

BOOK 1219 PAGE 172

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BOOK/FBI 1219 PAGE 172

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Prepared by and return to: O. Kenneth Bagwell, Jr., 100 Europa Drive, Suite 421, Chapel Hill NC 27514

NORTH CAROLINA
ORANGE COUNTY

DECLARATION OF RESTRICTIVE
AND PROTECTIVE COVENANTS
FOR SILVER CREEK

THIS DECLARATION is made on February 24, 1994 by Black Diamond Properties, Inc., hereinafter referred to as "the Declarant." The Declarant states and declares as follows:

A. The Declarant is the owner of certain real property located in Orange County, North Carolina, which is more particularly described in Exhibit A attached hereto and incorporated herein, and which is hereinafter referred to as "Phase I, Silver Creek."

B. The Declarant has subdivided Phase I, Silver Creek into single-family residential lots and public rights-of-way. The Declarant previously conveyed a 102,606 square foot tract adjoining Phase I Silver Creek to the Town of Chapel Hill to be used only as recreation area and open space, by Deed of record at Book 1210 Page 469, Orange County Registry. The Declarant intends to create additional phases of Silver Creek by acquiring and subdividing an additional tract of land adjoining Phase I, Silver Creek, or some portions thereof. That additional tract of land is shown by Exhibit B attached hereto and incorporated herein. The Declarant may create further phases of Silver Creek by acquiring and subdividing additional tracts of land not located within the tract shown on Exhibit B, but only pursuant to subsection 26(b) below.

C. The Declarant desires to impose certain restrictive and protective covenants upon Phase I, Silver Creek and upon all future phases of Silver Creek which may be made subject to this Declaration pursuant to §26 below (all of which phases, existing and future, are hereinafter referred to as "the Subdivision") to protect and to promote the beneficial ownership, use and enjoyment of all single-family residential lots located or to be located within the Subdivision.

NOW, THEREFORE, the Declarant hereby declares that all of the Subdivision and any part thereof shall be held, sold and conveyed subject to the restrictive and protective covenants set forth below, which are for the purpose of protecting the value and desirability of, and which shall run with, all tracts of land located or to be located within the Subdivision. The provisions of this Declaration shall be binding on all parties having any right, title or interest in the Subdivision or any part thereof at any time, their personal representatives, heirs, successors and assigns. The restrictive and protective covenants and provisions are as follows:

1. Definitions. The terms listed in this §1 shall be defined as stated herein:

(a) "Lot" shall mean and refer to any single-family residential lot as shown on any recorded plat of survey of any portion of the Subdivision.

(b) "Owner" shall mean and refer to any person or entity which is the owner of a fee or undivided fee interest in any Lot.

(c) "Declarant" shall mean and refer to Black Diamond Properties, Inc., its successors and assigns.

(d) "Association" shall mean and refer to Silver Creek Homeowners Association, Inc., a nonprofit corporation.

2. Land Use. No portion of the Subdivision shall be used except for residential purposes and for purposes incidental or accessory thereto. All Lots shall be used solely for detached, single-family residential dwellings in accordance with the plans for the Subdivision submitted to and approved by the Town of Chapel Hill. A single-family residential dwelling is defined for the purposes of these covenants as a residential dwelling occupied by related persons of the same family, or by related persons of the same family and not more than two (2) unrelated persons. This shall not preclude the inclusion of an apartment within the residential structure for occupancy by a domestic.

3. Control of Design & Quality of Structures. No dwelling, building or other structure shall be erected, placed or altered on any Lot until the building plans and specifications for such structure, the plot plans showing the proposed location of such structure and the proposed builder have been approved by the Declarant in writing. Such plans shall show floor elevations, drainage and grades, and shall show the location of buildings, other structures, driveways, walkways, fences and walls on the Lot. In determining whether to approve a proposed structure, the Declarant shall consider whether its exterior design is in harmony with existing structures in the Subdivision and whether the proposed location and design are suitable to the applicable Lot. The Declarant may approve or disapprove the proposed construction for any reason related to design, quality or aesthetics, in its sole discretion and judgment. If approved, the construction shall be performed strictly in compliance with the plans, specifications and drawings presented to and approved by Declarant. If the Declarant or its authorized representative shall fail to approve or disapprove a builder, plan, design or location within thirty days after the name of the builder, the complete plans, the complete specifications and the plot plans have been submitted to it in writing, then the requirement of the approval of the Declarant shall be waived. Approvals pursuant to this Section shall be required through the 31st day of December, 2000; provided that the

