

Doc ID: 010301680013 Type: CRP
Recorded: 05/14/2010 at 10:40:19 AM
Fee Amt: \$50.00 Page 1 of 13
Pitt County, NC
Deborah T Barrington REG OF DEEDS
BK 2744 PG 167-179

NORTH CAROLINA
PITT COUNTY

file
PREPARED BY: HORNE & HORNE, PLLC

DECLARATION OF CONDITIONS, RESTRICTIONS
AND COVENANTS RUNNING WITH THE LAND

THIS DECLARATION, made on the date hereinafter set forth by Lynn Evans Development, LLC, a North Carolina Limited Liability Corporation, with its principal offices in Pitt County, North Carolina, hereinafter referred to as "Declarant" does hereby covenant and agree to and with all other persons, firms or corporations now owning or hereafter acquiring as owners any tract or parcel of land in the area designated.

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Winterville Township, Pitt County, North Carolina, which is more particularly described as follows:

Lying and being in the City of Winterville, Winterville Township, Pitt County, North Carolina and being all of Mellon Downs, Phase One as shown on map recorded in Map Book 71, Pages 191-192, Pitt County Registry.

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 same, 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

Section 1: "Association" shall mean and refer to Mellon Downs 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 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: "Common Area" shall mean all real property (including the improvements thereto) owned or maintained by the Association to be reserved to the Association at the time of the conveyance of the first lot, if any.

Section 5: "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, and shall be known when platted as lots 1 through 15, 27 through 38 and 58 through 71.

Section 6: "Declarant" shall mean and refer to Lynn Evans Development, LLC, its successors and assigns.

Section 7: "Member" shall mean and refer to every person or entity who holds membership, as a lot Owner, in the Association.

ARTICLE II

Section 1: Owner's Easement 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 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 2/3rds of each class of members has been recorded.

Section 2: Declaration 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 classes of voting membership.

Class A. Class A membership shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as then determined, 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, and notwithstanding any other provisions herein, shall not be assessed at any rate. Class B membership shall cease and be converted to the Class A membership when the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, and in all events no later than October 1, 2012.

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 assessment or charges for maintenance and electricity on all common areas, 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 of the assessment.

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 of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to, landscaping maintenance, the cost of repairs, electricity, replacements and additions, the cost of labor, equipment, materials management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to

represent the Association when necessary, and such other needs as may arise.

Section 3. Basis and Annual Assessments. No assessments shall be made on any lot until the platted lot shall have been conveyed by deed. The initial annual assessment shall be \$100.00 per originally platted 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 effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington D.C.) from the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for the next succeeding two (2) years may be increased above that established by the Consumer Price Index formula by a vote of the members, and for each succeeding period of two (2) years thereafter, provided that any such change shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

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 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 (2/3rds) of the votes of each class of members who are voting in person or by proxy at the 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 (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) per cent 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 requirements, 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. Except as provided for Class B members, 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 Assessments and 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 lot to any owner. However, it is not the intent of the declarant to assess any Lot during the construction phase. That is to say the initial conveyance from the declarant to the first lot owner who receives a deed from the Declarant shall not pay assessments until the original owner receives a certificate of occupancy. 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 assessments 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 Assessment and 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 eighteen per cent 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 or deny 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.

Section 10: Exempt Property. All property dedicated to and accepted by, a local authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE V COMMITTEES

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE VI USE RESTRICTIONS

Section 1: Use. No lot shall be used except for residential purposes. No lot shall be subdivided by any Owner except by Declarant's written permission. No structure shall be erected, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed three stories in height, exclusive of basement, one detached structure not exceeding one and one-half (1.5) stories in height, to be used as a private garage for not more than two (2) vehicles and one (1) non-detached outbuilding constructed and used incidental to the residential use of the property.

Section 2: No commercial use. The purpose herein described shall be used for residential purposes only and no business or commercial enterprise may be carried on upon the premises.

