

JACQUELINE S. FRIERSON, PERQUIMANS CO. NC

STATE OF NORTH CAROLINA

COUNTY OF PERQUIMANS

BOOK 419 PAGE 808 (5)

406193



**FIRST AMENDMENT TO RESTATED DECLARATION
(ALBEMARLE PLANTATION)**

This FIRST AMENDMENT TO THE AMENDED AND RESTATED DECLARATION OF ALBEMARLE PLANTATION (the "First Amendment") is made as of this 30th day of August,, 2013, by **ALBEMARLE PLANTATION PROPERTY OWNERS ASSOCIATION, INC.**, a North Carolina corporation, hereinafter referred to as the "Association", and **ALBEMARLE PLANTATION HOLDINGS, LLC**, a North Carolina limited liability company ("Declarant").

RECITALS:

A. Albemarle Plantation is a residential real estate development which is located in Perquimans County, North Carolina. The Association recorded a Restated Declaration of Covenants, Conditions and Restrictions for Albemarle Plantation dated August 1, 2012, and recorded in Book 410, Page 751, Perquimans County Registry (the "Restated Declaration").

B. Under the provisions of Article 11, Section 5 of the Restated Declaration, the Association reserved the right to modify or amend said Restated Declaration except as limited in Section 13.06 of Article Three (3) without prior notice and without the consent of any person or entity, for any purpose, provided such amendment or modification does not materially alter the basic plan of the development.

C. Declarant is the owner of 58.68 acres more or less shown on sketch plan entitled "Albemarle Plantation Cole Tract" prepared by Bissell Professional Group dated 2-4-11 and subsequently referred to as Waterleaf on plats approved by the County, and being bounded by Pasquotank Blvd., Mathews Road, Holiday Island Road and Woodside II section which is more particularly described on Exhibit A (the "Cole Tract"), and pursuant to Section 14.02 of Article Three of the Restated Declaration. Declarant has agreed to subject the Cole Tract to the Restated Declaration for purposes of assuring compatible architectural and governance integrity with the rest of Albemarle Plantation.

D. Association has elected to amend the Restated Declaration to reflect the fact that the Cole Tract will hereafter be subject to the Restated Declaration.

NOW, THEREFORE, Association, pursuant to the provisions of Article 11, Section 5 of the Restated Declaration hereby amends said Restated Declaration as follows:

1. Annexation of Cole Tract. Declarant hereby agrees that the Cole Tract will be part of Albemarle Plantation and hereby subjects the Cole Tract to the Restated Declaration, and all of its covenants, rights, benefits and burdens. Notwithstanding the foregoing, no assessments will be due or owing except as provided in the last sentence of Section 13.02 of Article Three of the Restated Declaration. Notwithstanding the provisions of Section 4 of Article Ten of the Restated Declaration to the contrary, the Cole tract and all improvements shall be subject to Architectural approval of the Architectural Standards Committee ("ASC") which shall act reasonably, equitably and in good faith with respect to all approvals connected to improvements in the Cole Tract.

2. Preferred Builders in the Cole Tract. All Custom Homes must adhere to the provisions of Section 3 of Article 10 of the Restated Declaration relating to the Preferred Builders Program. All Spec Homes in the Cole Tract must also adhere to the provisions of Section 3 of Article 10 of the Restated Declaration; provided, however, Declarant may, at its option, propose one additional "preferred builder", subject to the approval by the APPOA, which shall not be unreasonably withheld or delayed. Declarant may substitute a new "preferred builder" from time to time, provided that APPOA is not obligated to approve more than one preferred builder for Declarant at any one time. All "preferred builders" for Spec Homes or Custom Homes in the Cole Tract are obligated to pay fees charged to other preferred builders, which is currently 1.5% of the base construction contract, unless the builder lists the property with Albemarle Realty for a minimum of twelve (12) months for the customary listing fee which is currently six (6%) per cent.

3. Fees for Bonds and Construction. Notwithstanding the policies of the ASC as to other properties to the contrary, review fees for Spec Homes in the Cole Tract will be limited to any reasonable out-of-pocket costs or expenses incurred by the ASC, and the performance bond will be waived. Custom Homes in the Cole tract will pay the customary ASC review fee, the performance bond, and the road bond. On Spec Homes built by Declarant in the Cole Tract, the road fee will be waived until such time as the roads are turned over to the APPOA for maintenance and provided further that the roads must have been maintained by Declarant until such turnover.

4. Modification to Section 5 of Article Five: The first sentence of Section 5 of Article Five is hereby deleted and replaced with the following:

"The total annual assessments shall be divided among the Lots, Dwellings and Recreational Amenities made subject to this Declaration (other than any Lots, Dwellings and Recreational Amenities that are excluded pursuant to Section 13.02 of Article Three of the Restated Declaration)."

5. Defined Terms: The following terms shall have the following meanings when used in this First Amendment to the Restated Declaration:

"Custom Home" means a home built or to be built under a contract for a specific non-affiliated third party purchaser and customized to their specifications on an unimproved lot that has been sold by Declarant, any Affiliate of Declarant or any Subsequent Developer.

"Spec Home" means any home that is not a Custom Home.

5. Cumulative Effect. All of the Covenants, Conditions and Restrictions contained in the Restated Declaration, as amended, and in this First Amendment to the Restated Declaration, shall run with and encumber the Property. Whenever a provision of this Amendment to the Restated Declaration conflicts with specific provisions of the Restated Declaration, the provisions of this Amendment shall control.

6. Joinder by Declarant. Declarant joins in the execution of this First Amendment for purposes of confirming that it has agreed to the subjecting of the Cole Tract to the provisions of the Restated Declaration.

IN WITNESS WHEREOF, this First Amendment to the Restated Declaration has been signed and executed by the Declarant and adopted the word "SEAL" as its seal, the day and year first above written.

Albemarle Plantation Property Owners Association,
Inc. a North Carolina non-profit corporation

By: T.A. Facey
Name: T.A. FACEY
Its: PRESIDENT

ALBEMARLE PLANTATION HOLDINGS, LLC

By: William G. Garner (SEAL)
William G. Garner, Manager

STATE OF NORTH CAROLINA

COUNTY OF Chowan
~~PERQUIMANS~~

I, Shayne Byrum, a Notary Public of the County of Chowan and State aforesaid, certify that Terry Facey personally came before me this day and acknowledged that he is President of Albemarle Plantation Property Owners Association, Inc., a North Carolina Corporation, and that by authority duly given by the Board of Directors as the act of the Corporation, the foregoing instrument was signed in its name by its _____ President, sealed with its Corporate seal.

Witness my hand and official stamp or seal, this 16 day of September 2013.

(NOTARY SEAL)
Shayne Byrum
Notary Public
My Commission Expires: 11/29/15

STATE OF NORTH CAROLINA
COUNTY OF Dist

I, a Notary Public for the said County and State, do hereby certify that William G. Garner, Manager of Albemarle Plantation Holdings, LLC, a limited liability company, personally appeared before me this day and acknowledge the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal, this the 9 day of Sept, 2013.

My commission expires:
March 8, 2015

Kathy H. Glidenell
Notary Public



EXHIBIT A**COLE TRACT DESCRIPTION**

The Cole Tract, consisting of two parcels, the first of which bears the tax I.D. No. 2-0082- 0027A, containing 10.02 acres more or less; and the second of which bears the tax I.D. No. 2-0082-0006, containing 45.319 acre, more or less; and more being more particularly described as:

Bounded on the Northwest by Matthews Road, on the South by Pasquotank Blvd., on the East by Woodside Section of Albemarle Plantation and on the Northeast by Holiday Island Road.