

BOOK 674 PAGE 119

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF HART'S CREEK PHASE II

THIS DECLARATION, made and entered into this the 12th day of September, 1995, by HART'S CREEK PARTNERSHIP, A NORTH CAROLINA PARTNERSHIP, AND J. DAVID AND PATRICIA A. STROTHER, hereinafter called DECLARANTS;

W I T N E S S E T H :

THAT WHEREAS, the Declarants, Hart's Creek Partnership, a North Carolina Partnership, and J. David and Patricia A. Strother, are the owners of the real property described in Article I below, and desire to create thereon a low density residential community with permanent protection for native flora and fauna and the opportunity for residents to live in harmony with these natural life forms; and

WHEREAS, Declarants have adopted a uniform scheme for the development of said property in accordance with the provisions as set forth herein; and

WHEREAS the Declarants want to provide-for the preservation of the values and amenities in this community and for the maintenance of recreation and study in the natural environment and to these ends desire to subject the real property described in Article I to the covenants, restrictions and uses to which the real property described in Article I may be put; and Declarants hereby specify that such declarations shall constitute restrictions and covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them and shall be for the benefit of and in limitation on all future owners and residents of said property, this declaration of covenants, conditions and restrictions being designed to achieve the purposes stated herein; and whereas, Phase I of Hart's Creek contains the first, section of private roadway easement leading from Dewitt Smith Road, accessing Hart's Creek Phases I and II, and such roadway in Phase I is subject to a road maintenance agreement recorded in Book 582, Page 8 Chatham County Registry; and

WHEREAS it is the intention of Declarants to provide for a common access for Phase II which coordinates use and maintenance of the roadway thru Phase I and throughout Phase II;

THEREFORE Declarants; make the following provisions to carry out their intent:

ARTICLE I
DESCRIPTION OF REAL PROPERTY

The real property subject to this declaration is described as follows:

BEING all those lots or tracts of land denominated as Lots 17-26 containing 138.469 acres as shown on survey entitled "Hart's Creek - Phase Two" by Smith & Smith Surveyors, dated October 3, 1994, and recorded in the Chatham County Registry at Plat Book 95-350 to which plat reference is hereby made for a more particular description of same.

ARTICLE II
GENERAL PROVISIONS

All of the property described in Article I. above and annexed property and all subdivisions thereof shall be subject to the following conditions, restrictions and covenants hereinafter set out which may be enforced by any Owner of a Lot or Common Property.

SECTION ONE: Dwellings and Lot Sizes

(a) No lots shall be further subdivided below ten (10) acres.

(b) The ground floor area of the main residential structure, exclusive of open porches, garages, and carports, shall not be less than 1200 square feet of heated area for a one-story dwelling; nor less than 800 square feet of ground floor heated area for a dwelling of more than one story, exclusive of open porches, garages, and carports; in no event shall there be less than a total of 1300 square feet of heated area in a multi-story structure, exclusive of open porches, garages and carports. Any dwelling having an attached enclosed garage may count the total square footage of the garage towards the minimum square feet requirement.

An accessory dwelling unit i.e. guest house, pool house, garage apartment, in-house apartment, will be allowed on a lot provided it is restricted to 1,000 square feet or two thirds (2/3) of the heated space of the principal residence, whichever is the more limiting restriction. The accessory dwelling may not be the residence of more than two adult occupants.

SECTION TWO: Commercial and Business Uses Limited

(a) No manufacturing, commercial or business enterprise or enterprises of any kind for profit shall be maintained on, in front of or in connection with the properties, nor shall touch property in any way be used for other than strictly residential purposes. The purpose of this article and its qualifications is to preserve the quiet nature of the property and minimize traffic by prohibiting business or other services that cater to general public in unspecified intensity. This restriction shall not be construed, however, as preventing the following uses:

(b) Residents may practice a profession in home offices so long as such activities are conducted within the dwelling unit of the professional and provided no more than two persons may be

employed on the premises by the professional and provided clients are seen only on an appointment basis.

(c) Residents may teach students in a home provided that students may not visit for instruction at a frequency greater than six students per day for lessons or teaching purposes; provided, however, that this shall in no way be construed as providing day care for children of residents.

