

13/19/99

28977

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT) DECLARATION OF
) RESTRICTIVE COVENANTS
) FOR MODERATE INCOME HOUSING

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR MODERATE INCOME HOUSING ("Declaration") is made this 28th day of May, 1999, by The Estate of Calhoun Thomas, Jr. (hereinafter, the "Declarant").

RECITALS

WHEREAS, Declarant is the owner of certain real property located on Hilton Head Island Beaufort County, South Carolina, more particularly described as all that certain piece, parcel or tract of land, containing four and 76/100 (4.76) acres, more or less, and which is shown and described as follows:

All that certain piece, parcel or lot of land, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 4.76 acres, more or less, and which is shown and described on the Plat thereof entitled: "A Plat of 4.76 Acres, A Portion of Parcel 4, A Section of Yacht Cove P. U. D.", a copy of which recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 72, at Page 60 (hereinafter, the "Property").

WHEREAS, the Declarant and Hancock Development Company, Inc., have executed and delivered a Contract for the Purchase and sale of the Property, dated April 26, 1999; and,

WHEREAS, Hancock Development Company, Inc., has assigned its rights under the April 26, 1999, Contract, to The Hansford at Port Royal, L. L. C.; and,

WHEREAS, the terms and conditions of the April 26, 1999, Contract, provide that the Declarant shall execute and record this "Declaration of Restrictive Covenants for Moderate Income Housing"; and,

WHEREAS, The Hansford at Port Royal, L. L. C., for itself and its successors and assigns,

consents to be bound by this Declaration of Restrictive Covenants for Moderate Income Housing”, and further represents and warrants that it has received good and valuable consideration from The Town of Hilton Head Island, South Carolina, to induce it to agree to be bound by the terms and conditions of this “Declaration of Restrictive Covenants for Moderate Income Housing”.

NOW THEREFORE, Declarant hereby declares that the Property shall be held, transferred and subject to the following restrictive covenants, which shall run with the land and be binding on The Hansford At Port Royal, L. L. C., and any future owner of all or any part of the Property.

ARTICLE 1 - DEFINITIONS

1. When used in this “Declaration of Covenants and Restrictions for Moderate Income Housing”, the following words shall have the meaning set forth below.

1.1 **Certificate of Qualification:** A certificate to be issued by The Town of Hilton Head Island, South Carolina, or its designee, upon presentation of proof that a prospective purchaser of a Moderate Income House meets the requirements imposed by this Declaration. Certificates of Qualification shall be issued upon the application of a prospective purchaser of a Moderate Income House. Such Application shall provide information on the prospective purchaser’s income and be subject to disclosure requirements set forth on forms to be promulgated by The Town of Hilton Head Island, South Carolina. The Certificate of Qualification shall be recordable.

1.2 **Declaration:** This “Declaration of Restrictive Covenants for Moderate Income Housing”.

1.3 **Market Rate House:** Any single family dwelling unit built within the Property that is not a “Moderate Income House.” The single family dwelling units are to be built in a “duplex” configuration, and accordingly, one “Market Rate House” is one half of a duplex unit.

1.4 **Moderate Income House:** Any single family dwelling unit built within the Property that

shall be restricted to purchase by a "Qualified Purchaser" as defined herein. The single family dwelling units are to be built in a "duplex" configuration, and accordingly, the "Moderate Income House" is one half of a duplex unit.

1.5 **Property:** The real property encumbered by this Declaration is described as follows:

All that certain piece, parcel or lot of land, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 4.76 acres, more or less, and which is shown and described on the Plat thereof entitled: "A Plat of 4.76 Acres, A Portion of Parcel 4, A Section of Yacht Cove P. U. D.", a copy of which recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 70 at Page 60.

1.6 **Qualified Purchaser:** An individual or individuals who at the time of the closing of purchase of a Moderate Income House has a gross income (or combined gross income in the case of more than one individual) in an amount equal to or less than eight (80%) per cent of the "Average Median Income" for Beaufort County, South Carolina, as defined by the United States of America Department of Housing and Urban Development.

