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2004

FILED  
CHATHAM COUNTY  
REBA G. THOMAS  
REGISTER OF DEEDS

Durham Co.  
6/27/07  
5659 191

FILED Dec 17, 2004  
AT 10:09:53 am  
BOOK 01148  
START PAGE 0039  
END PAGE 0045  
INSTRUMENT # 15995

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NORTH CAROLINA  
CHATHAM COUNTY

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COLVARD FARMS DEVELOPMENT CO.  
9310 NCHMY TSI  
DURHAM, NC 27713

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF COLVARD FARMS SUBDIVISION**

This AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF COLVARD FARMS SUBDIVISION is made as of this 15 day of December, 2004 by the owners of not less than seventy-five percent (75%) of the Lot Owners subject to the Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Colvard Farms Subdivision recorded in Book 991, Page 311, Chatham County Registry, on January 27, 2003 (the "Declaration").

**WITNESSETH:**

WHEREAS, the Declaration provides that the Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners agreeing to amend the Declaration upon the recording of such amendment; and

WHEREAS, the parties to this instrument desire to amend the Declaration as set forth herein below; and

WHEREAS, there are a total of 123 Lots currently subject to the Declaration; and

WHEREAS, attached hereto as Exhibit A and incorporated by reference herein is a Certificate of Lot Owners representing 94 or 76.4% of such Lots consenting to this Amendment.

NOW, THEREFORE, the undersigned Lot Owners do hereby declare that the following amendments to the Declaration shall be effective and binding on all parties having or hereafter acquiring any right, title and interest in the real property subject to the Declaration, or any part thereof, and shall inure to the benefit of each Lot Owner or successor in interest or assignee thereof.

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1. The following definitions are added to Article I of the Declaration:

"Associate Member" means an owner of a CFEE Lot.

"CFEE Lot" means a lot in Colvard Farms Executive Estates, as shown on a plat recorded in Plat File 99-S24, Chatham County Registry.

2. The definition of "Lot" in Article I of the Declaration is amended to read as follows:

"Lot" shall mean and refer to any numbered or lettered plot of land that is part of the Property, is intended for single-family residential use and is shown on a plat which Developer has (i) recorded or caused to be recorded in the office of the Register of Deeds, Chatham and/or Durham Counties, North Carolina, (ii) has received approval for recordation, or (iii) plan to record in the future.

3. Article II, Section 6 of the Declaration is amended to read as follows:

Section 6. Additional Lands. Additional lands, if any, which may become subject to this Declaration under the provisions of this Section II, may in the future be referred to as a part of Colvard Farms. Also, the name Colvard Farms may be used by the Developer to refer to other nearby properties, if any, not subject to this Declaration. It is expressly acknowledged that the CFEE Lots are not subject to this Declaration and that the Lot Owners shall have no rights with respect to such property. On behalf of the Association, the Developer is authorized to enter into a maintenance agreement with the owners of the CFEE Lots pursuant to which such owners would be subject to the same fees for use of the common areas and water, sewer and irrigation services as those Members of the Association.

4. Article III, Section 2 of the Declaration is amended to add the following provision:

Associate Members shall be entitled to one (1) vote for each CFEE Lot owned by such Associate Member, but only with respect to matters coming before the Association that affect annual or special assessments. Associate Members shall not be entitled to vote on other matters brought before the Association and shall not be counted for purposes of determining a quorum of Members.

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5. Article IV, Section 2 of the Declaration is amended to read as follows:

Section 2. Title to the Permanent Open Space. Prior to December 31, 2006, Developer shall convey to the Association (by deed without warranty at Developer's option) fee simple title to all real property portion of the Permanent Open Space, if any, shown on any plat of any part or all the Property recorded by Developer prior to the recordation of this Declaration, which conveyance shall be free and clear of all encumbrances and liens other than the lien of current year's ad valorem taxes and assessments not in default, utility, and access easements, other easements, restrictions and encumbrances outstanding and of record in Chatham and/or Durham Counties, North Carolina, and the terms and conditions of this Declaration and any applicable Supplemental Declaration. Developer shall convey to the Association other real Property portions of the Permanent Open Space shown on any maps of part or all of the Property recorded subsequent to the recordation of this Declaration prior to the conveyance of the first Lot shown on any such map, such conveyance to be in accordance with and subject to the terms and conditions of this paragraph.

6. Article V, Section 3 of the Declaration is amended to read as follows:

Section 3. Maximum Annual Assessment and Annual Assessment. Through and including December 31, 2004, the maximum annual assessment shall be \$1,728 per year per Lot.

- (a) The maximum annual assessment for the calendar year beginning January 1, 2005, and for successive calendar years thereafter, shall be established by the Board and may be increased by the Board without approval by the membership of the Association by an amount per year not to exceed the greater of (i) ten percent (10%) of the amount of maximum annual assessment of the immediately preceding calendar year or (ii) the percentage increase reflected in the U.S. Bureau of Labor Statistics, Washington D.C. or such other index as may be the successor to said Consumer Price Index, for the twelve month period ending the immediately preceding July 1.
- (b) The maximum annual assessment for the calendar year beginning January 1, 2005, and for each successive calendar year thereafter, may be increased without limit by the affirmative vote of two-thirds (2/3) of the votes of each class of membership entitled to be cast by the Members present or represented by proxy at a duly called meeting of the Association at which a quorum is present. The provisions of this subsection shall not apply to nor be a limitation upon any change in the maximum annual assessment undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under this Declaration or its Articles or Bylaws or any applicable laws.

