



Doc ID: 001193290007 Type: CRP  
Recorded: 09/18/2006 at 01:25:38 PM  
Fee Amt: \$32.00 Page 1 of 7  
Onslow County, NC  
Mildred M Thomas Register of Deeds

BK 2732 PG 283-289

RESTRICTIVE AND PROTECTIVE COVENANTS

NORTH CAROLINA  
ONslow COUNTY

↙  
Mail after recording to: Morton Farms, Inc.  
199 Country Club Blvd.  
Jacksonville, North Carolina 28540

Prepared by: Gaylor, Edwards & Vatcher, Attorneys

THIS DECLARATION OF RESTRICTIVE AND PROTECTIVE COVENANTS, made this 15<sup>th</sup> day of September, 2006, by MORTON FARMS, INC., hereinafter called "Declarant";

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article II of this declaration and desires to create thereon a residential community with roads and streets; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community; and to this end desires to subject the real property described in Article II to the covenants, restrictions, and easements hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof;

NOW, THEREFORE, the Declarant declares that the real property described in Article II, shall be transferred, sold, conveyed and occupied subject to the covenants, restrictions, and easements (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "The Properties" shall mean and refer to all lands described herein, as are subject to this Declaration or any Supplemental Declaration, under the provisions of Article II hereof.
- (b) "Original Lot" shall mean and refer to any plot of land shown upon any original recorded subdivision map of the Properties.
- (c) "Owner" shall mean and refer to the legal or equitable owner whether one or more persons or entities holding any Original Lot, whether such ownership be in fee simple title or as land contract

vendee, and shall not mean or refer to a mortgagee.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

All that certain real property situated in Onslow County, North Carolina and more particularly shown and described on a plat entitled "Final Plat Showing, Rock Creek, Section IX", dated April 16, 2005, prepared by John L. Pierce & Associates, P.A. and recorded in Map Book 51, Page 174, Slide L-1510, in the office of the Register of Deeds of Onslow County, North Carolina.

## ARTICLE III

### BUILDING AND USE LIMITATIONS

Section 1. All lots as described in Article II hereof shall be limited to RESIDENTIAL use. No building shall be erected, altered, placed or permitted to remain on any residential lot other than a one single-family dwelling and private garages or out buildings incidental thereto. Provided, however, the Declarant shall have the right and privilege to use homes built by it as model homes from which to conduct sales operations of the remaining homes of The Properties.

All dwellings shall have a minimum enclosed heated living area of 2,000 square feet, if a one story dwelling, and 2,400 square feet, if a two story dwelling. Notwithstanding any provision of this Declaration regarding amendments hereto to the contrary, specifically including ARTICLE VI, Section 6, the covenants and restrictions set forth herein establishing the minimum number of enclosed heated living area square feet required for each dwelling shall not be amended without the prior written consent of the Declarant.

No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be occupied or stored on any residential lot or abutting street, either temporarily or permanently.

No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum set back lines shown on the recorded plat. No building shall be located any closer to a side or rear property line than eight (8) feet; provided further, that no building shall be located any closer to either said property lines than thirty (30) feet when said property line adjoins the golf course. However, a 10% variance is allowed, exclusive of open porches or attached garages. For the purposes of this covenant, eaves, steps and open porches shall not be a 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.

No sign of any kind or advertising device shall be displayed to the public view on any lot except one sign of not more than one (1) foot square with name and address of owner, other than a "for sale" sign by the owner or his agent of not more than three (3) square feet.

Section 2. 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. No junk cars, that is cars not in use, or any other kind of trash shall be allowed to accumulate or remain on The Properties. No boats, trailers, motor homes or campers shall remain parked between the dwelling and any adjoining street. No animals, livestock or poultry of any kind shall be raised or kept on any lot except dogs, cats or other household pets, provided that they shall not be so maintained for any commercial purpose.

Trash, garbage or any other waste material shall be kept in sanitary containers. Equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All fuel tanks shall be adequately concealed from the road(s). All structures intended for occupancy must be equipped with inside plumbing facilities. All sanitary plumbing, septic tanks, wells, and disposal of waste, shall conform with the minimum requirements of and be approved by the Health Department of Onslow County, North Carolina.

Section 3. The Declarant reserves for itself, its successors or assigns, an easement and right at any time in the future to grant to public utility companies easements, deemed necessary or desirable by the Declarant, its successors or assigns, in its sole discretion, for utilities along the front, side, and rear lines of all lots in the subdivision for the construction and perpetual maintenance of conduits, pipes, poles, wires, and fixtures for electric lights, telephones, drainage, gas, water, sewer and other public and quasi-public utilities and to trim any trees which at any time may interfere or threaten to interfere with the maintenance of such services, with right of ingress to and egress from and across said premises to employees of said utilities.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear ten (10) feet and side eight (8) feet 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 obstruct or retard the flow of water through drainage channels in the easements. The easement areas 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.

No fence, wall, hedge or shrub planting which obstructs sight distance lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area as shown by the typical sight distance at the street intersections as shown on the recorded plat. Nothing 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.