ARTICLE 2 - USE RESTRICTIONS ON THE PROPERTY

2.1. The Property shall be restricted to construction of "duplex" housing units. No other form of dwelling unit or use shall be permitted on the Property.

2.2. The Property shall be developed with a mix of Market Rate Houses and Moderate Income Houses. The number of Market Rate Houses and Moderate Income Houses within the Property shall be equal, provided, however, that no more than 24 Moderate Income Houses shall be developed within the Property.

2.3. Prior to the sale of any dwelling unit within the Property, The Hansford at Port Royal, L. L. C., shall record a subdivision plat of the Property. The subdivision plat for the Property shall

designate which dwelling units within the Property are Moderate Income Houses, and which dwelling units are Market Rate Houses.

2.4 Modular construction of dwelling units shall not be permitted within the Property.

ARTICLE 2 - SIZE RESTRICTIONS ON SINGLE FAMILY HOUSING UNITS

2.1 The Market Rate Houses and Moderate Income Houses shall have a maximum of one thousand three (1300) hundred square feet of enclosed, heated space, and a minimum of Eight (800) hundred square feet of enclosed, heated space.

2.3 No owner of any Market Rate House or Moderate Income House on the property may expand the size of the dwelling beyond the stated maximum of one thousand three hundred (1300) square feet of enclosed, heated space.

ARTICLE 3 - INCOME AND SALES PRICE RESTRICTIONS FOR INITIAL SALE OF MODERATE INCOME HOUSING

3.1 For the initial sale of any Moderate Income House from The Hansford at Port Royal, L. L. C., to any Qualified Purchaser, the sales price of any Moderate Income House within the Property shall be between One Hundred Nineteen Thousand and no/100 (\$119,000.00) Dollars, and One Hundred Twenty Nine Thousand Nine Hundred and no/100 (\$129,900.00) Dollars. In no event shall the sales price exceed One Hundred Twenty Nine Thousand Nine Hundred and no/100 (\$129,900.00) Dollars. The average price of all Moderate Income Houses shall be One Hundred Twenty Five Thousand and no/100 (\$125,000.00) Dollars.

3.2 The initial sale of any Moderate Income House from The Hansford At Port Royal, L. L. C., of any Moderate Income House shall be only to a Qualified Purchaser.

3.3 Any potential Qualified Purchaser of any Moderate Income House within the Property shall

be required to obtain a Certificate of Qualification from the The Town of Hilton Head Island, South Carolina, which Certificate of Qualification shall issued upon the potential Qualified Purchaser providing evidence the potential Qualified Purchaser meets the requirement of this Declaration.

3.4 Any contract for the sale of any Moderate Income House within the Property shall be conditioned and contingent upon the prospective purchaser satisfying all of the requirements of this Declaration.

3.5 The failure of a purchaser of a Moderate Income House to obtain and record a Certificate of Qualification at or before the closing of the sale of a Moderate Income House from The Hansford at Port Royal, L. L. C., shall be prima facie evidence of a violation of this Declaration.

ARTICLE 4 - INCOME RESTRICTIONS FOR SUBSEQUENT SALES OF MODERATE INCOME HOUSES

4.1 An owner of a Moderate Income House may not sell his Moderate Income House on resale to any person other than a Qualified Purchaser.

4.2 Any contract for the sale of any Moderate Income House within the Property shall be conditioned and contingent upon the prospective purchaser satisfying all of the requirements of this Declaration.

4.3 The failure of a purchaser of a Moderate Income House to obtain and record a Certificate of Qualification at or before the closing of any sale of a Moderate Income House on resale shall be prima facie evidence of a violation of this Declaration.

