


 Doc ID: 00193400012 Type: CRP
 Recorded: 10/20/2005 at 01:18:17 PM
 Fee Amt: \$47.00 Page 1 of 12
 Pitt County, NC
 Judy J. Tart Register of Deeds
 BK 2006 pg 774-785

+ F.L.
 PREPARED BY: L. ALLEN HAHN, ATTORNEY

NORTH CAROLINA
PITT COUNTY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
HAMPTON CREEK SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by BIG EAST DEVELOPMENT, INC., a North Carolina Corporation, of Pitt County, North Carolina, hereinafter referred to as "Declarant".

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Declarant is the owner of certain property in or near Winterville Township, Pitt County, North Carolina, which is more particularly described as follows:

All of that certain tract of land known as HAMPTON CREEK SUBDIVISION, as shown on Map of same drawn by Baldwin and Associates recorded in Map Book 64, Pages 77 and 78 of the Pitt County Registry.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject 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 Hampton Creek Homeowner's 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 or part thereof, 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 hereafter be brought within the jurisdiction of the Association.

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

Section 5: "Lot" shall mean and refer to any numbered or lettered lot or plot of land or any divided lot shown upon any recorded subdivision map of the properties with the exception of the Common Area and the exception of Lot 39 (the cemetery lot). It is anticipated that there will be a duplex constructed on each numbered lot shown on the subdivision map. The numbered lot will be divided into each side of the duplex. Each side shall become a lot. The lot owner shall maintain his house, patio area, any storage buildings, and any fenced in property. All lawn maintenance located inside a fenced in area shall be the responsibility of the individual lot owner.

Section 6: "Declarant" shall mean and refer to BIG EAST DEVELOPMENT, INC., its successors and assigns.

Section 7: "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II:

PROPERTY RIGHTS

Section 1: Owner's Easement of Enjoyment. 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 suspend the voting rights 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;

(b) 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 agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2: Declaration of Use. 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 family, his tenants, or contract purchasers who reside on the property.

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 any map not separated from ownership of any lot which is subject to assessment.

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

Class A. Class A membership shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for such 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 then determined, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned, and notwithstanding any other provisions herein, shall be assessed at a rate of not more than twenty-five (25%) percent of the Class A membership rate. Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, and in all events no later than January 1, 2008.

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 therefore, 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 fell due. The personal obligation for delinquent assessment shall not pass to his successors in the title unless expressly assumed by them.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to, the cost of yard maintenance, common lighting, repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area if any, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise. Individual lot owners shall be responsible for all maintenance to the interior and exterior of their individual homes and any other improvements on the lot. All lawns located inside a fenced area will be maintained by the individual homeowner.

Section 3: Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum annual assessment shall be, \$200.00 per lot, prorated for the remainder of said year.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) from the preceding month of July.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for the next succeeding two (2) years may be increased above that established by the Consumer Price Index formula by a vote of the members, and for each Succeeding period of two (2) years thereafter, provided that any such change shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.
- (c) The Board of Directors may fix an annual assessment at an amount not in excess of the maximum.
- (d) Homeowners dues will not be assessed until at least one-half of a numbered lot is occupied.

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 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, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at the meeting duly called for this purpose.

Section 5: Notice and Quorum of 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 and 4 shall be sent to all members not less than thirty (30) days or 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 (60%) per cent of all 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 requirements, 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. Except as provided for Class B members, both annual and special assessments must be fixed as a uniform rate for all Lots and may be collected on a monthly basis.

Section 7: Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessments 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 sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and 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. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8: Effect of Nonpayment of Assessment. 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 eight (8%) per cent 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 or deny 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 assessment 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.

Section 10: Exempt Property. All property dedicated to and accepted by, a local authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V:

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI:

USE RESTRICTIONS

1. No noxious or offensive trade or activity 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, and no condition shall be permitted or allowed to exist on the property which is or may become an annoyance or nuisance to the property owners.

2. No structure of a temporary nature, including, but not limited to, a trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, and no trailer, mobile home, tent, shack, barn or other outbuilding shall be permitted to exist on the property as a residence.
3. The property herein described shall be used for residential duplex purposes only and no business or commercial enterprise may be carried on upon the premises. This restriction, however, shall not prevent any support activities in conjunction with any duplex project or such other approved multi-family development such as management offices, maintenance areas, recreation areas, snack areas, central meeting room areas and other such functions normally associated with a duplex project or such other approved multi-family development. Any duplexes built on the lots shall contain a minimum of 850 square feet of heated floor space on each side of the duplex unit (1700 square feet minimum per numbered lot).
4. No lot or parcel of land in this subdivision may be used for any single or multi-family purposes such as apartments, planned unit development or condominiums without the prior approval of such use by Declarant or his successors or designees. No structure of any type shall be started on any of the above described lots (nor shall any structure be modified or improved on the exterior) until the plans of such structure and the plot plan showing the location of such structure and the color scheme have been approved by Declarant or his successors or designees within thirty (30) days after written application, the plan shall be deemed to have been approved. Both the plot plans and building plans must be submitted to the Declarant and approved before construction. All outbuildings must have written approval from Declarant or its assigns prior to beginning same.
5. If the parties claiming hereunder or any of their heirs, successors or assigns shall violate or attempt to violate any of the covenants herein except as hereinafter provided it shall be lawful for the Declarant or any other person or persons owning any real property situated in said development to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants, either to prevent him or them from so doing or to recover damages

