

Alamance County, NC
Recorded 03/17/2005 09:51:15am
No 9999-00154866 1 of 20 pages
David J P Barber, Register of Deeds

NORTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR HAW VILLAGE SUBDIVISION

ALAMANCE COUNTY



(Prepared by and mail to T.S. Royster, Jr. Attorney, P.O. Box 1060, Oxford, NC 27565)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into this 16th day of March, 2005 between Tarheel Land Company, a North Carolina Corporation (hereinafter called "Declarant") and all parties hereafter acquiring any of the described property.

WITNESSETH:

WHEREAS, Declarant is the owner of all lots within a subdivision in the County of Alamance, State of North Carolina, known as Haw Village; and

WHEREAS, it is in the best interest of the Declarant and to the benefit, interest and advantage of every party hereafter acquiring any of the described property that certain covenants, conditions, easements, assessments, liens and restrictions governing and regulating the use and occupancy of the property be established; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities and the desirability and attractiveness of the property in Alamance County; and for the continued maintenance and operation of such recreational and common area.

NOW, THEREFORE, in consideration of the premises, the Declarant agrees with all parties hereafter acquiring any of the property hereinafter described that it shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed

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as covenants running with the land, shall be binding on all parties acquiring any right, title or interest in any of the Properties and shall inure to the benefit of each owner thereof.

ARTICLE I

THE PROPERTY

Section 1. The property which shall be held, used, transferred, sold, conveyed and occupied subject to this Declaration is located in Alamance County, North Carolina, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Declarant hereby subjects the property, more particularly described on Exhibit A attached hereto and incorporated hereby by reference, to this Declaration and the jurisdiction of the Association and any additions thereto.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Haw Village Homeowners Association, Inc., its successors and assigns.

Section 2. "Builder" as used herein shall mean Anderson Homes, Inc., any entity to which it assigns its interest in its lot purchase contract with Declarant, and any commercial Builder which purchases and owns a Lot within the Subdivision for the purpose of constructing upon it a residence to be sold.

Section 3. "Common Area" shall mean all property owned by the Association or such other property which the Association may hold subject to the provisions of the Declaration. Common Areas shall be defined and bounded on the plat(s) as "Common Areas", "Common Open Space", or other similar designation on maps of the Properties. Common Areas in each phase shall be conveyed to the Association in accordance with Article III, Section 3, prior to deeding the first Lot in the phase. Common Areas shall specifically include but shall not be limited to the subdivision sign, landscaping and lighting within the signage and landscaping easements at the entrance to the subdivision, lighting of the subdivision streets, the drainage and other easements shown on the subdivision plat and the subdivision streets until they are placed on the NCDOT system for maintenance.

Section 4. "Common Expense" shall mean and include:

- (a) All sums lawfully assessed by the Association against its members;

- (b) Expense of the Common Area and administration, maintenance, repair, or replacement of the Common Areas;
- (c) Expenses declared to be Common Expenses by the provisions of this Declaration or the By-laws;
- (d) Hazard, liability, or such other insurance premiums as the Declaration or the By-laws may require the Association to purchase;
- (e) Ad valorem taxes and public assessment charges lawfully levied against Common Areas;
- (f) Expenses agreed by the Members to be Common Expenses of the Association; and
- (g) Utilities used in connection with the Common Areas.
- (h) Any reasonable expense incurred by the Association in performance of the regular and customary operations of a Homeowners Association

Section 5. "Declarant" shall mean and refer to Tarheel Land Company, a North Carolina Corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

Section 6. "Lot" shall mean and refer to any numbered Lot or plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area and dedicated right-of-way.

Section 7. "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 or as a tenant.

Section 8. "Properties" shall mean and refer to that certain real property hereinbefore described in Exhibit A, and such additions thereto as may hereafter be made subject to the provisions of this Declaration.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area and over the Common Area for access, ingress and egress from and to public streets, walkways and parking areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association, subject to the ordinances of the County of Alamance, to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) The right of the Association to fine Owners for non-compliance with these Covenants, suspend the voting rights and right to 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 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 persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action. All the owners of Lots to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a security interest;

(d) The right of the Association to limit the number of guests of Members;

(e) The right of the Association, with the assent in writing of persons entitled to cast at least eighty percent (80%) of the votes in the Association, and in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the Members and the Association hereunder;

(f) The right of the Association to adopt, publish and enforce rules and regulations as provided in Article VIII of this Declaration: and

(g) The right of the Association to exchange Common Area in accordance with the ordinances of Alamance County and North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his or her 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, but such delegation shall be subject to the limitations of subsections (a) through (g) of Section 1 above.

Section 3. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, except utility and storm drainage easements, prior to the conveyance of the first Lot of each phase of development.