ARTICLE 5 - REVIEW OF EXTERIOR APPEARANCE

5.1 Prior to construction of any Market Rate House or Moderate Income House on the Property, The Hansford at Port Royal, L. L. C., shall submit a rendering of the proposed exterior elevation,

showing dimensions, appearance, finish and site orientation to The Town of Hilton Head Island, South Carolina, for approval. Approval by The Town of Hilton Head Island, South Carolina, shall not be unreasonably withheld.

5.2 The exterior elevations and floor plans shall not differ between Market Rate Houses and Moderate Income Houses.

ARTICLE 6 - COMMON ELEMENTS

6.1 The Hansford at Port Royal, L. L. C., may, through additional recorded covenants, prior to any sale of all or a part of the Property, establish a condominium regime in compliance with the provisions of S. C. Code Ann. § 27-23-10, *et seq.*, (Supp., 1998).

6.2 At such time as The Hansford at Port Royal, L. L. C., has sold all of the Moderate Income Houses within the Property, it shall convey the common areas within the property to the homeowner's association established as a part of the condominium regime, at no cost to the association.

ARTICLE 7 - GENERAL PROVISIONS

7.1 All Moderate Income Houses within the Property must be occupied by the owner or owners thereof as a residence. Short or long term rental of Moderate Income Housing within the Property is prohibited, and commercial activity or business uses within Moderate Income Houses are prohibited.

7.2 Any deed or title to any Moderate Income House shall show the actual consideration paid on the face of the deed or title.

7.3 Should any covenant or restriction contained in this Declaration, or any part, article, section, paragraph, subparagraph, sentence, clause, phrase or term in this Declaration be declared to be void,

invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal of jurisdiction which considers such matter, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable.

7.4 In all cases, the provisions of this Declaration shall be given that reasonable interpretation or reasonable construction which will best effect consummation of the general plan to provide for Moderate Income Housing.

7.5 When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

7.6 Failure to enforce any provision of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

7.7 This Declaration shall be governed by the laws of the State of South Carolina.

ARTICLE 8 - EFFECT OF VIOLATION AND ENFORCEMENT

8.1 In the event that the Property or any Moderate Income House is sold, transferred or conveyed without compliance with all of the terms, conditions and requirements hereof, then such sale shall be wholly null and void and shall confer no legal title or estate upon the purported buyer. Each and every conveyance of the Property or any Moderate Income House shall be deemed to include and incorporate each and every provision of this Declaration, even without specific reference to this Declaration.

8.2 The Declarant and The Hansford at Port Royal, L. L. C., hereto affirmatively represent that The Town of Hilton Head Island, South Carolina, is a Third Party Beneficiary of this Declaration, and that The Town of Hilton Head Island, South Carolina, has standing to enforce each and every

provision of this Declaration, and shall be entitled to enforce the full and faithful performance of any or all of the terms and provisions of this Declaration. Accordingly, in addition to any other remedy for breach of a restrictive covenant provided by law to any person claiming by, through, or under Declarant, The Hansford at Port Royal, L. L. C., the Association or The Town of Hilton Head Island, South Carolina, and their successors or assigns, or any of them jointly, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them. The right of enforcement held by The Town of Hilton Head Island, South Carolina, may be assigned by The Town of Hilton Head Island, South Carolina, to any other governmental or public agency, and upon such assignment, the Assignee shall have the right to enforce the provisions hereof.

8.3 Should the then owner of the Property or any Moderate Income House fail, neglect or refuse to satisfy and discharge any obligation arising under this Declaration, and in the event that it becomes necessary for the Declarant, the Association or The Town of Hilton Head Island, South Carolina, to take legal action for the enforcement of such obligation, the Association or The Town of Hilton Head Island, South Carolina, as the case may be, shall be entitled to receive from the then owner of the Property all costs and expenses of enforcement thereof, including reasonable attorney's fees and costs of suit.

8.4 Nothing contained herein shall be deemed or interpreted to require the Declarant or The Town of Hilton Head Island, South Carolina, to take action to enforce this Declaration, and no property owner may take any action to seek to force Declarant or The Town of Hilton Head Island, South Carolina, to take such action.

