



Doc ID: 002257710013 Type: CRP
 Recorded: 02/14/2007 at 08:38:12 AM
 Fee Amt: \$50.00 Page 1 of 13
 Onslow County, NC
 Maryland K. Washington Reg. of Deeds

BK 2818 PG 932-944

STATE OF NORTH CAROLINA
 COUNTY OF ONSLOW

DECLARATION
 OF COVENANTS, CONDITIONS AND RESTRICTIONS
 OF THE HAMMOCKS AT PORT SWANSBORO HOMEOWNERS ASSOCIATION, INC.

THIS DECLARATION, made on the date hereinafter set forth by The Hammocks at Port Swansboro, a corporation organized under the laws of the State of North Carolina with its principal office located in Onslow County, North Carolina, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in Swansboro Township, Onslow County, North Carolina, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to The Hammocks at Port Swansboro, 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 a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 4. "Eligible First Mortgage Holder" shall mean any holder of a first mortgage, who files with the secretary of the association, notice, that they are holding a mortgage on the lot.

Section 5. "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 6. "Storage Area" shall mean such area that is retained by Declarant for the storage of boats, recreational vehicles, etc...

Section 7. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 8. "Declarant" shall mean and refer to The Hammocks at Port Swansboro, LLC, its successors and assigns if such successors and assigns should acquire 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 suspend the voting rights and right to use of the recreational facilities, if any, 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; and

b. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members and fifty-one percent (51%) of the mortgage holders has been recorded.

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 the family, his tenant, or contract purchasers who reside on the property.

Section 3. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the use of not less than two (2) automobile parking spaces, which shall be located near the Lot together with the right of ingress and egress in and upon said parking area. The Association shall insure not less than two (2) vehicle parking spaces for each dwelling.

Section 4. Common Control Areas. The Association shall govern any and all repairs, replacements, and maintenance of the Common Control Areas.

Section 5. Traffic Island Maintenance. The Association shall maintain in an orderly fashion all traffic islands which are landscaped or upon which improvement may be placed on any road within the subdivision.

Section 6. Exterior Maintenance: In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot subject to dues and assessments as follows:

- (a) Repair any fences and gates in the common area;
- (b) maintain the lawn grasses from the curb to the front fence, side yard and rear yard, to include, but not limited to mowing, trimming, edge, in and removal of clippings, apply nutrients, weed control chemicals and insect control chemicals as required;
- (c) wash each house at the discretion of the Board of Directors, to prevent unsightly appearance;
- (d) to provide general exterior maintenance to the improvements on the property, less and except any and all glass and doors;
- (e) Provide maintenance, repair and upkeep at the expense of the owner who fails to maintain acceptable appearance of his property at the expense of the owner; and
- (f) To maintain all streets, front, side and rear lawns and drainage lines to include storm water control lines.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot and the storage area which is subject to assessment shall be a member of the Association. Membership shall be appurtenance to and may not be separated from ownership of any Lot or storage area which is subject to assessment.

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

Class A. The Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned and for the storage area. When more than one person holds an interest in any Lot or storage area, 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.

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. Within One Hundred Twenty Days (120) when the total votes outstanding in the Class A membership is seventy-five (75%) percent of the total votes outstanding in the Class B membership, or
- b. On the fifth anniversary of the conveyance of a Lot or other parcel within the development.

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 and the storage area, hereby covenants, and each Owner of any Lot or storage area 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 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 for the improvement and maintenance of any Common Area; and for the improvement and maintenance of any Common Control Area. In addition, sums shall be collected and amassed to establish a capital account for capital improvements and repairs to the properties.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Twelve Hundred and 00/100 Dollar (\$1200.00) per Lot or storage area and may be paid monthly, quarterly, semi-annually or annually as determined by the Association. However, this annual assessment fee must be paid in advance for the first year only at the time of closing.

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 ten percent (10%) 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 an Owner, the maximum annual assessment may be increased above ten percent (10%) 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 a 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 for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 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 fifty percent (50%) 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 (½) 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 storage area and shall be collected on a monthly basis. However, notwithstanding this section or any other section contained herein, Declarant shall be obligated to pay only one-fourth (¼) of the Uniform Assessment provided the Lot or storage area is unoccupied and has not been deeded by Declarant to a purchaser.

Section 7. Date of Commencement of Annual Assessments Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual 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 due date at the rate of ten percent (10%) per annum or such other rate as the Association may determine. 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 assessments 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 in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after such plans and specification 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. Land Use and Building Type. No Lot shall be used except for residential purposes except in the storage area. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single family dwelling not to exceed three (3) stories in height, unless approved by Declarant. Any building erected, placed or altered on any Lot shall be subject to the provisions of the Article V of this Declaration of Covenants, Conditions and Restrictions relating to architectural control

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Temporary Structures. No structure of a temporary character, such as a basement,

tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently.

Section 4. Animals. No livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other common household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and are at all times not a nuisance to other Owners, properly leashed or confined in an approved area. No other animals shall be allowed without the prior consent of the Declarant. Declarant may, at its option, assign this right to the Association.

Section 5. Outside Antennas. No outside radio or television antennas shall be erected on any Lot or dwelling unit within the Properties unless and until permission for the same has been granted by the Board of Directors of the Association or its architectural control committee.

Section 6. Window Coverings. All drapes, curtains, or other similar materials hung at windows, or in any manner so as to be visible from the outside of any building erected upon any Lot shall be of a white or neutral background or material.

Section 7. Exterior Lights. All light bulbs or other lights installed in any fixture located on the exterior of any building or any Lot shall be clear, white or non-frost lights or bulbs.

Section 8. Storage Area Maintenance. The storage area shall be fenced with opaque fencing not less than six (6) feet in height with no access to any person other than the declarant, Lot owners and their invitees all boats, recreational vehicles, etc...should be shall be registered to a lot owner.

ARTICLE VII

EASEMENTS

Section 1. Utility and Drainage. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the front and rear ten (10) feet of each lot and within all commons walls. Within these easements, no structure, planting or other material shall be placed or permitted, to remain which may interfere with the installation and maintenance of drainage, or which may obstruct or retard the flow of water.

Section 2. Emergency Repairs. The Association is hereby granted a permanent easement to enter any properties, including any individually owned Lot, for the sole purpose of effectuating emergency repairs.

Section 3. Ingress and Egress. Each Lot Owner shall have an unrestricted right of ingress

and egress to their Lot. This right shall pass and inure to the benefit of all future Lot Owners.

Section 4. Encroachment. Any and all encroachments and violations of less than one foot shall be deemed a minor violation and each Owner or the Association shall be deemed to have granted an easement appurtenant to the violating Lot for said encroachment.

ARTICLE VIII

INSURANCE AND BONDS

Section 1. Liability Insurance. The Association shall obtain and maintain a Comprehensive General Liability Insurance policy covering all Common Areas, public ways and other areas that are under its supervision. The policy shall provide coverage of at least \$300,000.00 for bodily injury and property damage for any single occurrence. The premium for said policy shall be paid by the Association.

Section 3. Fidelity Bond. The Association shall have Fidelity Bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. A management agent that handles funds for the Association shall be covered by its own Fidelity Bond.

Except for Fidelity Bonds that a management agent obtains for its personnel, all other bonds shall name the Association as an obligee and their premiums shall be paid by the Association as a common expense.

The Fidelity Bonds shall be in a sufficient amount to cover the aggregate of the following:

- a. the maximum funds that will be in the custody of the Association or its management agent at any time while the bond is in force;
- b. the sum of three (3) months assessments of all amounts in the project; and
- c. all reserve funds of the Association.

Section 4. Notice to Association and Mortgagors. All insurance policies and bonds must include a provision that calls for ten (10) days written notice to the Association and each holder of a first mortgage before the bond or insurance can be canceled or substantially modified for any reason.

ARTICLE IX

GENERAL PROVISION

Section 1. Enforcement. The Association, 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

Section 3. Document Availability. The Association shall have current copies of the Declaration, By-Laws, and other rules concerning the project as well as its own books, records and financial statements available for inspection by Lot Owners or by holders, insurers and guarantors of first mortgages that are secured by Lots and improvements within the development. These documents shall be available during normal business hours and under other reasonable circumstances.