(d) Residents may manufacture, construct, or otherwise prepare for sale "handcraft" articles and art provided no more than two non-residents may be employed on the premises, and provided no retail trade may be conducted on the premises except by mail or on an appointment basis with a maximum frequency of six visits per day.

(e) The raising of farm animals including horses raised for pleasure and crops-for profit is specifically permitted as are other pursuits of horticulture, agriculture, and animal husbandry, but specifically prohibited are the commercial processing and packaging of food or fiber products that might require a factory-type operation in buildings of more than 1300 square feet or employing more than three employees whose principal work would be the processing and/or packaging of agricultural or forest products. Riding instruction may be conducted on tracts 10 acres or more with a maximum frequency of ten students per day.

(f) No commercial auto repair shall be allowed on the premises.

(g) Parking for uses permitted under (b), (c), (d) and (e) shall be upon the premises only and not upon any private roads

SECTION THREE: Firearms and Hunting

No bored firearms shall be discharged on this property for the purpose of practice, hunting or the destruction of any animal. However, wildlife clearly threatening or endangering residents may be controlled in any practical manner.

SECTION FOUR: Buildings

No dwelling of any kind, other than a well house, shall be located on any lot nearer than one hundred and thirty feet (excepting on Lot 24 which shall be no nearer than 90 feet) from the centerline of any public or private road {not including individual driveways), nor shall any building be built within 75 feet of any property line of any lot nor 50 feet from the high water level of any ponds. In the event that two or more lots are acquired by one owner, the setbacks shall apply to the boundaries of the new resulting combined lots and not to the individual separate lots. Driveways shall be constructed with the intention of providing screening of structures as much as possible from vision from any public or private roads and adjoining properties.

A perimeter of natural undisturbed vegetation shall be maintained for a distance of at least 75 feet from any lot line on all lots of 10 acres or more and 50 feet for all lots under 10 acres, although thinning of undergrowth and small trees may be allowed in areas adjacent to road right of way. Any fencing shall not fall within this 75 foot or 50 foot perimeter boundary

requirement. Such perimeter shall not be disturbed in any way except that two breeches no wider than sixty feet each shall be allowed for combined entrance, exit and utility lines. However, spaces which now exist and which may fall within this designated perimeter may remain and be maintained for permitted agricultural or other uses. Provided also that said perimeter may be breeched for septic system drainfield lines. No more than 50% of a lot may be clearcut.

SECTION FIVE: Trash Disposal

No tract shall be used or maintained as a dumping ground for rubbish, and no junk or disabled motor vehicles shall be allowed upon said property unless screened from sight of private and public roads and of adjoining landowners. Trash, garbage, or other waste shall not be kept except in sanitary containers and shall not be visible from the road shielded by a fence or fencing compatible in design and quality with surrounding structures on that tract.

SECTION SIX: Motorcycles and Bikes

No motorcycles, trail bikes or any other motor vehicles shall be operated on this property except on the designated private roads and on the drives from the private roads to dwellings and outbuildings for purposes only of ingress or egress or for the purpose of agriculture or maintenance.

SECTION SEVEN: Temporary Structures

No structure of temporary character, trailer, camper, van, lean-tos, basements, tents, shacks, garages, barns or other outbuildings shall be used on any lot as a residence. However, temporary structures may be utilized for limited camping purposes prior to or during the construction of a residence provided an undisturbed boundary of trees screen structures from public and private roads and driveways.

SECTION EIGHT: Mobile Homes, Modular Units.

(a) One and one-half or two story modular homes which meet the standards of the North Carolina Residential Building Code are permitted with approval of Declarant Hart's Creek Partnership or architectural Committee of three elected by members of lot owners should Declarant Hart's Creek Partnership no longer hold an interest in Hart's Creek Phase II. No single or doublewide mobile homes are permitted.

SECTION NINE: Noise

There shall be no electric or electronic amplification of sound or music at a volume which may be heard from any adjoining lot or parcel, provided that with the special permission of affected adjacent and nearby property owners, parties may make and amplify sound in excess of the above restrictions for special occasions.