ARTICLE 9 - DURATION

9.1 This Declaration shall run with the Property and shall be binding upon the parties hereto, their heirs, successors and assigns, and all persons claiming by, through or under them for a period of twenty-five (25) years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by all of the then owners of the Property and by The Town of Hilton Head Island, South Carolina, has been recorded, agreeing to change the said Declaration in whole or in part.

ARTICLE 10 - ASSIGNMENT AND MODIFICATION

10.1 The Hansford at Port Royal, L. L. C., may assign its rights and obligations under this Declaration to a partnership, limited liability company or corporation which is owned or controlled in whole or in part by Hancock Development Company, Inc., or Robert M. Hancock.

10.2 The provisions of this Declaration may be changed by affirmative, written agreement of The Town of Hilton Head Island, South Carolina, and The Hansford at Port Royal, L. L. C., so long as The Hansford at Port Royal, L. L. C., owns any part of the Property. Approval of any such change by The Town of Hilton Head Island, South Carolina, shall be by resolution adopted by affirmative majority vote of The Town Council for The Town of Hilton Head Island, South Carolina. Any changes to this Declaration shall be executed by both The Town of Hilton Head Island, South Carolina, and The Hansford at Port Royal, L. L. C., and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina. Changes to this Declaration shall be effective as of the date and time of recording.

IN WITNESS WHEREOF, the Declarant and The Hansford at Port Royal, L. L. C., by and through their duly authorized officers, have duly executed this Declaration of Restrictive Covenants for Moderate Income Housing the date first above written.

WITNESSES:

THE ESTATE OF CALHOUN THOMAS, JR.

John P. Quincy J.

By: [Signature]

Christine [Signature]

Its: [Signature]

THE HANSFORD AT PORT ROYAL, L. L. C.

By: _____

Its: _____

WITNESSES:

[Handwritten Signature]

Jessica S. Clinton

THE HANSFORD AT PORT ROYAL, L. L. C.

BY: Hancock Development Company, Inc.,
Its Manager

By: *[Handwritten Signature]*
Robert M. Hancock, President

**THE TOWN OF HILTON HEAD ISLAND,
SOUTH CAROLINA,**

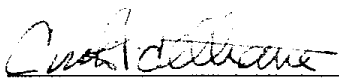
By: _____
Thomas D. Peoples, Mayor

Attest: _____
Stephen G. Riley, Manager

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S. C. CODE ANN. § 30-5-30 (SUPP. 1998)

I, the undersigned Notary Public do hereby certify that Calhoun Thomas, III, personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Estate of Calhoun Thomas, Jr.

Sworn to and Subscribed before me on this 28th Day of May, 1999.



Notary Public for South Carolina
My Commission Expires: 1-21-2002

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S. C. CODE ANN. § 30-5-30 (SUPP. 1998)

I, the undersigned Notary Public do hereby certify that Robert M. Hancock personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Hansford at Port Royal, L. L. C.

Sworn to and Subscribed before me on this _____ Day of May, 1999.

Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S. C. CODE ANN. § 30-5-30 (SUPP. 1998)

I, the undersigned Notary Public do hereby certify that Robert M. Hancock personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Hansford at Port Royal, L. L. C.

Sworn to and Subscribed before me on this 28 Day of May, 1999.



Notary Public for South Carolina
My Commission Expires: 2/6/01

STATE OF SOUTH CAROLINA)
) UNIFORM ACKNOWLEDGMENT
COUNTY OF BEAUFORT) S. C. CODE ANN. § 30-5-30 (SUPP. 1998)

I, the undersigned Notary Public do hereby certify that Thomas D. Peeples, Mayor, and Stephen G. Riley, Manager, personally appeared before me on this day and duly acknowledged the execution of the foregoing instrument on behalf of The Town of Hilton Head Island, South Carolina.

Sworn to and Subscribed before me on this _____ Day of May, 1999.

Notary Public for South Carolina
My Commission Expires: _____

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SERVICES

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