Association may extend the time period during which such approval shall be required by recording, on or before December 31, 2000, a written declaration of extension with the Orange County Registry. Such declaration shall state that the Association or its authorized representatives have assumed all rights and responsibilities of the Declarant pursuant to this Section, and shall state a definite extension period during which approval pursuant to this Section shall be required.

4. Completion of Construction. Once construction of any structure located within the Subdivision is begun, it must be prosecuted diligently and must be completed within twelve months of its commencement, unless otherwise approved in writing by the Association.

5. Subdivision of Lots. No dwelling shall be erected on less than one Lot and no Lot shall be subdivided; however, owners of adjoining Lots may adjust a common boundary line, provided that the adjustment conforms in all respects with the Development Ordinance of the Town of Chapel Hill and all other provisions of this Declaration.

6. Minimum Dwelling Size. The minimum size of dwelling structures to be erected on the Lots shall be TWO THOUSAND FOUR HUNDRED (2,400) SQUARE FEET of heated and finished living area. A multiple story structure shall have no less than ONE THOUSAND TWO HUNDRED (1,200) SQUARE FEET on its first floor.

7. Setbacks. Setbacks for all structures to be located on the Lots shall be as set forth by applicable provisions of the Chapel Hill Development Ordinance as enacted May 11, 1981, and as subsequently amended.

8. Signs. No commercial signs of any kind shall be displayed to public view on any Lot. This provision does not apply to signs used to advertise a Lot for sale.

9. Mailboxes and Newspaper Containers. The size, type, style, composition and location of mailboxes, newspaper containers and similar structures, if placed apart from the dwelling, must be approved by the Declarant.

10. Driveways. The driveway for a Lot shall be paved prior to occupancy of any dwelling constructed on that Lot.

11. Trees. All trees larger than eight inches (8") in diameter, and all redbud, dogwood and beech trees of any size, shall not be removed from any Lot without the prior written consent of Declarant; provided that any such trees may be removed without the permission of Declarant if located within the area upon which a residential structure, driveway or sidewalk are to be constructed upon a Lot, or within fifteen (15) feet of the foundation of any residential structure; and provided further that any dead or diseased trees, shrubs, bushes or other vegetation shall be promptly removed from any Lot.

12. Refuse Storage. All trash, garbage and refuse stored outside of a dwelling shall be stored in a solidly screened, enclosed, covered receptacle out of view from any street or any other Lot.

13. Storage of Building Materials. No lumber, brick, stone, cinder block, concrete block, cement or other materials used for building purposes shall be stored upon any Lot longer than a reasonable time for the completion of the construction in which they are to be used.

14. Temporary Structures. No temporary structures such as sheds or tents shall be erected or placed on a Lot without the written approval of the Declarant. Such structures, if permitted, may be used only during periods of construction, and never as a residence.

15. Parking and Vehicle Storage. Garages shall be enclosed on all four sides. The Owner(s) of any occupied Lot shall provide at least two (2) parking spaces on the Lot, which need not be covered and which may be on a driveway, for off-street parking. Only licensed and operative vehicles, classified as passenger cars, station wagons, passenger pick-up trucks or passenger vans may be regularly parked in driveways. No vehicle will be permitted to park regularly on any roadway within the Subdivision. Recreational vehicles must be screened from view as provided in §21 below to be allowed upon a Lot. No vehicle located on a Lot may be used as a dwelling, even temporarily.