ARTICLE IV

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 that is subject to assessment. Membership in the Association as defined hereinabove shall be mandatory for each original Lot Owner and each successive Owner of a Lot.

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

Class A. Class A members shall be all Owners, with the exception of the Declarant and Builder, and shall be entitled to one vote for each Lot owned provided that when Class B membership terminates, as set forth below, the Declarant and Builder shall be Class A members for each Lot they then own. 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, and in no event shall fractional votes be allowed.

Class B. The Class B member(s) shall be the Declarant and Builder and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in Class B membership; provided, however, and anything herein to the contrary notwithstanding, if at any time before ten (10) years after the first Lot is conveyed to an Owner for use as a residence, the Class B membership terminates for the foregoing reason and thereafter Declarant, pursuant to this Declaration, annexes Additional Property to the Declaration such that, following such annexation, if votes are allocated to the Lots owned by the Declarant and Builder at the rate of three (3) votes per

Lot, Declarant's and Builder's total outstanding votes would exceed the total outstanding votes of the Class A Members, the Class B membership shall be reinstated until such time as it again terminates due to one of the events of termination stated herein, without limitation on the number of times the Class B membership may terminate and be reinstated in accordance with this provision; or

- (b) Ten (10) years after the first Lot is conveyed to an Owner for use as a residence; or
- (c) Upon the surrender of all Class B membership by the holder thereof.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and Builder 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 fell due. The personal obligation for delinquent assessments owed by an Owner 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 to promote the recreation, health, safety, and welfare of the residents in the Properties and in particular for the acquisition, improvement and maintenance of the Common Areas, including the maintenance, repair and reconstruction of driveways, walks, bridges and parking areas situated on the Common Area, maintenance and upkeep of storm sewer pipes and impoundment structures, the cutting and removal of weeds and grass, the removal of trash and rubbish or any other maintenance of Common Areas and maintenance and landscaping of the Common Areas, including but not limited to, the cost of repairs, replacements and additions, the cost of enforcing the provisions of this Declaration, the cost of labor, equipment, materials, management and supervision, the payment of taxes and public assessments levied against the Common Area, the payment of Common Expenses, the procurement and maintenance of insurance in accordance with this Declaration or bylaws, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the

foregoing, paving and any other expense for which the Association is responsible, and such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund or funds for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular or special assessments for Common Expense for the Owners of the kind of Lots that require the reserve fund or funds.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the first conveyance of a Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence, the maximum annual assessment for detached single family Lots shall be One Hundred and Eighty Dollars (\$180-) per Lot. 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.

(a) From and after January 1 of the year immediately following the first conveyance of a first Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence, the maximum annual assessments may be increased effective January 1 of each year without a vote of membership by up to 10% of the previous year's assessment.

(b) From and after January 1 of the year immediately following the first conveyance of a Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence, the maximum annual assessment for Lots may be increased above the increase permitted in Section 4(a) above by agreement of Owners of Lots to which sixty-seven percent (67%) of the votes in the Association are allocated.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 5. Special Assessments for Capital Improvements. In addition to the assessment 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, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have assent of two-thirds (2/3) of the votes in the Association, in person or by proxy, at a meeting duly called for this purpose.

Section 6. Notice and Quorum for any Action authorized under Sections 4 and 5. Written Notice of any meeting called for the purpose of taking any action authorized

under Section 4 or 5 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 more than 60 days following the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on an annual basis. Provided, however, that the assessment for Lots owned by Declarant or Builder shall be twenty-five percent (25%) of the regular assessments for other Lots.

Section 8. Date of Commencement of Annual Assessments: Due Dates. The regular annual assessments provided for herein shall commence as to all Lots in Haw Village Subdivision on the first day of the month next following the first conveyance of a Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence. Assessments of Lots within each Phase that is annexed to the subdivision shall commence on the first day of the month next following a conveyance from the annexed Phase of a Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence.

Such annual assessments shall be prorated on a monthly basis and paid in advance. 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. Until changed by the Board the assessment period should be based on a calendar year and paid by January 31. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an authorized agent of the Association setting forth whether the assessment on a specified Lot has been paid. Any certificate so given shall be conclusive evidence of payment of the assessment stated therein.

Section 9. 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 eighteen percent (18%) per annum or at the maximum rate allowed by law, whichever is less. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment. Foreclosure is to be in the same manner as that of Deeds of Trust, foreclosed under power of sale under Chapter 45 of the North Carolina General Statutes, or by any other method authorized by law. 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. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

Section 10. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of ad valorem taxes and the lien of any mortgage or Deed of Trust that is an encumbrance on any part of the Properties. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to such 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 11. Exempt property. All Properties dedicated to, and accepted by, a local public 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.

