

MAY 24 2006 10:04AM

STUBBS COLE

NO. 115 P. 3

Prepared by and return to: C. Thomas Biggs, Attorney at Law
P.O. Box 376, Durham, NC 27702

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
(RESIDENTIAL RESTRICTIONS)
BIRDSONG

This Declaration of Covenants, Conditions and Restrictions for Birdsong Subdivision made and entered into this the _____ day of _____, 2006 by Elie T. Batouli and wife, May K. Batouli, 1039 Dunsford Place, Cary, North Carolina 27511 (hereinafter referred to as "Declarant"), and James Hill Company, LLC, P.O. Box 151, Rougemont, NC 27572 (hereinafter referred to as "Builder").

WITNESSETH:

WHEREAS, Declarant and Builder are the owners of certain Properties located in the County of Orange, State of North Carolina, and

WHEREAS, Declarant and Builder desire to subject the Properties to certain protective covenants, conditions, restrictions and easements as hereinafter set forth, and

NOW, THEREFORE, Declarant and Builder hereby declare that all of the Properties described hereinafter shall be held, sold and conveyed as part of the general plan of development

subject to the following easements, restrictions, covenants and conditions, which are for the purpose of enhancing and protecting the value and desirability of, and which shall run with, the Properties 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
DEFINITIONS

Section 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a 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 2. "Properties" shall mean and refer to that certain real property more particularly described on Schedule A attached hereto and incorporated herein by this reference.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the open areas and dedicated road rights-of-way.

ARTICLE II
ARCHITECTURAL AND APPEARANCE CONTROL

Section 1. Residential Use. Each Lot shall be used solely and exclusively for residential purposes and no dwelling shall be erected or allowed to remain upon any Lot except one detached, single-family private residence not exceeding two and one-half (2 1/2) stories in height as measured from the street grade of the Lot, and not more than two detached accessory buildings. The total square footage of all garages, carports, storage buildings, barns, and other accessory buildings may

never exceed the heated square footage of the dwelling. No metal buildings of any description of any kind shall be used (regardless of size) without first getting approval of the Declarant in writing. Plans showing size, location, and blueprints must be submitted for said approval. If the Declarant fails to respond within 30 days of submission, the same information may be submitted to the Owners. However a majority vote of 75% of the Owners must approve plans in writing in order to build said structure.

Section 2. Required Land Area. No Lot may be subdivided by sale or otherwise so as to reduce the total area of the Lot to less than 75% of the original Lot as shown on any subdivision map of the Properties recorded by Declarant, provided, however, that Lots may be combined, and that Lot lines may be adjusted among Lots by Declarant or Owner subject to governmental approval provided that the total number of Lots shall not be increased.

Section 3. Approval of Structural Design. No residence, building, fence, wall, driveway, mail box, bus shelter, swimming pool, storage facility, landscape lighting, lights, utility shed, satellite dish, or other structure or appurtenance shall be erected, altered, remodeled, added to, or allowed to remain upon any Lot unless said structure shall conform with County regulations and distances as far as front, rear, and side line requirements. No building may be constructed closer to Birdsong Lane than the dwelling other than an attached garage or carport constructed when the original dwelling is built and being part of the original plan.

ARTICLE III

USE RESTRICTIONS

Section 1. Use of Properties. No portion of the Properties (except for a temporary office and/or sales model of the Declarant or Builder maintained for development and sales purposes) shall

be used except for residential purposes incidental or accessory thereto. This provision shall not be construed so as to prohibit domestic or health care personnel who work and provide on-premises services to or for an Owner, members of his family, his lawful tenants or contract purchasers from being provided with a place of residence within any residence situated on a Lot.

(a) Except as may be erected by the Declarant or assigns, no commercial signs, with the exception for a "For Sale" or "For Rent" sign no more than two feet in width and three feet in height, shall be erected or maintained on any Lot. Such signs as allowed hereunder, being temporary in nature shall not be subject to any set back requirement imposed by Article II, Section 3.

(b) No house trailers shall be permitted on any Lot. Boats, trailers, campers, tents or temporary building shall not be permitted on any Lot except in areas where they cannot be viewed from the streets. However, house trailers, temporary buildings and the like shall be permitted for construction purposes during the construction period of residential structures and shall be removed from the Lot within ten (10) days after a certificate of occupancy shall be issued for the residential structure or improvement being constructed.