16. Keeping Animals. No animals, birds or reptiles may be kept on any Lot, recreation area or open space, except that a limited number of dogs and cats may be kept on a Lot under reasonable conditions of control and sanitation, provided that they do not become a nuisance to the occupants of other Lots, and further provided that they are not kept, bred or maintained for any commercial purpose. Pets shall not be permitted to range the neighborhood, and shall be kept on a leash when not on the Lot of their owner.

17. Offensive Activities Prohibited. No noxious or offensive activity shall be conducted upon any Lot, recreation area or open area, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood or to the occupants of any Lot.

18. Erosion Control. At no time shall any Lot, recreation area or open area be stripped of its topsoil or trees, or allowed to be eroded by being excavated or neglected. During the period of grading and construction of a structure on a Lot and thereafter, the Owner(s) of the Lot shall exercise and maintain such erosion-control measures, including the erection of silt fences, as may be required by the Declarant in order to minimize erosion and runoff. Declarant reserves the right to impose requirements and standards of erosion control in excess of those required by law.

19. Underground Utilities. All utility lines serving structures located on Lots shall be placed underground.

20. Mobile Homes and Manufactured Housing. No mobile home, trailer or manufactured housing shall be located on any Lot.

21. Screening. Boats, campers, satellite dishes, antennae, clotheslines, pet enclosures and the like shall not be located on a Lot so as to be visible from any street or any other Lot. Swing sets, tree houses and play areas shall be located at the rear of a Lot.

22. Vegetable Gardens. No vegetable garden shall be allowed in the front yard of any Lot, and the area of any vegetable garden located on a Lot shall not exceed four hundred (400) square feet.

23. Garbage Collection. Until such time as the Subdivision is annexed by the Town of Chapel Hill, garbage collection and removal shall be the responsibility of the Owners of each Lot.

24. Temporary Construction Easements. The Declarant reserves unto itself, in gross, temporary construction easements over and across each lot, being a thirty foot (30') wide strip of land along the front lot line and a twenty foot (20') wide strip of land along the side and back lot lines of each Lot. The easements reserved hereunder shall be for road construction, erosion control and the installation of any and all utilities and drainage systems. The easements reserved hereunder shall terminate upon acceptance by the Town of Chapel Hill of responsibility for maintenance of all roads located in the Subdivision.

25. Maintenance of Lots. Each Owner shall maintain and preserve his Lot in a clean, orderly and attractive condition. Maintenance and preservation of the Lot shall include but not be limited to the trimming of shrubs, the mowing of grass, landscaping, and the removal of trash, debris and fallen trees and limbs.

26. Future Development. Future phase(s) of Silver Creek may be developed and made subject to this Declaration as follows:

(a) Additional parcels of land located within that tract of land shown by plat of survey by Ballentine and Riley Surveyors, a copy of which is attached hereto as Exhibit B and incorporated herein, may be developed by the Declarant as future phase(s) of Silver Creek. All such future phases of Silver Creek may be made subject to this Declaration, without the participation or consent of any Owners or the Association, by amendment to this Declaration executed by the Declarant only. Any such amendment by the Declarant shall clearly identify the additional parcels of land to be made subject to this Declaration. Any such amendment must be recorded in the Orange County Registry to be effective. From and after the recording of any such amendment, the parcel(s) of land described in the amendment shall be subject to this Declaration.

(b) Additional parcels of land located outside of that tract shown on Exhibit B may be developed by the Declarant as future phase(s) of Silver Creek and made subject to this Declaration, but only with the consent of the Association. All such parcel(s) may be made subject to this Declaration by amendment to this Declaration executed by the Association and authorized by a simple majority of the total votes cast in person or by proxy at a meeting duly held in accordance with the bylaws of the Association. Any such amendment must clearly identify the additional parcel(s) to be annexed, and must be recorded in the Orange County Registry to be effective. Upon authorization of such an amendment by the Association, roadways and residential lots shown on preliminary, unrecorded maps or plats of future phases of the Subdivision may be relocated and reconfigured by Declarant to facilitate annexation and development of such additional parcel(s). Upon the recording of such an amendment, the additional parcel(s) described therein shall be subject to this Declaration.

27. Parties Bound. All persons and entities acquiring any interest in any of the Lots and any other areas within the Subdivision, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the Lots, shall likewise be bound.

28. Duration. The provisions of this Declaration shall run with and bind the Subdivision for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless rescinded pursuant to §29 below.

29. Amendment or Rescission. Except as provided in §26 above, this Declaration may be amended or rescinded only by a written instrument executed by the Association and authorized by the affirmative vote of at least two-thirds (2/3) of all the Lots existing at that time, cast in person or by proxy at a meeting duly held in accordance with the bylaws of the Association. Any such amendment or rescission must be recorded at the Orange County Registry to be effective.

30. Enforcement. The Declarant, any Owner and/or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and obligations imposed by this Declaration. The Declarant, the Association or any Owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration, and/or to recover damages therefor.

31. Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter.

32. Assignment by Declarant. Any or all of the rights, powers, titles, easements and estates reserved or given to the Declarant in this Declaration may be assigned to the Association, and the Association shall accept and assume responsibility for any or all such rights, powers, titles, easements and estates when requested by the Declarant. Any such assignment or transfer shall be made by an appropriately recorded written instrument, and the Association shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to and assumed by the Declarant. The Declarant, but not the Association, shall thereupon be released from such obligations and duties.

33. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

34. Captions. The captions herein are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

35. Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its authorized officers and its corporate seal to be affixed hereto on the date shown above.

BLACK DIAMOND PROPERTIES, INC.

BY: J. B. Ballentine
J. Bruce Ballentine, President

Attest:

O. Kenneth Bagwell, Jr.
Assistant Secretary

NORTH CAROLINA
Orange County

Melissa McCuiston, a Notary Public for said County and State, hereby certify that O. Kenneth Bagwell, Jr., personally came before me this day and acknowledged that he is Assistant Secretary of Black Diamond Properties, Inc. and that, by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with the corporate seal, and attested by himself as its Assistant Secretary.

Witness my hand and official seal, this 24th day of January, 1994.

My Commission Expires: 1-18-95

Melissa McCuiston
Notary Public

NORTH CAROLINA - ORANGE COUNTY

The foregoing certificate (s) of

Melissa McCuiston, a Notary Public of Orange County, N.C.

is/are hereby certified to be correct. Filed for registration this the 25th day of Feb., 19 94, at 4:51 o'clock P.M., in Record Book 1219 Page 172.

Betty June Bayne, Register of Deeds

Beverly H. Winters

By: Assistant/Deputy
Register of Deeds

BOOK 1219 PAGE 180

EXHIBIT A

BEGINNING at an iron pipe at the southeastern corner of that 39.025 acre tract shown as property of North Weaver Partnership by plat of record at Plat Book 45 Page 78, Orange County Registry, and running thence North 83° 59' 07" West 95.07 feet to an iron pipe; thence North 42° 39' 13" West 178.65 feet to an iron pipe; thence North 40° 37' 17" West 355.48 feet to an iron pipe; thence North 41° 40' 18" West 355.18 feet to an iron pipe; thence in a counterclockwise direction along the arc of a circle having a radius of 855.00 feet a distance of 210.55 feet (with a chord bearing and distance of North 48° 13' 23" West 210.02 feet) to an iron pipe; thence North 01° 14' 15" East 297.97 feet to an iron pipe; thence North 66° 16' 07" East 145.00 feet to an iron pipe; thence South 75° 39' 44" East 274.56 feet to an iron pipe; thence North 14° 17' 15" West 120.22 feet to an iron pipe; thence North 72° 15' 58" East 172.77 feet to an iron pipe; thence North 17° 44' 02" West 60.00 feet to an iron pipe; thence North 72° 15' 58" East 50.00 feet to an iron pipe; thence South 17° 44' 01" East 17.34 feet to an iron pipe; thence North 72° 15' 58" East 180.00 feet to an iron pipe; thence North 17° 44' 02" West 297.66 feet to an iron pipe; thence North 72° 15' 58" East 256.28 feet to an iron pipe; thence South 01° 57' 41" West 1747.07 feet to an iron pipe, the point and place of BEGINNING; LESS

AND EXCEPT that tract shown as RECREATION AREA on plat of survey entitled FINAL PLAT, PHASE I, SILVER CREEK, of record at Plat Book 70 Page 151, Orange County Registry.

