

BK012217PG00082

WAKE COUNTY, NC 155
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/16/2006 AT 10:48:39

BOOK:012217 PAGE:00082 - 00090

Drawn by & HOLD FOR: MOORE & ALPHIN, PLLC (Box 155) (rm)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

**RESTRICTIVE COVENANTS
FOR
MACADIE PARK
PHASE 1**

HARD ROCK DEVELOPMENT ASSOCIATES, LLC, a North Carolina limited liability company (hereinafter "Declarant"), hereby declares that the real property described on **Exhibit A** attached hereto and made a part hereof (hereinafter the "Subdivision") is and shall hereafter be held, transferred, sold and conveyed subject to the following restrictive covenants, which shall be appurtenant to and run with the land, by whomsoever owned, to wit:

1. **DEFINITIONS.** All terms defined in the Declaration Of Covenants, Conditions and Restrictions For MacAdie Park, recorded in office of the Register of Deeds of Wake County, North Carolina (as from time to time amended, said documents, together with all amendments thereto, if any, being hereinafter referred to as the "Declaration"), shall have the same meanings when used herein.

2. **LAND USE AND BUILDING TYPE.** Except as specifically provided herein, Lots shall be used for residential purposes only. Except as permitted by the City of Raleigh, no trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that the Declarant, Owners, real estate brokers and their agents may show Lots and homes for sale or lease. Notwithstanding the foregoing, the Declarant and its agents and employees shall have the right to: (i) use Lots and improvements erected thereon for sales offices, field construction offices, storage facilities, and other uses consistent with the development of the Subdivision and the sale and construction of homes therein; (ii) maintain spot-lighted model homes which may be open to the public for inspection seven days per week for such hours as the Declarant deems appropriate or necessary; and (iii) conduct any other activities on Lots to benefit development, sales and construction efforts.

No structure shall be erected, altered, placed or permitted to remain on any Lot other than one detached, single-family dwelling, not to exceed two and one-half (2½) stories in height, a private garage for not more than three (3) cars, and out-buildings incidental to residential use of the Lot. Nothing herein shall be deemed to prohibit conversion of a Lot to a street.

BK012217PG00083

3. DWELLING SIZE. The minimum heated square footage of a dwelling may not be less than 1,100 square feet for a one-story dwelling and 800 square feet on the first floor of a two-story or two and one-half story dwelling.

4. BUILDING SETBACKS; HOUSE LOCATION. No Dwelling shall be erected or maintained on any Lot outside of the building envelope shown on the recorded plat of the Subdivision or as otherwise required or permitted by the zoning ordinance of the City of Raleigh (the "Zoning Ordinance"). For purposes of these building setback requirements, decks, porches, patios, stoops, eaves, overhangs, bay windows, chimneys, carports and other similar projections shall be deemed to be part of the dwelling only to the extent that the same are deemed to be part of the dwelling under the Zoning Ordinance as it exists as of the date of issuance of a certificate of occupancy for such dwelling. Any dwelling erected on a Lot other than a corner lot shall face the street on which the Lot abuts. On corner lots, a dwelling may be erected so as to face the intersection of the two streets on which the Lot abuts.

5. FENCES. No fence or wall shall be erected on any Lot closer to any street than the front or side building setback line. Any fence or wall installed within the Subdivision must meet all requirements of the Zoning Ordinance and must be approved as provided in Article VIII of the Declaration. Nothing in this paragraph shall be deemed to apply to or regulate retaining walls made necessary by the slope or grade of any Lot nor to any fence installed by the Declarant at any entrance to or along any street within the Subdivision, and no Owner or other person or entity may remove any fence installed by the Declarant without the prior written approval of the Declarant or, after the expiration of the Declarant Control Period, the Association.

6. TEMPORARY STRUCTURES. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn, or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently.

7. PARKING; DRIVEWAYS AND PARKING PADS; ABANDONED VEHICLES. Vehicles may be parked or stored only on portions of a Lot improved for that purpose, i.e., garage, driveway, carport or parking pad. No unenclosed parking shall be constructed or maintained on any Lot except a paved driveway and an attached paved parking pad, which pad shall be designed for the parking of not more than two (2) vehicles. Any driveway or parking pad constructed upon any Lot shall have a concrete surface.