Section 3: Plan approval. No site preparation or initial construction, erection or installation of any improvement, including, but not limited to, dwelling units, outbuildings, driveways, fences, walls, signs, mailboxes or other structures shall be undertaken upon any lot or parcel of land in this subdivision without the prior approval of the building plans, exterior paint or color schemes and exterior materials by the Declarant or its successors or designees. A detailed landscaping plan must be approved by the Declarant or its successors or designees. All landscaping plans shall reflect and include a minimum of one (1) tree at least six feet in height to be planted in the front yard area and shrubbery covering the entire front elevation of the structure. Landscaping is to be completed by the time of occupancy, unless an extension is given by the designee. A detailed plan of the outside elevation is to be signed by the designee prior to

construction with 8.5" x 11" in size recommended. All driveways must be constructed of concrete or concrete type materials. It is the intent of the parties that all exteriors of the structures shall be harmonious with all of the other structures in Mellon Downs, Phase One Subdivision. Nor shall any structure of any type be started on any of the above-described lots until a plot plan showing the location of such structure have been approved by the Declarant or its successors or designees. Such approval in both events must be in writing. If no approval or rejection has been given for such planned use or for such plans which have been deposited or delivered to the Declarant, its successors or designees within thirty (30) days after written application, the plan shall be deemed to have been approved.

Section 4: Any residence constructed on a lot must have a minimum square footage, more specifically described as heated living area, exclusive of one-story open porches, garage and basements, of not less than One Thousand Four Hundred (1,400) square feet.

Section 5: Structure Type: No mobile home, pre-fab, modular home, package home or other pre-built home shall be placed on any lot to be used as a residence. Any residence built on any lot shall be "stick built" except that pre-fabricated roof trusses and pre-fabricated fireplaces and chimneys may be utilized in a residence built on any lot.

Section 6: Setbacks. No buildings shall be located on any residential building plot nearer to any lot line than as allowed under the Winterville zoning ordinance.

Section 7: Nuisance. No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Owners and their invited guests shall refrain from playing loud music from any source whereas to disturb any other owner or their invited guests.

Section 8: Temporary structures. No trailer, basement, tent, shack, garage, barn or other outbuilding erected in the tract shall at any time be used as a residence temporarily or permanently nor shall any structure of a temporary character be used as a residence. A temporary construction command post will be allowed.

Section 9: No barns, stables, and outbuildings for the purpose of maintaining horses or other livestock type animals shall be permitted on any lot. No animals, livestock, poultry, or reptiles of any kind shall be raised, bred or kept on any portion of the property, except that no more than two domesticated dogs and cats and small non-offensive and harmless household pets may be kept by the owner of the property, provided that they are not kept or used for breeding or maintained for any commercial purpose. Pets kept outside must not constitute a danger or

nuisance including, but not by way of limitation, excessive barking or causing property damage to other lot owners or to the subdivision. When outside no animal may be staked out and when not contained within a fenced area, all pets must be kept on a leash. No animal pens, runs, housing or like enclosure shall be kept or placed on any lot, however, this shall not exclude proper fencing of the yard as permitted herein or animal runs and housing that are not visible from the street.

Section 10: Mailbox. No mail or paper box or other receptacle of any kind for use in the delivery of mail, magazines, newspaper or similar materials shall be erected or located upon any lot except such receptacle of standard design as approved by the Declarant or its successors or designees.

Section 11: Parking. No trucks or tractors may be stored or parked upon the property. This provision shall not, however, be interpreted to prohibit the owner of a pick-up truck, up to 1 ton in size, being used by any owner of this property for his personal conveyance, and such truck may be parked upon the property. No mobile home, camper or recreational vehicle shall be permitted to remain upon any street or lot unless it is located so as not to be visible from any street or road within the subdivision. No vehicle required by the State of North Carolina to have a current license may be kept on any property for more than 10 days without a current valid license plate.

Section 12: Clotheslines. No outside clotheslines shall be erected or kept on any lot.