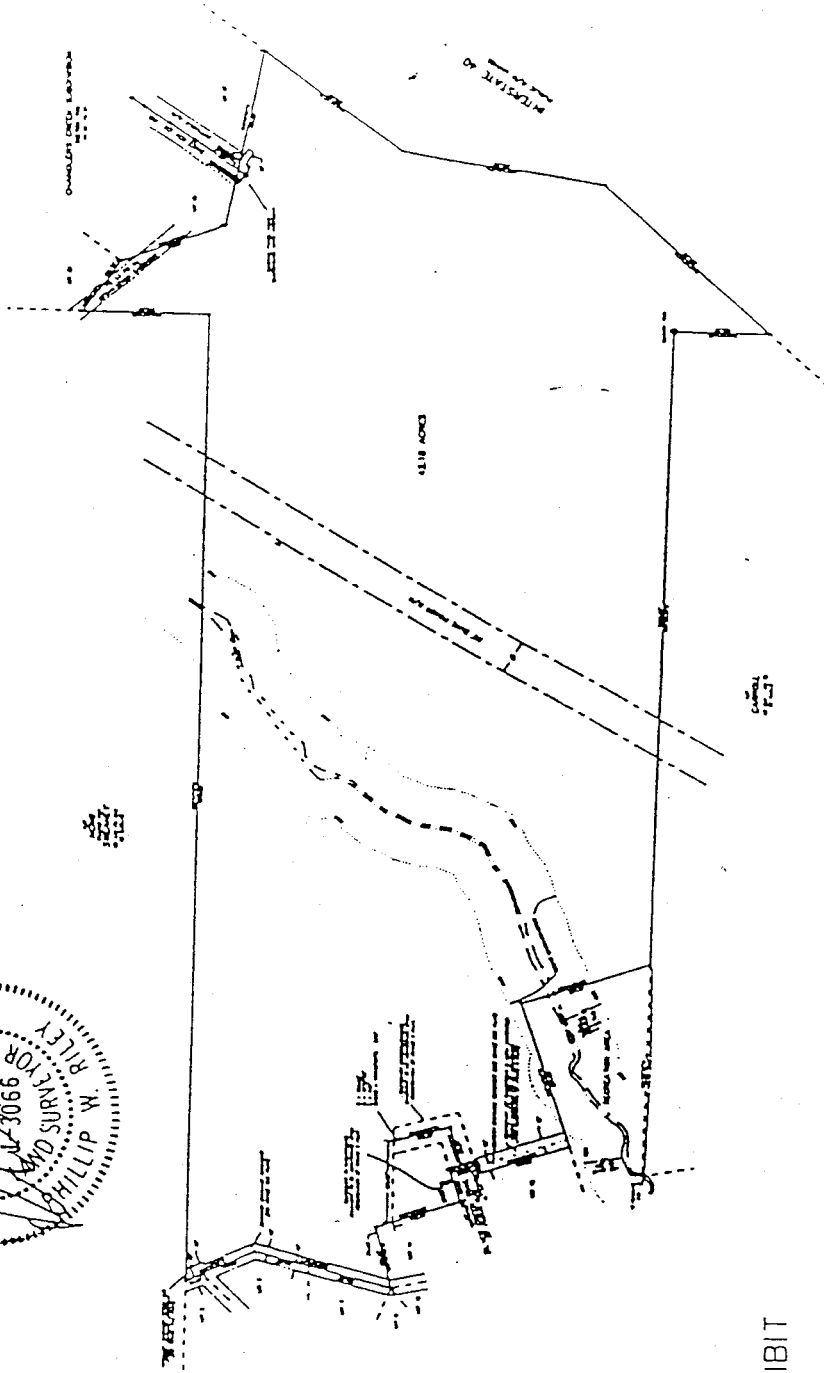
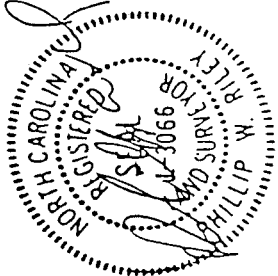
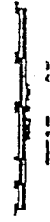
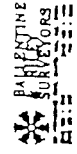