No mobile house trailer (whether on or off wheels), recreational vehicles, trailer or enclosed body of the type which may be placed on or attached to a vehicle (known generally as "campers"), tractor trailer trucks or cabs, or commercial vehicle of any kind shall be parked on any Lot or any street within the Subdivision. No boat or boat trailer shall be parked on any Lot or any street within the Subdivision. A boat and boat trailer may be parked or kept on a Lot only if it is parked or kept in an enclosed garage.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot in such manner as to be seen from any other Lot, any street within the Subdivision or the Common Area, and no automobiles or mechanical equipment may be dismantled or allowed to accumulate on any Lot.

BK012217PG00084

8. ANIMALS. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling, except that dogs, cats, or other household pets may be kept or maintained, provided that they are not kept or maintained for commercial purposes.

9. NUISANCES; BUSINESS ACTIVITY. 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. No vehicle repairs or maintenance shall be conducted within the Properties other than in a garage and concealed from public view. Outside clothes hanging devices are not permitted. No business trade or activity may be conducted on any Lot unless permitted by the Raleigh Board of Adjustments.

10. SIGNS. Except as otherwise required by the City of Raleigh, no sign of any kind shall be displayed to the public view on any Lot except signs used to advertise Lots for sale during the construction and sales period, one sign of not more than ten (10) square feet advertising the property for sale or rent, and signs of not more than ten (10) square feet expressing support of or opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, provided that such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the Association. Notwithstanding the foregoing, Declarant shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Properties.

11. ANTENNAS; SATELLITE DISHES OR DISCS. No television, radio or other electrical towers, aerials, antennae, satellite dishes, or other devices of any type for the reception or transmission of radio or television broadcasts or other means of communication shall be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon unless approved pursuant to Article VIII of the Declaration, except that this prohibition shall not apply to those antennae specifically covered by 37 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that the reception of an acceptable signal would not be impaired, an antenna, dish or receiver permissible pursuant to rules adopted by the Association may be installed only if it: (i) is located in the rear or side yard of the Lot; (ii) is not visible from any street (whether by location or screening); (iii) it is integrated with the Dwelling and surrounding landscape; (iv) if a dish or other receiver, is not larger than 36" in diameter; and (v) is approved pursuant to Article VIII of the Declaration. In no event shall any free-standing transmission or receiving tower be permitted on any Lot.

12. SWIMMING POOLS. No above-ground swimming pools shall be permitted in the Subdivision, except that small, inflatable wading pools shall be permitted in the back yard of a Lot. An in-ground swimming pool is permitted, provided that: (i) it is approved by the City of Raleigh; (ii) it is completely surrounded by an approved fence; and (iii) the pool, fence and other facilities have been approved in writing pursuant to Article VIII of the Declaration prior to obtaining a building permit for same. In view of governmental regulations concerning impervious surfaces, Declarant

BK012217PG00085

cannot and does not make any representation as to whether an in-ground swimming may be installed on any of the Lots.

13. MAILBOXES. No mailbox shall be placed or maintained on any Lot unless the same has been approved in accordance with the provisions of Article VIII of the Declaration.

14. MAINTENANCE OF LOTS; CONSTRUCTION. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair. In the event that any residence or structure on any Lot is destroyed or partially destroyed by fire, Act of God, or as a result of any other act or thing, the Owner of such Lot shall repair the damage and reconstruct the improvement within twelve (12) months after such damage or destruction; provided, however, that if the structure damaged is not part of or attached to the residence constructed on such Lot, the Owner may, at his option, either completely remove the damaged structure and landscape area on which the structure stood or repair or reconstruct the structure.

All construction, landscaping or other work which has been commenced on any Lot shall be continued with reasonable diligence to completion and no partially completed house or other improvement shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The Owner of each Lot shall at all times keep contiguous public streets free from any dirt, mud, garbage, trash or other debris resulting from any such construction on his Lot.