(c) No motor vehicles or equipment of any kind shall be regularly stored upon the premises except in enclosed garages. No motor vehicles may be parked upon the roadway serving the property; it being the intent for each property owner to provide proper parking for their vehicles within the lot.

Section 2. Hobbies and Activities. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkept conditions, shall not be pursued or undertaken on any part of any Lot.

Section 3. Animals and Pets. No poultry house or yard, rabbit hutch or other similar structure shall be constructed or allowed to remain on any Lot, nor shall livestock of any nature or classification whatsoever be kept or maintained on any Lot. However, a reasonable number of household pets shall be permitted, provided they are not raised for commercial purposes and subject to Article II, Section 3, a structure or enclosure may be erected in the rear yard for such household pets that are to be kept out-of-doors.

Section 4. Prohibited Activities. Noxious, offensive or loud activities shall not be carried on upon any Lot. Each Owner shall refrain from any act or use of his Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood.

Section 5. Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Properties shall be observed. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

Section 6. Dwelling Quality and Size. No dwelling containing less than 1600 square feet for a one (1) story dwelling and 1800 square feet for a two (2) or two and one-half (2 ½) story dwelling of finished heated living area, exclusive of basements, garages, carports, storage areas, breezeways and stoops, shall be erected upon any lot embraced within the aforescribed Property. A ten percent (10%) variance in this minimum dwelling size requirement may be allowed upon prior written approval of the party of the first part, although no obligation to allow such variance upon request is hereby created. All dwellings erected thereon shall be of good standard quality workmanship and the materials used therein shall be of standard and approved quality. No mobile home, manufactured home or modular home, either single-wide or double-wide, shall be permitted.

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ARTICLE IV

GENERAL PROVISIONS

Section 1. **Enforcement.** The Declarant, Builder, 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 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.

Section 2. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. **Amendment.** The covenants, conditions and restrictions of the Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for two successive period of ten (10) years each. This Declaration may be amended by an instrument approved by not less than the record Owners of seventy-five percent (75%) of the Lots.

Section 4. **Amendment Form.** If any amendment to these covenants, conditions and restrictions is so approved, and if Declarant is still record Owner of any Lot, such amendment shall be delivered to the Declarant or its delegate. Thereupon, the Declarant or its delegate shall within thirty (30) days, do the following:

(a) Reasonably assure itself that the amendment has been validly approved by the Owners of the required number of Lots. (For this purpose, the Declarant or its delegate may rely upon the evidence of record title available in the Orange County Registry, but shall not be required to cause

any title to any Lot to be examined.)

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Declarant or its delegate in the same manner that deeds are executed.

(c) Immediately, and within the thirty (30) day period aforesaid, Declarant or its delegate shall cause the amendment to be recorded in the Orange County Registry.

If Declarant does not act pursuant to Section 4. (a), (b), and (c) above within thirty (30) days, or if Declarant no longer is record owner of any Lot, then any Owner may have the amendment recorded.

All amendments shall be effective from the date of their recordation in the Orange County Registry, provided, however, that no such instrument shall be valid until it has been indexed in the name of the Declarant. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Declarant or its delegate, recorded, and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lots.

IN WITNESS WHEREOF, the undersigned, being the Declarant and Builder herein, have hereunto set their hands and seals this _____ day of _____, 2006.

DECLARANT:

Elie T. Batouli (SEAL)

May K. Batouli (SEAL)

BUILDER: JAMES HILL COMPANY, LLC

By _____ (SEAL)
James L. Hill, Member-Manager

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, Notary Public for the County of _____, and
State of North Carolina, do hereby certify that Elie T. Batouli and wife, May K. Batouli, either
being personally known to me or proven by satisfactory evidence (said evidence being
_____), personally appeared before me this day, and acknowledged the voluntary
due execution of the foregoing instrument by them for the purposes state therein.

WITNESS my hand and notarial seal, this ____ day of _____, 2006.

(OFFICIAL SEAL)

Notary Public: _____

My Commission Expires: _____

5-25-2006 2:51PM

FROM

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SCHEDULE A

BEING all of Lots 1 through 26, inclusive, as shown on plat of BIRDSONG SUBDIVISION, as per plat and survey thereof now on file in the Office of the Register of Deeds of Orange County in Plat Book 93 at Page 195, to which plat reference is hereby made for a more particular description of same.