EXHIBIT
B

REMAINING PHASES
OF
SILVER CREEK
CHapel Hill Township, Orange County, N.C.
PRODUCED FOR
BLACK DIAMOND PROPERTIES, INC.
BY B&B SURVEYING, INC. JULY 17, 2014

Return to:
Bagwell & Holt
NORTH CAROLINA
ORANGE COUNTY

FILED
21 DEC 2000, at 02:29:22pm
Book 2175, Page 283 - 283
Joyce H. Pearson
Register of Deeds,
Orange County, N. C.

BOOK 2175 PAGE 283

DECLARATION OF EXTENSION OF CONTROL
OF DESIGN AND QUALITY OF STRUCTURES
IN SILVER CREEK SUBDIVISION

Pursuant to Section 3 of that Declaration of Restrictive and Protective Covenants for Silver Creek of record at Book 1219 Page 172, Orange County Registry, ("the Original Declaration") Silver Creek Homeowners Association, Inc. hereby extends the time period during which approval of the design and quality of structures in Silver Creek Subdivision shall be required. The extension period shall be January 1, 2001 through December 31, 2010. Silver Creek Homeowners Association, Inc. and/or its authorized representative, J. Bruce Ballentine, shall have and assume all rights and responsibilities of the original Declarant pursuant to Section 3 of the Original Declaration during the extension period.

IN WITNESS WHEREOF, Silver Creek Homeowners Association, Inc. has caused this instrument to be executed by its President on the _____ day of December, 2000.

FOR MULTIPLE PIN SHEET
SEE BOOK 2175 PAGE 283-282

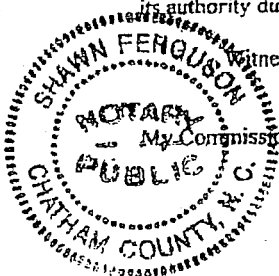
SILVER CREEK HOMEOWNERS ASSOCIATION, INC.

By: Cynthia C. Risku
Cynthia C. Risku, President

NORTH CAROLINA, CHATHAM COUNTY

I, Shawn Ferguson, a notary public, do hereby certify that Cynthia C. Risku personally came before me this day and acknowledged that she is President of the Silver Creek Homeowners Association, Inc., a corporation, and that the foregoing instrument was signed by her on behalf of said corporation by its authority duly given, as an act of the corporation.

Witness my hand and official seal this the 20 day of December, 2000.



Shawn Ferguson
Notary Public

NORTH CAROLINA, ORANGE COUNTY

The foregoing certificate(s) of Shawn Ferguson, Notary Public of Chatham County, N.C. is ~~(was)~~ certified to be correct. This instrument was presented for registration this 21st day of Dec, 2000, at 2:21:22 o'clock P. M., and duly recorded in the office of the Register of Deeds of Orange County, North Carolina, in Book 2175, Page 283. This the 21st day of Dec, A.D. 2000.

Joyce H. Pearson, Register of Deeds
By: Priscilla D. Mize
Assistant/Deputy Register of Deeds

SILVER CREEK

CHAPEL HILL, NORTH CAROLINA

NORTH

EAST CHAPEL HILL
HIGH SCHOOL

PEDESTRIAN ACCESS
TO SCHOOL

PEDESTRIAN ACCESS
TO SCHOOL

CHANDLER'S GREEN

CHESLEY

WEAVER DAIRY ROAD

SAN SOPHIA DR.

TELLURIDE TRAIL

SAN JUAN DRIVE

SILVER CREEK

GREENWAY
WITH
WALKING TRAIL

SILVER CREEK

ALTA COURT

SILVER CREEK TRAIL

SUNDADE PL

SPRING CREST

PERRY CREEK DRIVE

SWEETEN CREEK ROAD

I-40