15. GARBAGE; UNSIGHTLY STORAGE. All trash and rubbish shall be kept in garbage cans stored in such a manner as not to be visible from the street upon which the house fronts. No trash, rubbish, stored materials, wrecked or inoperable vehicles, or similar unsightly items shall be allowed to remain on any Lot; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, and other debris for collection by governmental or other similar garbage and trash removal units. In the event of curbside trash and/or garbage pickup, trash and/or garbage cans may be moved to the street on the night before the scheduled pickup, but all garbage cans must be returned to approved enclosure the night of the scheduled pickup.

16. SEPTIC TANKS; WELLS. No septic tank shall be installed, used or maintained on any Lot. No well shall be installed, used or maintained on any Lot for human domestic water consumption, nor shall any well be connected in any manner whatsoever to the water mains, laterals and piping serving the dwelling, which mains furnish domestic water from sources beyond the boundaries of the Lot.

17. REMOVAL OF TREES. Except in the case of an emergency situation that does not permit any delay, no living tree larger than 6" in diameter at a point measured 3' off the ground shall be removed from any Lot without the approval required by Article VIII of the Declaration. The foregoing provision shall apply only to Lots which have been occupied pursuant to a certificate of occupancy issued by the City of Raleigh.

18. EXTERIOR MAINTENANCE. The Owner of each Lot shall maintain the grounds and improvements on his Lot, including, but not limited to, plantings, landscaping and lawns, at all times in a neat and attractive manner.

BK012217PG00086

19. EASEMENTS. Easements for the installation, maintenance and repair of sanitary sewer, storm water drainage, and reclaimed water facilities are reserved as shown on the recorded plats. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow or otherwise impede or retard the flow of water through the drainage channels within such easements. Any easements located on a Lot shall be maintained continuously by the Owner of such Lot, except for any such improvements for which a public authority or utility company is responsible. Declarant reserves the right to create and impose additional easements or rights-of-way over any unsold Lot or Lots by the recording of appropriate instruments in the Wake County Registry, and such instruments shall not be construed to invalidate any of these covenants.

Declarant reserves an easement in and right at any time in the future to grant a ten-foot (10') right-of-way over, under and along the rear line of each Lot for the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary to or useful for furnishing electric power, gas, telephone service, cablevision or other utilities, including water, sanitary sewage service and storm drainage facilities. Declarant also reserves an easement in and right at any time in the future to grant a five-foot (5') right-of-way over, under and along the side lines of each Lot for the aforementioned purposes.

Easements are also reserved for the benefit of the Declarant, the MacAdie Park Community Association, Inc. (the Association"), and the City of Raleigh, and their respective successors and assigns, over, across and under those portions of the Lots shown and designated on the maps referred to in Exhibit A as "20' Private Drainage Easement", "Private Drainage Easement", and any variation or abbreviation thereof (regardless of size), for the purpose of installing, operating and maintaining storm water drainage facilities thereon. No building, structure, fill, embankment, fence, driveway, planting, swing or other obstruction shall be permitted in such area, other than those installed by the Declarant, the Association or the City, unless approved as provided in Article VIII of the Declaration and, if required, by the City.

Some of the Lots contain areas designated as "Sight Easement". No person or entity may install or construct any vegetation, fence or any other structure or thing within such easement areas in such a manner as to interfere with the view of traffic or in violation of any ordinance or regulation of the City of Raleigh. Easements are reserved for the benefit of the Declarant, the Association and the City, and their respective successors and assigns, over, across and under those portions of those Lots for the purpose of removing anything installed, constructed or planted in violation of this paragraph.

The Declarant, the Association and their successors and assigns shall at all times have the right of access upon such easements for the purpose of landscaping, planting, mowing, maintaining, repairing or replacing the easement area and the improvements thereon or for removing any object placed in the easement area in violation of the provisions of this Paragraph 19.

20. SUBDIVISION OF LOTS. No Lot shall be subdivided by sale or otherwise so as to reduce the total Lot area shown on the recorded map or plat, except by and with the written consent of the Declarant.