Section 4. No fence over a height of five (5) feet shall be constructed between a line extending from the rear of primary dwelling to each side lot line and the rear property line or nearer to the rear property line than 30 feet where the lot adjoins the property of the Rock Creek Golf Course. The finished sides of any fence allowed must face toward: (i) the front property line for that portion extending from the rear of the primary dwelling to each side lot line, (ii) the side lot line for that portion on or immediately adjacent to a side lot line and (iii) the rear property line for that portion on or parallel to the rear property line. No fence shall be erected between a line extending from the rear of the primary dwelling to each side lot line and the street right of way, provided however, a decorative fence of complimentary architectural design not exceeding a height of one (1) foot may be located nearer to the front property line than described above. On lots abutting more than one street, there shall be no fences located nearer any street right of way than the most distant portion of the wall of the dwelling facing that street right of way. No welded or webbed wire fence shall be allowed unless the exterior of any such fence shall be concealed by decorative wood or shrubbery.

Mailboxes shall be located no nearer to the paved portion of the public road abutting each lot than 12 inches. Mailboxes shall also be of a type, size, and design as that which is originally approved by the developer. No brick or stone mailboxes shall be permitted.

Any outbuildings constructed or placed on a lot shall compliment and be in harmony with the design and materials of the primary dwelling and shall be built or placed only on permanent foundations. The design of, and materials to be used, for any outbuildings must be approved by the

Declarant prior to construction or placement on any lot. No temporary buildings of any kind are allowed. If outbuildings are built with a crawl space that space shall be concealed with underpinning attached to the building. Outbuildings shall comply with all governmental agency specifications.

Driveway culverts or any culverts adjoining the public road which provide for drainage of runoff water shall be made of reinforced concrete pipe.

All owners and occupants of any lot abutting on the Rock Creek Golf Course shall extend to any and all golfers lawfully using the Golf Course the courtesy of allowing such golfers to retrieve any and all errant golf balls which shall land on any lot in the subdivision, provided such golf balls can be recovered without damaging any flowers, shrubbery or the property in general of the owner of any such lot.

Section 5. No lot as shown by the recorded map of the above lots shall be re-subdivided unless part of the subdivided lot becomes a part of a whole lot, and the remainder of the subdivided lot satisfies the Onslow County subdivision ordinances requirements for a single family dwelling lot.

Section 6. The purpose of the foregoing Building and Use Limitations is to insure the use of the properties for attractive residential uses, to prevent nuisances, to prevent impairment of the attractiveness of the property, to maintain the desirability of the community and thereby secure to each owner the full benefits and enjoyments to his home with no greater restrictions upon the free and undisturbed use of his property than are necessary to insure the same advantages to other owners.

#### ARTICLE IV

#### PROVISIONS RELATING TO WETLANDS

All of the properties subject to these Covenants and Restrictions shall also be subject to the following Special Provisions Relating to Wetlands. In developing the subject real property, the Declarant has agreed with the Department of the Army Corps of Engineers (pursuant to a permit issued by the Corps of Engineers) to restrict and prohibit any future filling or other detrimental activities in the wetland areas, which presently exist within the identified areas of the property. Accordingly, all wetlands shown and delineated on the recorded map of the subdivision set forth in Article II hereof, shall be maintained in perpetuity in their natural or mitigated condition. No person or entity shall perform any of the following activities on such conservation area: (a) fill, grade, excavate or perform any other land disturbing activities; (b) cut, mow, burn, remove or harm any vegetation; (c) construct or place any roads, trails, walkways, buildings, mobile homes, signs, utility poles or towers or any other permanent or temporary structures, (d) drain or otherwise disrupt or alter the hydrology or drainage ways of the conservation area; (e) dump or store soil, trash, or other waste; (f) allow animal grazing or watering or use for any other agricultural or horticultural purpose on such conservation areas. This covenant is intended to ensure continued compliance with the mitigation condition of authorization issued by the United States of America, U.S. Army Corps of Engineers, Wilmington District, and therefore may be enforced by the United States of America. This covenant is to run with the land and shall be binding on the Declarant, the owner of any lot in the subdivision and all persons or entities claiming under them.

This Article IV cannot be amended or modified without the express written consent of the U.S. Army Corps of Engineers, Wilmington District, or its authorized successor.

## ARTICLE V

### COMPLIANCE WITH DEPARTMENT OF TRANSPORTATION TRAFFIC MAINTENANCE STANDARDS

Driveway headwalls, fences, mailboxes, newspaper delivery boxes or other roadside obstructions, constructed within the right of way of any street as shown on the recorded plat of the subdivision in a location or out of materials determined to be a traffic safety hazard by the North Carolina Department of Transportation or the Declarant, shall not be permitted. It shall be the duty of the Owner of any Lot to remove such obstruction, at the Owner's sole expense, within thirty (30) days following written notification of such objection by the North Carolina Department of Transportation or Declarant. In the event any Owner fails to remove an obstruction within the thirty (30) day period following receipt of notice of the objection, Declarant shall be entitled, but not obligated, to remove the obstruction and recover the expense and cost, including reasonable attorney's fees, incurred in the removal.

