

FILED FOR REGISTRATION
MAY 26, 2010 10:28 A.M.
DATE TIME
AND RECORDED IN BOOK 826 PAGE 879
M. BRENT SHOAF, REGISTER OF DEEDS
DAVE COUNTY, NC.
BY Brent A. Shoaf
DEPUTY

NORTH CAROLINA)

)

DAVIE COUNTY)

**FIRST AMENDMENT TO AND ANNEXATION
OF PROPERTY TO DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
TURNBERRY AT BOXWOOD VILLAGE**

WITNESSETH:

WHEREAS, Robertson & Isenhour Properties, Inc. recorded a plat of Turnberry at Boxwood Village in Plat Book 8, Page 145 and Plat Book 9, Page 146 (the "Original Plats");

WHEREAS, the Original Plats described the tentative building envelopes location of 23 Patio Homes (the “Patio Homes Lots”) and 72 Townhouse Lots (the “Townhouse Lots”) to be constructed in 24 tri-home buildings;

WHEREAS, due to changing market conditions, the Declarant has decided to change a portion of the Townhouse Lots into single family residential lots (“Single Family

Lots”) as shown on a revised plat of Turnberry at Boxwood Village recorded in Book 10, Page 146, Davie County Registry (the “Revised Plat”), and being Lots 15 through 31 (a total of 17 Lots) on the Revised Plat;

WHEREAS, in Section 4 of Article XII, the Declarant retained the right to annex additional property into the Declaration, and the Declarant desires to annex Plat Book 9, Page 146 and the reconfigured property, as shown on the Revised Plat, into the Declaration;

WHEREAS, by changing a portion of the property from tri-home, Townhouse Lots to Single Family Lots, the Declarant desires to amend the Declaration to conform the Declaration to the different types of Single Family Lots now reflected in Turnberry at Boxwood Village;

WHEREAS, the Townhouse Lots in the tri-home buildings that are still a part of the Original Plats, have certain exterior maintenance that is to be provided by the Turnberry at Boxwood Village Homeowners Association, but the Single Family lots shown on the Revised Plat will not have any exterior maintenance for the residences and there is no Common Area maintenance around the residences of the Single Family Lots. Each Single Family Lot Owner shall be solely responsible for the exterior maintenance of his or her residence, landscaping, and lawn maintenance of his or her Single Family Lot. If the Single Family Lot Owner fails to maintain the exterior appearance and maintenance of his or her residence, the landscaping or lawn maintenance of the Single Family Lot, the Association shall have the right, after due notice, to enter the Single Family Lot to correct any unsightly condition;

WHEREAS, the Single Family Lots will have to comply, in all respects, with the requirements of Article VI Architectural Control, including but not limited to any structures built or placed on the Single Family Lot such as swings and other playground structures or equipment;

WHEREAS, given the different levels of maintenance between the Townhouse Lots, the patio Lots, and the Single Family Lots, it is necessary to amend the Declaration to provide a different dues structure for the Single Family Lots; and

WHEREAS, Section 3 of Article XII permits the Declaration to be amended, with the consent of the owners entitled to cast at least 67% of the votes of the Association.;

WHEREAS, after giving notice of a meeting of the Members of the Association, a meeting was held on May 18, 2010, and a draft copy of this First Amendment was approved by more than 67% of the votes of the Association, and the minutes of the meeting so reflect. The President of the Association was authorized to join in the execution of this First Amendment so reflect the results of said vote; and

WHEREAS, in Section 11 of Article I, the Declarant reserves the right "... to reconfigure, from time to time and without the consent of the Owners or the Members of the Association, the boundaries of any Lot or Lots owned by the Declarant"

NOW, THEREFORE, the Declarant hereby declares that all of the property described in Plat Book 9, Page 146 and the property described in the Revised Plat recorded in Plat Book 10, Page 146, Davie County Registry, shall be held, sold, and conveyed subject to the Easements, Restrictions, Covenants and Conditions set forth in the Declaration as amended herein and said lots shown on the both plats are hereby annexed into and shall become a part of the Association, and the conditions and requirements of the Declaration shall run with the real property and shall be binding on all parties having any right, title or interest in the lots shown on the Revised Plat or any part thereof, and shall be binding upon their heirs, successors and assigns, and shall enure to the benefit of each owner thereof.

NOW, THEREFORE, the Declarant does hereby amend the Declaration as follows:

1. Section 4. of Article I is hereby amended by deleting the first full sentence of Section 4 in its entirety and substituting the following:

Section 4. "Common Elements" or "Common Area" shall mean all real property owned by the Association (whether owned in fee or by way of license or easement) or leased by the Association, other than a Lot. The Common Elements to be owned by the Association are described as follows:

All of the land designated "Common Elements" as shown on the plat entitled Turnberry at Boxwood Village recorded in Plat Book 8, Page 145, Plat Book 9, Page 146, and Plat Book 10, Page 146, in the office of the Register of Deeds of Davie County, North Carolina.