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(c) Subject to the provisions of this Article V, the Board may fix the annual Assessment at any amount not in excess of the maximum annual assessment allowed for the applicable calendar year.

7. Article VI, Section 1(a) of the Declaration is amended to read as follows:

(a) The Association shall be responsible for the improvement, repair, replacement, use, operation and maintenance of the Permanent Open Space as provided in this Declaration, including, but not limited to, planting, mowing, pruning, fertilizing, preservation and replacement of the vegetation and landscaping, and the upkeep and maintenance of nature trails, sprinklers, sprinkler pumps, wells, signs, lighting, planting boxes and other equipment, apparatus and Improvements located in the Permanent Open Space or located in easements granted to or reserved by the Developer or the Association. In addition, the Association shall be responsible for the operations and maintenance of roads and utilities (including the Community Water System, Water Reclamation Facility, including, but not limited to, the treatment plant, collection lines and grinder pumps for each Lot, and Spray Irrigation System). With respect to the Common Property the foregoing responsibility is to such extent as the Board may determine, in its sole discretion, with consideration being given to the extent to which any governmental entity is responsible for and carrying out maintenance of same;

8. A new Article VIII, Section 30 of the Declaration is added to read as follows:

Section 30. In-ground Irrigation Systems: Use of Non-potable Irrigation Water. The Improvements on each Lot purchased from Developer after December 15, 2004, shall include in-ground irrigation systems servicing all turf areas on such Lot. All turf irrigation shall be performed only by means of in-ground irrigation systems, and all in-ground irrigation systems shall use, as of the date made available by the Developer, only water from the non-potable irrigation water supply for the Property; provided, however, for Lots not serviced by backyard in-ground irrigation systems and purchased from the Developer prior to December 15, 2004, Developer shall provide a tap access in the backyard to the non-potable irrigation system. These backyard taps shall be integrated into the in-ground irrigation control system such that they operate in conjunction with existing in-ground irrigation systems.

9. A new Article X, Section 7 of the Declaration is added to read as follows:

Section 7. Easement for Installation and Maintenance of Connections to Non-potable Irrigation Water Supply. The Developer and the Association hereby reserve an easement over and across each Lot for the purposes of (i)

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installing pipes and other equipment in order to connect the in-ground irrigation system on each Lot to the Property's non-potable irrigation water supply, (ii) if meeting the criteria of Section 8, installing pipes and other equipment in order to connect the alternative tap access systems on each Lot to the Property's non-potable irrigation water supply, and (iii) repairing any leaks or replacing pipes and other equipment in connection therewith.

10. These amendments shall be effective from the date of recordation in the Chatham County Registry.

11. Except as expressly set forth herein, the Declaration has not been modified or amended and is hereby re-acknowledged and affirmed.

IN WITNESS WHEREOF, not less than seventy-five percent (75%) of the Lot Owners, subject to the Declaration has caused this instrument to be executed as of the day and year first above written.

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Exhibit A

**CERTIFICATE OF LOT OWNERS CONSENTING TO AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
COLVARD FARMS SUBDIVISION**

F. Neal Hunter  
Name of Lot Owner  
89 Crooked Creek Lane  
Address  
F. Neal Hunter  
Signature as Printed

Jim A. Hunter  
Name of Lot Owner  
17 Woodgate Court  
Address  
Jim A. Hunter  
Signature as Printed

Kathleen Lewis  
Name of Lot Owner  
27 Woodgate Ct  
Address  
Kathleen Lewis  
Signature as Printed

\_\_\_\_\_  
Name of Lot Owner  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
Signature as Printed

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STATE OF NORTH CAROLINA

Durham COUNTY

I, Katherine A. Hunter, a notary public of the aforesaid county and state, certify that the following persons personally appeared before me this day and acknowledged the execution of the foregoing instrument.

F. Neal Hunter \_\_\_\_\_

Jeffrey N. Hunter \_\_\_\_\_

Kathleen Kowis \_\_\_\_\_

Witness my hand and official seal, this 17 day of December, 2004.



My commission expires:

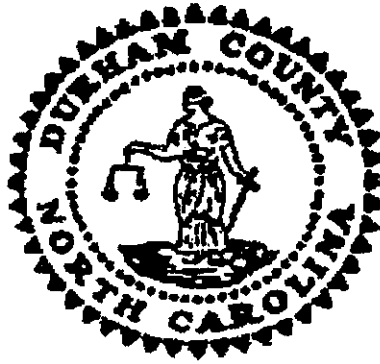
5-1-07

Katherine A. Hunter  
Notary Public

Chatham County, North Carolina  
REBA G. THOMAS Register of Deeds  
The foregoing certificate(s) of  
KATHERINE A HUNTER

notary/notaries public  
is/are certified to be correct.

Vicky E. Scott  
Assistant - Register of Deeds



WILLIE L. COVINGTON  
REGISTER OF DEEDS, DURHAM COUNTY  
DURHAM COUNTY COURTHOUSE  
200 E. MAIN STREET  
DURHAM, NC 27701

**PLEASE RETAIN YELLOW TRAILER PAGE**

It is part of recorded document, and must be submitted with original for re-recording  
and/or cancellation.

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Filed For Registration: 06/27/2007 02:34:43 PM

Book: RE 5659 Page: 191-199

Document No.: 2007029332

AMD 9 PGS \$35.00

Recorder: JENNIFER H SMITH



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