## ARTICLE VI

### GENERAL PROVISIONS

Section 1. No portion of any lot shall be covered by structures and/or paved surfaces, including walkways or patios of brick, stone, slate or similar materials than is allowed by stormwater runoff rules adopted by the State of North Carolina, Onslow County, or any governmental entity and this covenant may also be enforced by the State of North Carolina, Onslow County, or any of said governmental entities.

Section 2. Underground Wiring and Street Lights. Declarant, or its successors or assigns, reserves the right to subject the real property described herein 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 initial payment and/or a continuing monthly payment to Jones-Onslow EMC by the owner of each home.

Section 3. Any radio or television satellite receiving dish shall be located in the rear of or attached to the dwelling on any lot and no closer than 30 feet to the property line. No dish shall exceed 24 inches in diameter.

#### Section 4. Stormwater Management.

A. The following covenants in this section 4 are intended to ensure ongoing compliance with State Stormwater Management Permit Number SW8 060122 as issued by the Division of Water Quality under NCAC 2H.1000.

B. The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.

C. These covenants are to run with the land and be binding on all persons and parties claiming under them.

D. These covenants pertaining to stormwater listed in this Section 5 may not be altered or rescinded without the consent of the State of North Carolina, Division of Water Quality.

E. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality.

F. The maximum built-upon area per lot is 6,546.9 square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries and that portion of the right-of-way between the front lot line and the edge of the pavement. Built-upon area includes, but is

not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina, driveways, and parking areas, but does not include open wood decking or the water surface of swimming pools.

G. Swales shall not be filled in, piped, or altered except as necessary to provide driveway crossings.

H. Filling in or piping any vegetative conveyances (ditches, swales, etc.) associated with the development, except for average driveways crossings, is strictly prohibited by any persons.

I. Each lot will maintain a 30' wide vegetated buffer between all impervious areas and surface waters.

J. All roof drains shall terminate at least 30' from the mean high water mark of surface waters.

K. Built-upon area in excess of the permitted amount requires a state stormwater management permit modification prior to construction.

L. All permitted runoff from outparcels or future development shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.

M. Filling in, piping or altering any designated 5:1 curb outlet swale associated with the development is prohibited by any persons.

N. This project proposes a curb outlet system. Each designated curb outlet swale or 100 foot long vegetated area shown on the approved plan must be maintained at a minimum of 100 foot long, maintain 5:1 (H:V) side slopes or flatter, have a longitudinal slope no steeper than 5%, carry the flow from a 10 year storm in a non-erosive manner and maintain a dense vegetated cover and be located in either a dedicated common area or a recorded drainage easement.

O. In the event any lot is within CAMA's regulated Area of Environmental Concern ("AEC"), the built-upon area ("BUA") for that lot, as calculated by CAMA, is less than the amount shown in these restrictions, the most restrictive BUA will be the maximum permitted limit for that lot.

Section 5. Except as provided in this Article VI, Section 4, the covenants and restrictions of this Declaration, are subject to being altered, modified, cancelled or changed at any time as to said subdivision as a whole or as to any subdivided lot or part thereof by written document executed by the Declarant, for so long as the Declarant owns at least one (1) lot within this subdivision, without the consent of any other lot owner. Except as provided in this Article VI, Section 4, at such time as the Declarant no longer owns any lot in this subdivision, the covenants and restrictions set forth herein may be altered, modified, cancelled or changed by written document executed by not less than seventy-five percent (75.0%) of the lot owners in the subdivision.

Section 6. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Declarant, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then owners of seventy-five percent (75.0%) of the subdivided lots has been recorded, agreeing to change said Covenants and Restrictions in whole or in part.

Section 7. Any notice required to be sent to any owner under the provision of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as an owner on the records of the Declarant at the time of such mailing.

Section 8. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and failure by the Declarant or 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. Should suit become necessary to enforce any provisions of these covenants the losing party shall be accessed and the prevailing party shall recover the court costs of such suit including, but not limited to, attorney fees for the prevailing party in an amount to be set by the Court.

Section 9. 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.

IN TESTIMONY WHEREOF, Declarant, has executed this instrument the day and year first above written.

MORTON FARMS, INC.

by: Harold C. Morton  
Harold C. Morton  
President

STATE OF NORTH CAROLINA  
COUNTY OF ONSLOW

I, a notary public of the county and state aforesaid, do hereby certify that Harold C. Morton personally came before me this day and acknowledged that he is President of Morton Farms, Inc., a North Carolina Corporation, and that, by authority duly given and as the act of the Corporation, he signed the foregoing instrument in its name on its behalf as its act and deed.

Witness my hand and official seal this the 15<sup>th</sup> day of September, 2006.

J. Dewey Edwards, Jr.  
Notary Public

My commission expires:

July 9, 2011