2. Section 11 of Article I is hereby amended by deleting the first, full sentence of Section 10 in its entirety and substituting the following:

Section 10. "Lot" shall mean and refer to any separately numbered plot of land shown the Original Plats or the Revised Plat of the Properties intended for residential townhome purposes, for patio home purposes, and for single family residential purposes, and shall include any improvements constructed thereon, and "Lots" shall refer to all such lots collectively.

4. Section 3 of Article IV is hereby amended by adding an additional subparagraph (d) as follows:

(d) It is the intent of the Declarant and this Amendment that the annual assessment paid by the Townhouse Lots, the Patio Home Lots, and the Single Family Lots shall be in different amounts since the landscaping and mowing requirements and the exterior maintenance of the Townhouse Lots and Patio Home Lots are different and the fact that neither the exterior landscaping nor the exterior of the residence of the Single Family Lots will be maintained by the Association, but the Single Family Lots will share in the maintenance of a portion of the Common Area as stated hereinafter. The different amounts of annual assessments to be paid by the Townhouse Lots, the Patio Home Lots, and the Single Family Lots shall be determined as follows:

(i) Common Expenses for all Lots. In establishing the amount of the annual assessment to be allotted to each Townhouse Lot, to be allotted each Patio Home Lot, and to be allotted each Single Family Lot, the Executive Board shall first determine the portion of the annual assessment that is used to pay common expenses for all Lots (the "Common Expense"). The Common Expense shall be allotted equally to all Lots regardless of whether they are Townhouse Lots, Patio Home Lots or Single Family Lots. The Common Expense will include but not be limited to, (i) maintenance of the entrance to Turnberry at Boxwood Village, including the landscaping and mowing of the Common Area next to Whitehaven Drive from Boxwood Lane to the cul-de-sac with Turnberry Drive, (ii) private street lighting, if any, (iii) maintenance of any signage of a general nature for Turnberry at Boxwood Village, and (iv) lawn maintenance and mowing of the Common Area known as Common Area B and Common Area C, the said Common Areas B and C being for the use and enjoyment of Owners of all three types of Lots. The amount of the Common Expense will be divided by the 95 Lots of Turnberry at Boxwood Village described on the Original Plats and the Revised Plat, and the quotient will be the portion of the annual assessment to be paid by each Lot.

(ii) Annual Assessment for the Townhouse Lots. The Executive Board will determine the annual expense for the exterior maintenance costs of the Townhouse Lots as required in Section 1 of Article VII, including any amounts for a reserve account for said exterior maintenance (the "Townhouse Expenses"). The Townhouse Expenses will be divided by the 48 Townhouse Lots of Turnberry at Boxwood Village, and the quotient of the total Townhouse Expenses shall be added to the quotient of the Common Expense to determine the amount of the annual assessment to be paid by each Townhouse Lot.

(iii) Annual Assessment for the Patio Home Lots. The Executive Board will determine the annual expense for the exterior maintenance costs of the Patio Home Lots as required in Section 2 of Article VII (the "Patio Home Expenses"). The Patio Home Expenses will be divided by the 23 Patio Home Lots of Turnberry at Boxwood Village, and the quotient of the total Patio Home Expenses shall be added to the quotient of the Common Expense to determine the amount of the annual assessment to be paid by each Patio Home Lot.

(iv) Annual Assessment for the Single Family Lots. The Owners of the 17 Single Family Lots will be solely responsible for all maintenance of the Single Family Lots and any improvements located thereon. The Association will have no annual expense for any maintenance of the Single Family Lots. Therefore, the only annual assessment to be paid by the Single Family Lots will be the Common Expense determined by subparagraph (d) (i) above.

5. Section 7 of Article IV is hereby amended by deleting the first full sentence of Section 7 in its entirety and substituting the following:

Section 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES. The annual assessments provided for herein shall commence as to a Lot, whether a Townhouse Lot, a Patio Home Lot or a Single Family Lot, on the first day of the month following the date that construction is completed on any townhouse or any Single Family Lot and a Certificate of Occupancy has been issued for the townhouse or Single Family Lot. The terms of this Section 7, as amended herein, shall act retroactively as to the payment of dues from the date the Declaration or Plat is recorded, which ever first occurred.

6. A new Section 3 is hereby added to Article VI as follows:

Section 3. Applicability to Single Family Lots. All terms, conditions, requirements and procedures of this Article VI shall apply to the Single Family Lots and improvements erected thereon, either now or in the future, including but not limited to any swings or other playground equipment.