SECTION TEN: Outdoor Lighting

All area lighting (ground lighting excepted) shall be placed within set back lines and shall be positioned so as to avoid illumination of adjacent lots. Outside lighting may be used, provided that all such lights are focused or shielded so as to

direct the light downward. Lighting should be no higher than the eaves or height of one story outbuildings.

SECTIONS ELEVEN: Water and Sewage systems

All water and sewage systems shall be in conformity with the requirements of the Chatham County Health Department and shall be inspected and approved by the same.

SECTION TWELVE: Animals

No hooved animals or domestic fowl shall be permitted to feed or shelter within fifty feet of a branch, stream or pond. Pastures shall be managed so as to prevent soil erosion and the runoff of manure.

Residents shall control dogs, cats and other pets so that they do not become a nuisance on other properties. Outside housing for dogs and other pets shall be constructed in such a way as to provide that barking dogs or other loud animals shall not be heard at night; and no commercial kennels shall be operated on the property.

SECTION THIRTEEN: Minor violations

Minor violations of set back lines and square footage of less than five percent (5%) shall not be cause for corrective action by other record owners.

SECTION FOURTEEN: Waiver of Restrictions

No waiver or a breech of any of the restrictions or covenants herein contained shall be construed to be a waiver of any other breach of the same, or other restrictions or covenants; nor shall the failure to enforce any one of such restrictions be construed as a waiver of any other restriction or covenant.

SECTION FIFTEEN: Duration

The restrictions herein shall be binding for a period of thirty years from the date of this instrument, and may be extended thereafter, in whole or in part, for successive periods of twenty years each, by majority vote of the owners.

SECTION SIXTEEN: Enforcement

These restrictions shall operated as covenants running with the land for the benefit of any and all persons who now may own, or may hereafter own any part or parcel of the property above described, and such persons are specifically given the right to enforce these restrictions through any proceedings at law or in equity against any person or persons violating or threatening to violate such restrictions and to recover any damages suffered from any violation thereof or to restrain violations.

SECTION SEVENTEEN: Validity

Invalidation of any one or any portion of these restrictions and covenants by judgment or court order shall in no way affect any of the other provisions contained herein, and those other provisions shall be severable from the invalidated portions and shall remain in full force and effect.

SECTION 18: Amendment

The foregoing Covenants of Restrictions may be amended and/or revised by 2/3 majority vote of the lot owners of Hart's Creek Phase II.

ARTICLE III DECLARATION OF EASEMENT AND PROVISIONS FOR ROAD MAINTENANCE ROAD MAINTENANCE

SECTION ONE. The real property constituting Lots 17-26 of Phase II of Hart's Creek shall be held, transferred, sold and conveyed subject to the easements and provisions set forth in this Article III.

SECTION TWO. Declarants hereby grant unto themselves and the future record owners of this property adjoining and abutting all private roads serving the cited lots and shown on Plat Slide 95-350, Chatham County Registry, perpetual easements for the purposes of ingress, egress and regress and for the installation and maintenance of utilities along said roads. And, further, Tony F. and Margaret A. Clark, individually, and separate from any partnership interest in Hart's Creek, hereby grant a perpetual easement to the owners of lots in Phases I and II over and across that strip of land designated as the Cross-Hatched portion of the roadway connecting Phases I and II of Hart's Creek as shown on that plat above referenced, such easement being only for the Phase I and II lot owners, their heirs, successors and assigns, for the purpose of ingress, egress and regress and for the installation and maintenance of utilities. Tony F. and Margaret A. Clark hereby reserve the right to the use of the roadway in Phase I as shown on the Phase I plat as well as the right of easement across the cross-hatched area for themselves and their heirs, successors and assigns.