Section 12. Working Capital Fund. At the time of closing of the initial sale of a dwelling constructed on a Lot, a sum equal to one-sixth (1/6) of the annual assessment for a Class A Lot shall be collected from the purchaser and transferred to the Association to be held as a working capital fund. The purpose of said fund is to insure that the Association will have adequate cash available to meet unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund shall not be considered advance payment of regular assessments.

Section 13. Dues Paid In Advance. At the time of closing of the initial sale of a dwelling constructed on a Lot, the annual assessment for a Class A Lot, prorated for a partial month to the first day of the month following said closing, will be collected from the purchaser. An amount equivalent to one annual assessment (prorated to the end of the Association's fiscal year), plus any working capital collections, shall be collected at the time of conveyance of the Lot to the purchaser.

ARTICLE VI

ARCHITECTURAL CONTROL

(a) No dwelling building, fence, wall or other structure of any kind shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made (including changes or alterations in the color or exterior paint, vinyl siding, masonry or shutters) until the plans and specifications showing the nature, kind, shape, height, materials 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 Declarant or its appointed Architectural Committee. The Declarant or its appointed Architectural Committee shall control all improvements and construction proposed on any lot for so long as it shall own at least one lot in Haw Village Subdivision, all phases combined. At such time as Declarant shall no longer hold a Class B membership or elects to voluntarily relinquish architectural control, it shall appoint an Architectural Committee of three (3) persons who own lots in the subdivision. Successors to this committee shall be appointed by the Declarant so long as there is a Class B membership, or if there is no Class B membership, then the Architectural Committee shall be appointed by the Board of Directors of the Association. In the event the Architectural Committee fails to approve or disapprove such design and location within thirty (30) days after said completed 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.

(b) Residences shall be erected with a minimum of 1200 square feet of heated space, exclusive of porches and garages, except lots 1 and 73 shall have a minimum of 1400 square feet of heated space.

(c) No trailer, tent, shack, barn or other building shall be erected or placed on any Lot covered by these covenants. No detached garage shall at any time be used for human habitation temporarily or permanently. Temporary structures are prohibited.

(d) No additional driveways or sidewalks may be installed on any Lot without the prior written approval of the Board of Directors of the Association or the Architectural Committee.

(e) Mailboxes shall not be altered in any way, with the exception of repairs to restore these items to their original appearance if damaged or discolored.

(f) Grass shall be mowed as frequently as necessary to keep the yard from becoming unsightly, and flowerbeds shall be kept free of weeds. In the event this work is not done, the Association shall have the authority, but not the obligation, to perform this work in lieu of the Owner and assess the cost to the Owner through the Association, including any legal fees incurred by the Association. In addition, any alteration of the landscaping of the front and/or side yards must be approved by the Board of Directors of the Association or the Architectural Committee.

(g) No yard art, including plastic flowers, that is visible from the street may be displayed on any Lot without the prior written approval of the Board of Directors of the Association or the Architectural Committee.

(h) No household furniture intended for interior use may be kept or stored on porches or yards.

(i) All garbage or refuse shall be kept in the rear yard of all Lots, not in the front or side yards and may not be visible from the public street, except as necessary to comply with applicable governmental ordinances regulating garbage or refuse collection.

(j) Clothes lines, including temporary or retractable lines, are prohibited on any Lot.

(k) Upon the recordation of a deed from the Declarant to a Builder, said Builder shall be responsible for upkeep and cleanliness (including mowing of any grass on the Lot) of Lots for which no structure has been commenced.

(l) No noxious or offensive trade, activity, or language shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Except for unit identification numbers required by governmental authority, no billboards shall be erected or maintained on the Properties. No more than one sign, not larger than five square feet in size, is to be placed on any Lot; only for sale or for rent signs are permitted. No trade materials or inventories may be stored upon the properties and no trucks or tractors may be stored on the Properties. No business activity or trade of any kind whatsoever, which shall include but not be limited to the use of any residence as a doctor's office or professional office of any kind, a fraternity house, a rooming house, a boarding house, an antique shop or gift shop shall be carried on upon any Lot. The foregoing notwithstanding, the Declarant, Builder, real estate brokers, Owners and their agents may show Lots for sale or lease; and the Declarant and Builder and the agents and employees of each, shall have the right to (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices; (ii) maintain spot-lighted model homes which may be open to the public for inspection 7 days per week for such hours as the Declarant or Builder deems appropriate or necessary; (iii) conduct any other activities on Lots to benefit sales and construction effect; and (iv) use the parking facilities on the Common Area for parking for its employees and invitees.

ARTICLE VII

INSURANCE

Section 1. Insurance coverage on the Properties shall be governed by the following provisions:

(a) Ownership of Policies. All insurance policies covering the Common Areas shall be purchased by the Association for the benefit of the Association and the Members. All insurance policies covering Single Family Lots shall be owned by the individual Owners thereof and shall be fully paid by such Owners.