There shall be an annual audited statement prepared each year with copies made available to the Lot Owner, and any holder, insurer or guarantor of any first mortgage that is secured by a Lot within the development any lot owner or holder insures or guarantees any eligible first mortgage may at their expense obtain an audited statement.

Section 4. Condemnation, Destruction or Liquidation. The Association will be deemed to represent the Owners in any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Areas and shall have the authority to negotiate, settle and otherwise make agreements on behalf of all Lot Owners and any and all sums payable shall be distributed to the Lot Owners and their mortgage holders. Any and all funds shall be distributed to each of the Lot Owners in equal shares. However, all first mortgage holders shall be given ten (10) days notice prior to any disbursements to the Lot Owners.

Section 5. Limitation on Ability to Sell and Lease. No Lot Owners right to sell, convey, transfer or mortgage his Lot shall be restricted. However, no Lot shall be leased for less than thirty

(30) days.

Section 6. Mortgagee Approval. The following actions will require the prior written approval of at least fifty-one percent (51%) of the eligible mortgage holders: Annexation of additional properties, other than contained herein, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

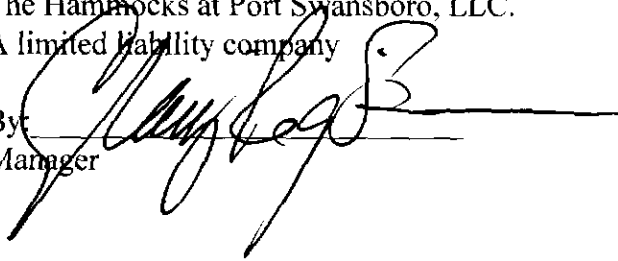
Section 7. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty-five (35) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners, and thereafter by an instrument signed by not less than fifty percent (50%) of the Lot Owners. However, the Declarant is empowered to make such amendments as may be necessary to comply with the Veterans Administration requirement for loan guarantees within the properties. All material changes, including any transfer of the common area shall require not less than 30 days advance notice as well as notice to all eligible first mortgage holders. Any amendment must be recorded. As long as there is Class B Membership, the Veterans Administration and/or the Federal Housing Administration shall have the right to veto amendments to the Declaration.

Section 8. Annexation. Additional residential property, Common Area and Common Control Area may be annexed to the Properties by Declarant. Any and all additional land within the area described in Deed Book 2630, Page 888; and Deed Book 897, Page 765 of the land records of Onslow County, may be annexed by the Declarant without the consent of members within seven (7) years of the date of this instrument, provided that the annexation is in accord with general plan of development and that the number of units does not exceed 135 in number.

IN WITNESS WHEREOF, the Declarant hereto has set their hand and seal this the

15 day of February, 2007.

The Hammocks at Port Swansboro, LLC.
A limited liability company

By: 
Manager

{Corporate Seal}
Attest By:

Secretary/Assistant Secretary

STATE OF NORTH CAROLINA
COUNTY OF ONSLOW

I, a Notary Public of said County and State, do hereby certify that Anthony C. Diasbee personally came before me this day and acknowledged that he is Secretary of The Hammocks at Port Swansboro, LLC, a limited liability company, and that by the authority duly given and as the act of the company, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by himself as its Secretary.

Witness my hand and seal, this 15 day of February, 2007

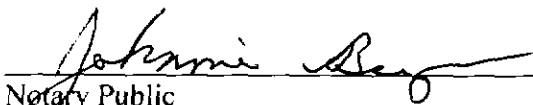

Notary Public
My Commission Expires: 10-09-07

Exhibit "A"

Being all of 6.57 acres of that plat entitled " PCR INVESTMENTS, INC d/b/a THE HAMMOCKS AT PORT SWANSBORO, being part of that property as per Map Book 34, page 119, Swansboro, NC, prepared by Charles A. Rawls and Associates, dated November 15, 2005 recorded in Map Book 50, Page 110, Slide L-1208, Onslow County registry.