

Work File No: 999-00174530

Craven NC - Document State
Becky Thompson, Register of Deeds
Date 12/23/2003 Time 10:32:18 1 of 11 Pgs
No: 2003-00365189
Book 2130 Page 647
Fee Amt : 44.00
Excise Tax: .00

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by LAWRENCE J. BAYER, and wife, ALICE J. BAYER, hereinafter referred to as "Declarant"; Cherry Branch Homeowners' Association, Inc., a North Carolina non-profit Corporation; and all Prospective Purchasers of Quarter Horse Estates, Section One, Subdivision;

WITNESSETH

WHEREAS, Declarant is the owner of certain property in a Subdivision known as Quarter Horse Estates, Section One, County of Craven, State of North Carolina, which is more particularly described as:

Lots numbered 124 through 133, Quarter Horse Estates, Section One, as the same is shown on a plat thereof recorded in Plat Cabinet G, Slide 176E, Office of the Register of Deeds of Craven County, North Carolina.

WHEREAS, the Property adjoins various section of Cherry Branch Subdivision, and the Owners Association which is associated with Cherry Branch Subdivision has agreed that the owners of Lots within Quarter Horse Estates, Section One can become members of the Association, and Declarant intends for each Lot owner to be a member of the Association; and

WHEREAS, Cherry Branch Homeowners Association, Inc. joins in the execution of this agreement for the sole purpose of granting the rights in the Association as set forth herein.

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

Prepared by:
John W. King, Jr.
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Attorneys at Law
310 Craven Street
New Bern, NC 28560

run with, the real property and be binding on all parties having any right, title of interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to Cherry Branch Homeowners 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 which is 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 by the Association for the common use and enjoyment of the Owners.

Section 5. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded subdivision map of the Properties.

Section 6. "Declarant" shall mean and refer to Lawrence J. Bayer or Alice J. Bayer, their successors and assigns if such successors or assigns should acquire the Declarant's rights along with more than one undeveloped Lot from the Declarant for the purpose of development.

**ARTICLE II
PROPERTY RIGHTS**

Section 1. Owner's Easements 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 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 suspend the voting rights and right to use 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 sixty (60) days for any infraction of its published rules and regulations;

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(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 agreed to by two thirds (2/3) of each class of members voting on the same at a duly called meeting for that purpose, and a certificate signed by the secretary of the meeting is recorded indicating the approval.

Section 2. Delegation 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 and may not be separated from ownership of any Lot which is subject to assessment.

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

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) 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 (1) 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. 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 the Class B membership, or
- (b) on September 1, 2007.

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

THE ASSOCIATION HAS RECEIVED A COPY OF THE
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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 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 shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment shall be One Hundred Fifteen and no/100 Dollars (\$115.00) per Lot.

(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 each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to any Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

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 only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum from Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 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%) or as otherwise set forth in the bylaws of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present,

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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 held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessment: 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 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. 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 Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the date due at the rate of eight percent (8%) 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 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 assessments 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 assessment thereafter becoming due or from the lien thereof.

**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, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location and land use consistent with these covenants, in relation to surrounding structures and topography by the Declarant or its assigns. In the event the Declarant or its assigns fail 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

Section 1. Lot. The "lot" as used herein shall mean the parcels as depicted on the above-mentioned map.

Section 2. Building Type; Dwelling. The word "dwelling" as used herein shall mean one (1) detached building designed for use as a single family residence. No concrete blocks on exterior walls, except decorative screen blocks, shall be used above foundation elevation unless the same are covered with brick veneer, stone, or stucco.

Section 3. Land Use. Each Lot shall be used for residential purposes only. Not more than one (1) dwelling may be erected or permitted or remain on a Lot. No wrecked or junked motor vehicle or vehicle without current license plates or truck larger than one (1) ton shall be permitted to remain on a Lot or street. No activity shall be permitted on any Lot which amounts to a nuisance to the other Lot Owners, or interferes with their reasonable enjoyment of their property. No Lot may be used for storage without a house being located thereon. All materials stored on a Lot and clothes lines and satellite discs shall be located in the rear yard and screened from view by natural vegetation or wood privacy fencing. Declarant or his designee reserves the right for a period of five (5) years to conduct sales from model homes within this Section.

Section 4. Mobile Homes and Manufactured Housing. No mobile home, modular home, metal storage shed, or manufactured housing may be placed or permitted to remain on a Lot.

Section 5. Combination of Lots. One (1) Owner of two (2) or more adjoining Lots or one (1) Owner of one (1) Lot and one half (1/2) of one (1) adjoining Lot or both of the adjoining Lots, may construct a residential dwelling thereon upon and across the dividing line of such adjoining Lots, or Lot and adjoining one half (1/2) Lot or adjoining two (2) adjoining half Lots so owned by one (1) Owner so long as such residential dwelling shall not be nearer than ten (10) feet to such Owner's side Lot line, and so long as any outbuildings shall not be nearer than ten (10) feet from such Owner's side Lot line or ten (10) feet from the rear Lot line, but thereafter, no additional residential dwelling may be built thereon. In the event of such recombination or combination, any easements reserved along the interior Lot lines which have been recombined and deleted, shall be withdrawn and shall not constitute an encumbrance on such Lot and shall be reserved only along the perimeter boundary lines of the total Lots or portions thereof so owned by the one (1) Owner.

Section 6. Dwelling Size. Any dwelling erected upon any lot shall contain not less than 1200 square feet of enclosed floor heated area. Any dwelling, once started, shall be substantially completed within nine (9) months.

Section 7. Setback Requirements.

- (a) No dwelling shall be erected or permitted to remain on any Lot nearer to any street than the setback line as shown on the recorded plat.
- (b) No dwelling or other permissible structure shall be erected or permitted to remain nearer than ten (10) feet to any side or rear Lot line.
- (c) Hardship variances may be granted from time to time by the Declarant.

Section 8. Animals. No animals shall be permitted to remain on any Lot other than dogs, cats, or other small household pets, always in reasonable numbers, and subject to reasonable rules and regulations as may be promulgated from time to time by the Homeowner's Association. No Pit Bulls, Rottweilers or Doberman Pinschers shall be allowed. There shall be no hunting of wildlife in the Subdivision.

Section 9. Drainage and Utility Easements. The party of the first part reserves to itself, its successors and assigns, a ten (10) foot drainage and utility easement along all rear Lot lines, all side lot lines, and front Lot lines of the numbered Lots and further, easements are reserved as shown on the plat of QUARTER HORSE ESTATES, SECTION ONE. Driveways shall be permitted across front and side Lot line easements.

Section 10. Maintenance and Repair of Property. The exterior of any building located on a Lot shall be maintained, repaired and kept in a neat and clean condition.

Section 11. Access. No numbered Lot may be used for ingress, egress, regress or access to adjoining land not part of this Subdivision..

Section 12. Stormwater Compliance:

- (a) No more than 5,000 square feet of any lot in Quarter Horse Estates, Section One, including the portion of the right-of-way between the edge of pavement and the front lot line, shall be covered by impervious structures, including asphalt, gravel, concrete, brick, stone, slate or similar material, not including wood decking or the water surface of a swimming pool.
- (b) The covenants pertaining to stormwater regulations may not be changed or deleted without concurrence of the State.
- (c) Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the development except for average driveway crossings, is strictly prohibited by any persons.

(d) This covenant is intended to ensure compliance with the Stormwater Permit Number SW7020524 issued by the State of North Carolina.

Section 13. Street Lighting: Each of the Lots is subject to a contract with Carteret-Craven Electric Cooperative for the installation of underground electrical utility which may require an initial contribution and/or the installation of street lighting, which will subject the owner to a continuing monthly payment to Carteret-Craven Electric Cooperative or similar electric provider.

ARTICLE VII STAGED DEVELOPMENTS

Additional land within the area described in Deed Book 1558 at page 680, of the land records of Craven County may be annexed by the Declarant without the consent of members.