Section 13: Satellite dishes. No satellite dish or comparable communication device having a size larger than eighteen (18) inches in diameter may be located on any lot; further any such satellite dish or comparable communication device must be located in the back yard of any lot. No transmitting tower or antenna exceeding a height of twenty (20) feet from ground level shall be placed, used or erected on any lot within the property, either temporarily or permanently.

Section 14. Fences. Any other fence must be approved pursuant to the provisions of Section 3 herein. It is further provided that no fence of any kind shall be constructed on any lots on the property in the front yard of such lot, said front yard being defined as that particular area of the yard located between the rear corner of the residence and the street.

Section 15. Signs. No sign of any kind shall be displayed to the public view on this property except one sign of not more than eight (8) square feet advertising the property for sale, or signs used by a builder, developer, Realtor or owner to advertise the property during construction and then for sale. No yard or lawn ornaments of any kind will be permitted to be

permanently placed on any lot, except in the rear portion of the yard, said rear portion of the yard being defined as that particular area of the yard located between the rear corner of the residence and the back or rear lot line.

Section 16. All Lots, whether occupied or unoccupied, shall be well maintained and kept free of rubbish and debris. Rubbish, trash, debris, garbage and other waste must be kept only in sanitary containers which are in a screened area not generally visible from the road. All containers, or other equipment for storage of disposal of such waste materials shall be kept in a clean and sanitary condition and shall be disposed of on a regular basis. Burning of trash or debris is not permitted.

Section 17. There shall be no discharging of guns, pistols, or any other firearm of any kind, caliber, type or method of propulsion; and no animal hunting is permitted within the Subdivision perimeter or the Development Area.

Section 18. Entire agreement. Nothing herein contained shall be construed as imposing any covenants or restrictions on any property of the owners of this tract of land other than those properties to which these Restrictive Covenants specifically apply. No provision contained in these Restrictions shall be deemed to have been waived, abandoned, abrogated by reason of failure to enforce them on the part of any Person as to the same or similar future violations, no matter how often the failure to enforce is repeated.

ARTICLE VII VARIANCES

The Declarant or its successors or designees in their sole discretion may allow reasonable variances and adjustments to these Restrictions in order to alleviate practical difficulties and hardships in their enforcement and operation. Any such variances shall not violate the spirit or the intent of this document to create a Subdivision of Lot owned in fee by various persons with each such Owner having an easement upon areas owned by the Corporation. To be effective, a variance hereunder shall be recorded in the Pitt County Register of Deeds Office; shall be executed on behalf of the Corporation; and shall refer specifically to this Declaration.

ARTICLE VIII EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. 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 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 drainage channels in the easements.

Declarant shall have a reasonable construction easement across the Common Area for the purpose of constructing improvements on the lots.

ARTICLE IX
GENERAL PROVISIONS

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 restrictions 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 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 (90) per cent of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75) percent of the Lot Owners. Any amendment must be recorded.

Section 4: Annexation. Additional residential property and Common Area may be annexed to the Properties within five years from the recordation of this instrument in the Pitt County Registry.

IN WITNESS WHEREOF, the said parties of the first part, have hereunto set their hands and seals, this the 12th day of May, 2010.

LYNN EVANS DEVELOPMENT, LLC

 (SEAL)
Lynn Evans, Member-Manager

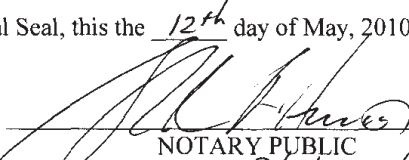
STATE OF NORTH CAROLINA
COUNTY OF PITT

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Lynn Evans.

Witness my hand and Notarial Seal, this the 12th day of May, 2010.

(Affix Seal Here)

STEPHEN F. HORNE, III
NOTARY PUBLIC-PITT COUNTY, NC
MY COMMISSION EXPIRES:



NOTARY PUBLIC
Printed/Typed Name: Stephen F. Horne III
My Commission Expires: 4-13-15

JOINDER AND CONSENT OF NOTEHOLDER, TRUSTEE AND BENEFICIARY
KNOW ALL MEN BY THESE PRESENTS: THAT, WHEREAS,

(1) BB&T, hereinafter called the "Mortgagee" is the beneficiary under the hereinafter described Deed of Trust which encumbers the property subject to this Declaration and of which this Joinder and Consent is a part.