specifically excluded from any liability for monetary damages. Provided however, Declarant does hereby reserve to itself its assigns or designees the right to waive violations of minimum building lines which violations exceed said minimum building lines by no more than ten percent (10%).

6. Nothing herein contained shall be construed as imposing any covenants or restrictions on any property of the Declarant of this subdivision other than those properties to which these restrictive covenants specifically apply.
7. Drainage and utility easements are reserved on said lots as shown on the recorded plat aforementioned.
8. Wood and PVC fences will be allowed near the rear of the dwelling upon prior written approval of the Declarant. However, chain link fences will only be allowed to fence in a small dog pen, which one shall not exceed six feet by ten feet. All yard maintenance and grass cutting inside fenced in areas shall be the responsibility of individual owners.
9. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.
10. All individual purchasers, from and after the date of recording of this Declaration, shall be required to keep their respective portion of the property free and clear of all weeds, rubbish, trash, debris and other matter. No junked or abandoned cars shall be allowed on any lot.
11. The invalidation of any one of these covenants by judgment, court order or otherwise shall in no way affect any of the other provisions of this Declaration, and the remaining provisions of this Declaration shall remain in full force and effect.
12. No satellite television reception dish shall be erected, placed or allowed to remain on any lot except one (1) satellite receiver not exceeding 24 inches in diameter may be placed on the roof of a dwelling or in the rear yard only. No television antennae or radio antennae in excess of ten (10) feet in height may be erected on any structure on any lot. No skateboarding, roller skating, bicycle or other ramps may be built on any

lot. No clothes lines may be erected on any lot. All driveways must be made of concrete.

13. No animals, livestock, poultry or reptiles of any kind shall be raised, bred or kept on any portion of the property of any duplex side, except for a total of two (2) domesticated dogs and cats in each household and small non-offensive household pets, provided that they are not kept or used for breeding or maintained for any commercial purposes.

14. The subdivision will have a central mailbox station and no individual mailboxes are permitted.

15. Each wall which is built as a part of the original construction of the homes upon the properties and placed on the line dividing between any two or more lots shall constitute a party wall and not inconsistent with the provision of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of the restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title. In the event of any dispute arising concerning a party wall, or under provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one arbitrator, and the decision of a majority all three arbitrators shall be binding.

16. Any two lot owners who jointly use a party wall may mutually agree to provide for exterior maintenance upon the structures upon each lot particularly as to painting,

exterior finish, replacement and care for roof, gutter, downspouts and exterior building surfaces. The parties owning property on which the joint party wall is in use may agree to provide for separate maintenance to the end that each owner shall take care of and be responsible for the maintenance on his property, but each separate owners shall maintain his property including the appearance in a manner not incompatible with the adjacent party wall owner. In the event of any dispute arising concerning the maintenance of the sharing of cost of maintenance or any other matter under the provisions of this Article, each lot owner shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VII:

EASEMENTS

Easements for installments and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

ARTICLE VIII:

GENERAL PROVISIONS

Section 1: Enforcement. The Association, 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 to enforce any covenant or restrictions 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 in no wise affect any other provisions 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 or 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 (90%) percent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners. Any amendment must be recorded.

Section 4: Annexation. The Declarant may annex one additional adjacent property for addition to these Covenants as a Section Two of Hampton Creek without the joinder of any additional parties.

IN WITNESS WHEREOF, BIG EAST DEVELOPMENT, INC., the Declarant, has executed this document, this the 18 day of October, 2005.

BIG EAST DEVELOPMENT, INC.

BY: [Signature] (SEAL)
President

ATTEST:
[Signature] (SEAL)
Secretary

NORTH CAROLINA
PITT COUNTY

I, Sally M. May, a Notary Public for said County and State, do hereby certify that Rocky Russell as President of BIG EAST DEVELOPMENT, INC., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 19 day of October, 2005.

[Signature]
Notary Public
My Commission Expires: 01-26-2010