7. The capitalized title of Article VII is hereby deleted in its entirety and the following is hereby substituted:

ARTICLE VII
EXTERIOR MAINTENANCE FOR TOWNHOUSE LOTS AND
PATIO HOME LOTS

8. The capitalized title of Section 3 of Article VII is hereby deleted in its entirety and the following is hereby substituted:

SECTION 3. EXTERIOR MAINTENANCE TO BE PERFORMED
BY THE OWNERS OF TOWNHOMES, PATIO HOMES AND
SINGLE FAMILY HOMES

9. A new Section 5 is hereby added to Article VII as follows:

SECTION 5. SINGLE FAMILY LOTS. It is the intent of the Declarant and this First Amendment that the Association shall have no responsibility for any exterior maintenance on any Single Family Lot shown on the Revised Plat.

In the event any Owner of a Single Family Lot fails or refuses to maintain the landscaping and lawn area in a neat and orderly manner or to keep the Lot from accumulating any unsightly weeds, underbrush or overgrown shrubbery, the Association may, at its option and after complying with the notice provisions of Section 3 of this Article, enter and remove all such unsightly items and growth at said Owner's expense. The Owner shall be personally liable to the Association for the costs and expense of any actions the Association takes in connection with this Section, and said costs and expense, until paid, shall be a permanent charge and lien upon the Single Family Lot in question and enforceable and collectible to the same extent as provided for in Article IV of the Declaration, entitled "Covenant for Maintenance and Assessments." By acquiring property subject to these restrictions, each and every Single Family Owner agrees to pay such costs and expense promptly upon demand by the Association, its agents, assigns, or representatives. No such entry on the Single Family Lot in question by the Association officers, Directors or the Association's agents, representatives, assigns and contractors, pursuant to this Section shall be deemed a trespass on the Single Family Lot. The provisions of this Section shall not apply to Single Family Lots during construction of the improvements on the Single Family Lot.

10. Section 1 of Article VIII is hereby deleted in its entirety and the following is hereby substituted:

SECTION 1. LAND USE. No Lot shall be used except for single-family residential purposes for Townhomes, Patio Homes and Single Family Homes.

11. The first sentence of Section 2 of Article VIII is hereby deleted in its entirety and the following is hereby substituted:

SECTION 2. RULES AND REGULATIONS. The Executive Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the front and rear yard space of the Townhomes and Patio Homes, if any, of each such Lot and the Common Area.

12. Section 3 of Article VIII is hereby amended by adding a new "(c)" as follows:

(c) Single Family Homes, 1,300 square feet of heated floor area.

Except as amended herein, all other terms and conditions of the Declaration shall remain as stated therein. All capitalized words and phrases used herein shall have the same meaning as the capitalized word or phrase in the Declaration unless a different definition or intent is clearly expressed in this First Amendment.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its name and its corporate seal hereto affixed as of the 19th day of May, 2010.

DECLARANT:

ROBERTSON & ISENHOUR PROPERTIES,
INC., a North Carolina corporation

By: 

K. Todd Isenhour, Vice President

CONSENT BY TURNBERRY AT BOXWOOD VILLAGE OWNERS ASSOCIATION, INC.

The undersigned hereby acknowledges that he is the duly elected President of the TURNBERRY AT BOXWOOD VILLAGE OWNERS ASSOCIATION, INC., and that all Members of the Association were given the required notice of a meeting of the entire Association, that said meeting of the Members was held on May 6, 2010, and at that meeting this First Amendment to the Declaration was approved by a vote of more than 67% of the total membership of the Association.

TURNBERRY AT BOXWOOD VILLAGE
OWNERS ASSOCIATION, INC.

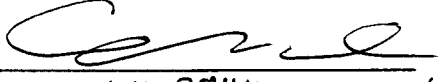
By


K. Todd Isenhour, President

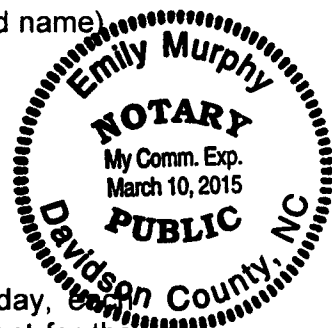
Forsyth County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **K. Todd Isenhour**, Vice President of ROBERTSON & ISENHOUR PROPERTIES, INC..

Date: 5/19/10


EMILY MURPHY (printed name)
Notary Public

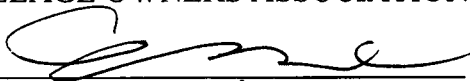
My Commission Expires: 3/10/15



Forsyth County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **K. Todd Isenhour**, Vice President of TURNBERRY AT BOXWOOD VILLAGE OWNERS ASSOCIATION, INC.

Date: 5/19/10


EMILY MURPHY (printed name)
Notary Public

My Commission Expires: 3/10/15