(2) The said Deed of Trusts in which Mortgagee is beneficiary are more fully described and delivered by Lynn Evans Development, LLC to BB&T Collateral Service Corp., Trustee for BB&T, dated February 13, 2009 and recorded in Book 2587, Page 109 of the Pitt County Registry and a Deed of Trust in which Mortgagee is beneficiary are more fully described and delivered by Lynn Evans Development, LLC. to BB&T Collateral Service Corp., Trustee for BB&T, dated August 20, 2009 and recorded in Book 2664, Page 90 of the Pitt County Registry.

(3) Mortgagee is requesting that BB&T Collateral Service Corp., join with them in executing this Joinder and Consent in order to subordinate its said Deed of Trust, and the lien thereof, as hereinafter provided.

NOW THEREFORE, FOR AND IN CONSIDERATION of the premises, the submission of the property described herein to this Declaration, and other good and valuable consideration, the receipt and sufficiency of all of which consideration is herewith and hereby acknowledged, the said Mortgagee and their Trustee, BB&T Collateral Service Corp., hereby consent to the execution, delivery and recordation of the foregoing Declaration and join in the said execution, delivery and recording of said Declaration without representation or warranty of any type as to the matters and things therein contained; AND IN ADDITION THERETO, SAID Mortgagee and their Trustee further subject and subordinate said Deeds of Trust, and the lien and encumbrance thereby created, to said Declaration, BUT TO THE EXTENT ONLY, that said Deeds of Trust recorded in Book 2587, Page 109 and in Book 2664, Page 90 of the Pitt County Registry shall be inferior and subordinate to said Declaration, IT BEING EXPRESSLY UNDERSTOOD AND AGREED that except for such subordination the Deeds of Trust now owned and held by Mortgagee and all and singular the terms and provisions thereof shall be and remain in full force and effect.

CORPORATE TRUSTEE AND/OR CORPORATE NOTE HOLDER EXECUTE HERE:

BB&T COLLATERAL SERVICE CORPORATION

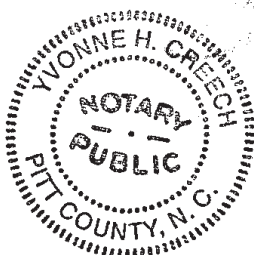
BRANCH BANKING & TRUST COMPANY

By: [Signature]
Title: President
Corporate Seal

By: [Signature]
Title: Vice President
(Corporate Seal)

CORPORATE ACKNOWLEDGMENTS

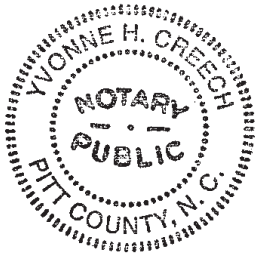
SEAL - STAMP



State of North Carolina, County of Pitt
I, a Notary Public of the County and State aforesaid, certify that
Dennis W. Alexander personally came
before me this day and acknowledged that he/she is
Sr. Vice President of **BB&T COLLATERAL SERVICE CORPORATION**, a corporation, and that he/she, as being authorized to do so, executed the foregoing on behalf of the corporation. Witness my hand and official seal on May 12, 2010.

Yvonne H. Creech
Notary Public
Print Name Yvonne H. Creech
My commission expires: 11/14/2013

SEAL - STAMP



State of North Carolina, County of Pitt
 I, a Notary Public of the County and State aforesaid, certify that
John R. Bunting III personally came
 before me this day and acknowledged that he/she is Vice President
 of **BRANCH BANKING & TRUST COMPANY**, a corporation, and
 that he/she, as Vice President being authorized to do so,
 executed the foregoing on behalf of the corporation. Witness my hand and
 official seal on May 12, 2010.

Yvonne H. Creech
 Notary Public
 Print Name: Yvonne H. Creech
 My commission expires: 11 / 14 / 2013