ARTICLE VIII GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Declarant, or any Owner, 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 or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Reasonable attorney's fees shall be recovered by the prevailing party for the enforcement of these covenants.

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.

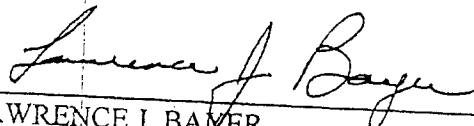
Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded.

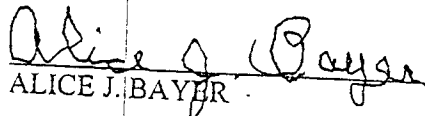
Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two thirds (2/3) of each class of members, however, the adjacent Property described as Tract Three, in Deed Book 1558 at page 680, in the Office of the Register of Deeds of Craven County may be annexed without the consent of the members by the Declarant who hereby reserves said rights, provided any area annexed shall contribute pro-rata to Common Area maintenance.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions, except as otherwise provided herein.

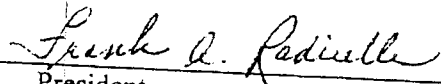
Section 6. Additional Easements. Declarant reserves the right to grant easements of ingress, regress and egress over the streets to subsequent purchasers, and adjacent property notwithstanding the acceptance of streets within the state highway system.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 29th day of August, 2002.


LAWRENCE J. BAYER (SEAL)


ALICE J. BAYER (SEAL)

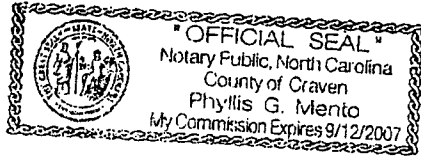
Homeowners Assn
CHERRY BRANCH OWNERS' ASSOCIATION, INC.

By: 
President

North Carolina, Craven County

I, Phyllis G. Mento, a Notary Public in and for said County and State, do hereby certify that **Lawrence J. Bayer**, personally appeared before me this date and acknowledged the due execution of the foregoing instrument for the purposes and intents therein expressed

Witness my hand and official stamp or seal, this the 17 day of December, 2003.

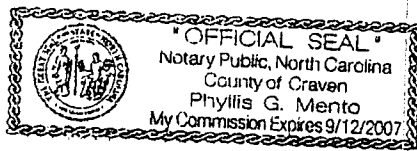


Phyllis G. Mento
Notary Public
My Commission Expires: 09/12/2007

North Carolina, Craven County

I, Phyllis G. Mento, a Notary Public in and for said County and State, do hereby certify that **Alice J. Bayer**, personally appeared before me this date and acknowledged the due execution of the foregoing instrument for the purposes and intents therein expressed

Witness my hand and official stamp or seal, this the 17 day of December, 2003.

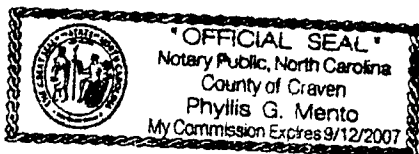


Phyllis G. Mento
Notary Public
My Commission Expires: 09/12/2007

North Carolina, Craven County

I, Phyllis G. Mento, a Notary Public of the county and state aforesaid, certify that Frank A. Radicella personally came before me this day and acknowledged that he is the current President of Cherry Branch Owners' Association, Inc., a North Carolina corporation, and that by authority duly given and as the act of such corporation, he signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and official stamp or seal this the 23 day of December, 2003.



Phyllis G. Mento
Notary Public
My Commission Expires: 09/12/2007

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The certificates of the foregoing notaries are certified to be correct. This instrument was presented for registration this day and hour and duly recorded in the Office of the Register of Deeds of CRAVEN County, North Carolina, in Book 2130 at Page 647

This the 23 day of December, 2003, at 10:32 o'clock A.m.

Betty Thompson
Register of Deeds

By Michelle L. Cook
Assistant/Deputy Register of Deeds