21. UNINTENTIONAL VIOLATIONS. Declarant, or the persons or firms to whom the architectural review and approval authority has been delegated pursuant to Article VIII of the Declaration, may, but shall not be obligated to, waive in writing a violation of the designated and

BK012217PG00087

approved building setback lines on any Lot, provided that, no waiver may be granted for a violation in excess of 25% of the applicable requirements. No such waiver shall be effective unless the Lot and all structures thereon are in full compliance with the applicable provisions of the Zoning Ordinance or a variance has been obtained for such violation. Waivers shall be effective upon recording of same in the Wake County Registry.

23. STREET LIGHTING. Declarant reserves the right to subject the Subdivision to a contract with Progress Energy for installation of street lighting, which requires a continuing monthly payment to Progress Energy by each residential customer.

24. ENFORCEMENT; FINES. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant herein and enforcement shall be to either restrain violation and/or to recover damages resulting therefrom. These covenants may be enforced any Owner or by the Association pursuant to the Declaration and the Bylaws of the Association.

As more fully provided in the Declaration and Bylaws, the Board of Directors of the Association shall have the right and authority to levy fines or penalties for the violation of any provision of these Covenants and/or the rules and regulations hereafter promulgated by the Association. Any monetary fine or penalty shall be deemed a Special Assessment against the Lot of the Owner against whom such fine or penalty is assessed.

25. SEVERABILITY. Invalidation of any one or more of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

26. TERM. These covenants shall run and bind the land and all Owners thereof for a period of 25 years from the date they are recorded, after which time, they shall be automatically extended for successive periods of ten (10) years unless altered or amended as set forth below. These covenants may be amended during the Declarant control Period by the Declarant, without the approval or joinder of the Members or any other person. These covenants may also be amended during the first twenty-five year period by an instrument signed by the then-Owners of not less than eighty percent (80%) of the Lots, and thereafter an instrument signed by then-Owners of not less than seventy-five percent (75%) of the Lots.

27. MACADIE PARK COMMUNITY ASSOCIATION, INC. The Owners of Lots within the Subdivision are Members of the MacAdie Park Community Association, Inc., and are subject to and bound by the Declaration, which provides additional restrictions on such Lots.

28. DECLARANT. Nothing contained in these Covenants shall be construed to permit interference with the development of the Lots by Declarant so long as said development follows the general plan of development previously approved by the City of Raleigh. The restrictions contained herein shall not be deemed to apply to any sales office, construction trailer, model home, or other temporary improvement installed by or with the approval of Declarant.

BK012217PG00088

IN WITNESS WHEREOF, Declarant caused this instrument to be executed by its duly authorized officer, as of the date set forth in the notary acknowledgment below.

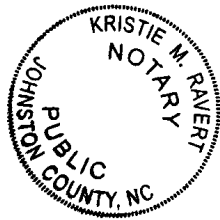
HARD ROCK DEVELOPMENT ASSOCIATES, LLC

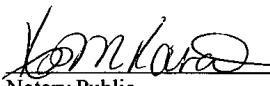
By:  (Seal)
Terry E. Slate, Manager

STATE OF NORTH CAROLINA -- COUNTY OF WAKE

I, the undersigned, a Notary Public for said County and State, certify that Terry E. Slate personally appeared before me this day and, being personally known to me, acknowledged that he is Manager of **Hard Rock Development Associates, LLC**, a North Carolina limited liability company, and that he, as Manager, being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official stamp or seal, this the 9th day of October ~~September~~, 2006.




Notary Public
My commission expires: 9-21-2010

BK012217PG00089

EXHIBIT A

MACADIE PARK
Phase 1

Lying and being in the City of Raleigh, St. Marys Township, Wake County, North Carolina, and being more particularly described as follows:

All of the real property, containing 19.33 acres, more or less, shown and identified on that certain plat entitled "Recombination, R/W Dedication and Subdivision Plat, MACADIE PARK, Phase 1", recorded in Book of Maps 2006, Pages 2087-2090, inclusive, Wake County Registry, to which plats reference is hereby made for a more particular description, SAVE AND EXCEPT the rights-of-way public streets and the "Open Space" shown thereon.



BOOK:012217 PAGE:00082 - 00090

**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages