

Tisdale



Doc ID: 008033510008 Type: CRP
Recorded: 04/16/2010 at 12:59:43 PM
Fee Amt: \$35.00 Page 1 of 8
Onslow County, NC
Rebecca L. Pollard Reg. of Deeds

BK **3388** PG **855-862**

NORTH CAROLINA
ONslow COUNTY

Return to: Tisdale, McConnell & Bardill, LLP
Attorneys at Law

**Declaration of Restrictive and
Protective Covenants, Conditions
and Easements for Blue Creek
Estates, Section I-A**

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, BRYNN CREEK, LLC, a North Carolina limited liability company organized and existing under and by virtue of the laws of the State of North Carolina, with its principal place of business in the City of Jacksonville, State of North Carolina, hereinafter called "Developer", is the owner of all that tract of land located in Onslow County, North Carolina, and designated and known as BLUE CREEK ESTATES, SECTION I-A, shown on that certain plat recorded in Map Book 59, Page 217, Slide m-1531, in the office of the Register of Deeds of Onslow County.

AND WHEREAS, Developer desires to subject said property to the protective covenants hereinafter set forth for the benefit of said property and for each owner thereof, which shall inure to the benefit and pass and run with said property, and each and every lot or parcel thereof, and shall apply to and bind the successors-in-interest and any owners thereof.

AND WHEREAS, Developer prior to selling and conveying the aforesaid lots, desires to impose upon said lots certain mutual and beneficial restrictions, covenants, conditions and charges (hereinafter collectively referred to as "covenants") for the benefit of all the lots in the subdivision, in order to promote the best interest and protect the investments of Developer and Owners and to comply with certain regulations as may be established from time to time by the State of North Carolina, Onslow County, or any other appropriate municipality, agency or political subdivision.

NOW, THEREFORE, Developer hereby covenants and agrees with all persons, firms, or corporations now owning or hereafter acquiring any of the numbered lots included on said plat, that all of said numbered lots shall be and the same now are, to the extent hereinafter defined and

whomsoever owned, to wit:

1. LAND USE AND BUILDING TYPE: No lot shall be used except for residential purposes. No structures shall be erected, placed, altered or permitted to remain on any such lot other than one detached single family dwelling not to exceed two and one-half stories in height, a private garage which may contain living quarters for occupancy by domestic servants of the lot and such other outbuilding as may be reasonably appurtenant to the dwelling, provided that the same are constructed in line with the general architectural design and construction standards used in the dwelling itself. An Owner or Occupant residing in a dwelling on a lot may conduct business activities within the dwelling so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the dwelling; (ii) the business activity conforms to all zoning requirements for the lot; (iii) the business activity does not involve regular visitation of the dwelling or lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the subdivision; and (iv) the business activity is consistent with the residential character of the subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the subdivision. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. This covenant shall not be construed as prohibiting the use of a new single family detached dwelling as a model home for sales purposes.

2 DWELLING, QUALITY AND SIZE: The heated ground floor area of the main structure, exclusive of one story open porches and garages, shall not be less than 1350 square feet for a one story dwelling nor less than 700 square feet on the first floor of a building of more than one story.

3. BUILDING LOCATION: No building shall be located on any lot nearer than the setback line as shown on the recorded plat. No building shall be located with respect to side lot lines so as to be nearer than 10 feet to either such line. No garage or other permitted accessory building shall be located nearer than 15 feet to the rear lot line. For the purpose of this covenant,

eaves, steps and open porches shall not be considered as part of a building provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. An error of not more than 10 percent in the location of a building on the lot with respect to the minimum setback lines shall not be considered a violation of this covenant.

4. LOT AREA AND WIDTH: No dwelling shall be erected or placed on any lot having a width of less than 60 feet at the minimum setback line nor shall any dwelling be erected or placed on any lot having an area of less than 10,000 square feet; except said minimum requirements do not apply to any designated and numbered lots on said plat herein referred to, if any such lots shown do not meet these minimum requirements.

5. NUISANCES: No noxious or offensive activity shall be carried upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All lots, whether occupied or unoccupied, shall be well maintained and no unattractive growth or accumulation of rubbish or debris shall be permitted to remain on a lot. No automobile, other vehicle(s), motorcycle(s) or other similar items shall be repaired or placed "on blocks" or stands except in an enclosed garage.

6. EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat, and where not shown thereon shall be over the rear ten (10) feet of each lot, and five (5) feet along each side line of each lot. Within these easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or 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 channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

7. LIVESTOCK AND POULTRY: No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept, provided that they are not bred or maintained for any commercial purposes.

8. BUILDING PLANS AND SPECIFICATIONS: No dwelling or other building shall be erected upon any lot unless the plans and specifications thereof meet or exceed the requirements of the North Carolina State Building Code. Brynn Creek, LLC will retain architectural control of plans, specifications and color schedules, of homes.

9. ERECTION OF FENCES: No fence shall be erected unless such fence is of an ornamental nature. Brick, split-rail, wrought iron, wooden picket, vinyl and wooden privacy fences shall be deemed to be ornamental and meet the requirements of this restriction. No fence of any type shall be erected or permitted to remain upon any lot closer to the front line of said lot than the rear of the primary residential dwelling. No fence shall be erected nearer to any street than the respective building corners.

10. SATELLITE DISHES: No Satellite dishes of any kind shall be allowed or permitted upon any lot in the subdivision over 18" in diameter.

11. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot parallel to the building line, one sign of not more than three square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale period.

12. GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in containers. This does not pertain to construction debris while house is under construction. All incinerators or other equipment for the storage of such material shall be kept in a clean and sanitary condition.

13. SIGHT DISTANCE AT INTERSECTIONS: No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 4 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

14. TEMPORARY STRUCTURES: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently. No trailer, mobile home, camper or like vehicle shall be allowed to remain on any lot at any time for any purpose unless it is parked behind the main dwelling structure or placed inside a carport or garage.

15. STORM WATER RUNOFF PROVISIONS: In accordance with Stormwater Permit No. SW8 080523 issued by the State of North Carolina, Division of Water Quality under NCAC 2H.1000, the allowable built-upon area per lot (Maximum BUA Per Lot) for each lot subject to these restrictive and protective covenants is as set forth on Exhibit A – Blue Creek Estates, inclusive of that portion of the right-of-way between the front lot line and the edge of the pavement, structures, walkways of brick, stone, or slate, but not including wood decking. These covenants pertaining to stormwater regulations may not be changed or deleted without the express written consent of the State of North Carolina, Division of Water Quality. 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. Lots within CAMA's Area of Environmental Concern may have their permitted built-upon area reduced due to CAMA jurisdiction within the Area of Environmental Concern. Alteration of the drainage as shown on any approved stormwater drainage plan for the property may not take place without the concurrence of the Division of Water Quality. Each lot will maintain a 30 foot wide vegetated buffer between all impervious areas and surface waters. All roof drains shall terminate at least 30 feet from the mean high water mark. This covenant is intended to insure continued compliance with storm water runoff rules adopted by the Division of Environmental Management, the Department of Natural Resources and Community Development of the State of North Carolina and the benefits afforded hereunder may be enforced by the State of North Carolina or any appropriate department or agency thereof.

16. DURATION, AMENDMENT AND TERMINATION: These covenants contained in 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 the covenants shall be automatically extended for successive periods of one (1) year. This Declaration may be amended in full or in part during the first twenty (20) year period by an instrument signed by not less than a majority of the Owners. The Developer has the unilateral right at its sole discretion to amend this Declaration in full or in part until 90% of the lots have been sold. However, no amendment shall be made to Item 15 without the consent of the Director of the Division of Environmental Management of the Department of Natural Resources and Community Development of the State of North Carolina or any subsequent department or agency of the State of North Carolina having jurisdiction over storm water runoff regulations. To be effective, any amendment must be recorded in the office

of the Register of Deeds of Onslow County, North Carolina.

17. ENFORCEMENT: In the event of a violation or breach of any of these restrictions, covenants, agreements and conditions by any person or concern claiming by, through or under the undersigned, or by virtue of any judicial proceedings, the Declarant, its successors and assigns and the owners of the number lots in the subdivision, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms thereof or to prevent the violation or breach of any of them.

18. SEVERABILITY: Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

19. UTILITIES: The developer reserves the right to subject the real property in this subdivision to a contract with Jones-Onslow EMC for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an additional payment and/or a continuing payment to Jones-Onslow EMC by the owner of each building.

20. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS: The Developer has caused to be created "Blue Creek Estates Homeowners Association, Inc.", a non-profit corporation, ("the Association") to which the Developer has transferred the responsibility for storm water and erosion control (to include the transfer to the Association of the permit issued by the State of North Carolina, Division of Water Quality), the responsibility for maintenance of any entrance signs to the subdivision, and the responsibility for maintenance of the roads within the subdivision until such time, if any, as the responsibility for road maintenance is assumed by the North Carolina Department of Transportation. Every owner of a lot which is subject to this Declaration shall be a mandatory member of the Association. Membership shall be appurtenant to and may not be severed from ownership of any lot and shall pass automatically to an owner's successor in title to the lot. The Association shall have two class of voting membership: Class A, which shall be all lot owners with the exception of the Developer, who shall be entitled to one vote per lot, and Class B, which shall be the Developer and shall be entitled to ten (10) votes for each lot owned. Class B membership shall cease and be converted to Class A membership at such time as ninety percent (90%) of the lots have been sold by the Developer, or at an earlier time if in its sole and absolute discretion the Developer so determines.

21. ASSESSMENTS: No annual assessment shall initially be due, however the Association may levy an annual assessment and/or a special assessment, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting called for this purpose. The assessments levied by the Association shall be used exclusively for storm water and erosion control, repair and maintenance of the entrance signs and road maintenance until such time, if any, that the responsibility for road maintenance is assumed by the North Carolina Department of Transportation. Each owner of a 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 any and all such annual and/or special assessments which, together with interest thereon and the costs of collection thereof as hereinafter set forth, shall be a continuing charge upon the lot. Any assessments that are not paid within thirty (30) days after the due date shall bear interest from the date of delinquency at the maximum rate allowed by law, together with such late fees as may be set by the Board of Directors of the Association. The Association may bring an action at law against the owner of the lot personally obligated to pay any assessments and interest, or the Association may foreclose or claim a lien on the lot in the manner prescribed by the laws of the State of North Carolina. Costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage. The sale or transfer of any lot shall have no effect on the assessment lien.

IN WITNESS WHEREOF, BRYNN CREEK, LLC, has caused this Declaration to be signed in its company name by its Manager this 15th day of April, 2010.

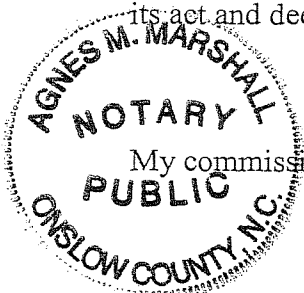
BRYNN CREEK, LLC

BY:

Steven W. Wangerin
Steven W. Wangerin, Manager

NORTH CAROLINA
ONslow COUNTY

I, Agnes M. Marshall, a Notary Public of the County and State aforesaid, certify that Steven W. Wangerin personally came before me this day and acknowledged that he is Manager of Brynn Creek, LLC, a North Carolina Limited Liability Company, and that by authority duly given and as the act of such entity, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and official seal, this the 15th day of April, 2010.



My commission expires: Sept 6, 2011

Agnes M. Marshall
Notary Public

Exhibit A – Blue Creek Estates

<u>BUA per square feet</u>	
Lot # 1	6081
2	4841
3	4129
4	4578
5	4568
6	4603
7	4956
8	4814
9	6235
10	15432
11	7039
12	5037
13	15893
14	7419
15	6720
16	5600
17	23549
18	10921
19	5539
20	5639
21	7612
22	5675
23	7620
24	7384
25	7972
26	25918
27	39284
28	21227
29	5092
30	4625
31	5697
32	11944
33	6792
34	5801
35	13387
36	11035
37	7378
38	5509
39	6105
40	1374
41	5335
42	5555
43	5450
44	5842
45	6659
46	12673
47	6370
48	4816
49	4856
50	4435
51	5287
52	6717
53	4506
54	7905
55	6047
56	4623
57	4237
58	7771
59	4471
60	4973
61	4498
62	4633
63	8228
64	22560
65	4339
66	4647
67	4482
68	6910
69	10352
70	11614
71	15345
72	9534
73	4639
74	5029
75	5645
76	7710
77	5555
78	5450
79	5842
80	6659
81	12673
82	6370
83	4816
84	4856
85	4435
86	5287
87	6717
88	4506
89	7905
90	6047
91	4623
92	4237
93	7771
94	4471
95	4973
96	4498
97	4633
98	8228
99	22560
100	4339
101	4647
102	4482
103	6910
104	10352
105	11614
106	15345
107	9534
108	4639
109	5029
110	5645
111	7710