SECTION THREE. Each record owner, including Declarants, of any lot herein cited, shall be responsible for and pay a pro-rata portion of the costs of maintenance of said private roads as they pass through Phase I of Hart's Creek Subdivision as shown on Plat Slide 91-373 and throughout Phase II. Such maintenance shall include, but not be limited to, grading costs, gravel or rock hauled in to fill ruts, holes and washed out sections, and necessary replacement of or additional drainage culverts. Said roads shall be maintained in at least an all-weather condition. As long as Hart's Creek Partnership shall own 50% or more of platted lot's in Phase II, it shall be their right and duty to perform in its own name the required road maintenance and immediately assess all other lots for their share of the actual cost of such maintenance. After such time as Hart's Creek Partnership shall no longer own at least 50% or more of the platted lots in Phase II the record owners, who comprise the Hart's Creek Phase II Landowners Association, shall meet at least annually to determine maintenance as provided in SECTION FOUR.

SECTION FOUR. The lots in Phase I are subject to the provisions of a road maintenance agreement recorded in Book 582 Page 84, Chatham County Registry, and that document sets forth the requirements of road maintenance within Phase I. In such road maintenance agreement cited above, there is a requirement that there shall be a meeting of the record owners of lots in Phase I at least once a year to determine maintenance needs. It is hereby provided that the record owners of Phase II shall meet at least annually with the Phase I landowners in order to coordinate

common road maintenance for Phase I, and among themselves for the maintenance of Phase II roadways with written notice given to all members at their last known address not less than 30 days nor more than sixty (60) days in advance of the meeting. The record owner of each lot in Phase II shall be deemed to hold a single share and cast a single vote. A quorum shall be required for the membership to take action, A quorum shall constitute the presence of members or of proxies of entitled to cast sixty (60%) of all the votes of the membership. A simple majority vote shall authorize maintenance to take place. At the time of any improvements to roadways within Phase II, the total number of shares of the record owners of lots in Phase II shall be divided into the cost of the improvements, and all parties shall then be responsible for payment. At the time of any improvements to roadways within Phase I, the total number of shares of record owners of lots in Phases I and II shall be divided into the cost of the improvements and the parties shall than be responsible for payment to Hart's Creek Phase I Homeowners' Association.

SECTION FIVE. The share so computed above shall be due and payable thirty (30) days after written demand. In the event that any lot owner in Phase II fails and refuses to pay all or any portion of an assessment for road maintenance, that share, together with interest, court costs and reasonable attorneys' fees incurred in the collection thereof, shall be a charge upon the property against which each assessment is made, as well as the personal obligation of the owners. After legal notice, the outstanding share may be reduced to judgment and shall become a lien upon the lands of the defaulting owner, and shall be subordinate to the lien of any mortgage or deed of trust. Sale or transfer of the land shall not affect the assessment lien, except that the sale or transfer pursuant to a foreclosure shall extinguish the lien as to the assessments due prior to, but not after, sale or transfer.

SECTION SIX. Any damage to the road caused by home construction, timbering or agricultural use shall be the responsibility of the owner engaged in the cause of such damage.

SECTION SEVEN. Further, Tony F. and Margaret A. Clark will be deeded that certain 6.958 acre tract lying in the northwest corner of Phase II, which tract Declarants agree shall not be assessed any Phase I or II road maintenance charges unless a residential structure is placed on that tract. If a residential structure is placed on that tract, then Tony F. and Margaret A Clark or any successor or assignee will pay one share of the road maintenance charges as follows. If access is achieved through Phase I, the amount of road maintenance assessment shall be the same as any lot owner in Phase I; if access is achieved through Phase II, the amount of road maintenance assessment shall be the same as any lot owner in Phase II.

SECTION EIGHT. The private road located within said property may be dedicated to the public at the election of 60% of the lot owners in the event dedication is not required by a governing body as set forth above. In that event, the owners and their successors in title and interest to any of the property described herein will remain responsible for road maintenance as herein provided until such time as the road dedicated is maintained by the North Carolina Department of Transportation or other governmental body. If a portion of the road is taken over for maintenance, the balance not taken shall remain subject to this agreement.

SECTION NINE. This agreement shall run with and be appurtenant to the lots in Phase II and shall be binding upon heirs, assigns and successors of each record owner of the aforesaid property.

IN WITNESS WHEREOF, the Declarants have hereunto caused this Declaration of Covenants, Conditions and Restrictions to be signed, all as of the day and year first above written.

HART'S CREEK, A NORTH CAROLINA PARTNERSHIP