Carolina, County of Buncombe

Each of the foregoing certificates, namely of Sharon R. Pilat

a notary or Notaries public of the State and County designated is certified to be correct.

This 13 day of October, 19 90.

OTTO W. DeBRUHL
Register of Deeds, Buncombe County

By: Celene C. Bonham Deputy

Filed for registration on the 12 day of October, 19 90 at 3:08 P M.

OTTO W. DeBRUHL
Register of Deeds, Buncombe County

By: Celene C. Bonham Deputy